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Friday
January 13, 1984

Selected Subjects

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 446]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 210,000 cartons during the period January 15–21, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: January 15, 1984.

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 rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule 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). The action is based upon recommendations and information submitted by the Lemon 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 currently in effect. The committee met publicly on January 10, 1984, at Ventura, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is steady.

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 regulation 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 regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.746 is added as follows:

§ 910.746 Lemon Regulation 446.

The quantity of lemons grown in California and Arizona which may be handled during the period January 15, 1984, through January 21, 1984, is established at 210,000 cartons.

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

Dated: January 12, 1984.

Will supply on pages

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-1149 Filed 1-12-84; 11:49 am]

BILLING CODE 3410-02-M

7 CFR Part 928

Papayas Grown in Hawaii; Change in Interest Charges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the interest rate charged on delinquent assessments from ¾ of 1 percent per month to 1 percent per month. This rule also extends the time when assessments are due by 10 days. This action is designed to bring the interest rate more into line with current comparable rates, and to conform with handlers' current accounting practices.

EFFECTIVE DATE: February 13, 1984.

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 rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. 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 the recommendations and information submitted by the Papaya Administrative Committee and upon other available information. Notice of this action was contained in a proposed rule published April 7, 1983, in the **Federal Register** (48 FR 15133). No comments were received during the 30 days provided.

Under § 928.41 of the papaya marketing order, if a handler does not pay program assessments within a prescribed time period, the unpaid assessments may be subject to an interest charge at rates prescribed by the committee with the approval of the Secretary. The current interest rate of ¾ of 1 percent per month is set forth in § 928.141 of Subpart—Rules and Regulations (§§ 928.141–928.160), and

that rate has been in effect since 1971. This action would increase the rate to 1 percent per month to reflect a rate more in line with current comparable interest rates. This action also provides that such interest charges shall apply to assessments not paid within 5 days after the 25th of each month, rather than to assessments not paid within 5 days after the 15th of each month as is now the case, applicable to papayas handled during the preceding month.

List of Subjects in 7 CFR Part 928

Marketing agreement and orders, Hawaii, Papayas.

PART 928—[AMENDED]

Therefore, § 928.141 is revised to read as follows:

§ 928.141 Interest charges.

(a) Assessments levied pursuant to § 928.41 not paid within 5 days after the 25th of each month on papayas handled during the preceding month shall be subject to an interest charge of 1 percent per month.

(b) Notification that assessments are due not later than 5 days after the 25th of each month shall constitute a demand on a handler for the payment of the handler's pro rata share of expenses within the meaning of § 928.41(a).

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

Dated: January 10, 1984.

Russell L. Hawes,

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

[FR Doc. 84–989 Filed 1–12–84; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 989

Raisins Produced From Grapes Grown in California; Addition of Muscat (Including Other Raisins With Seeds), Sultana, and Zante Currant Raisins to Weight Dockage System and Conforming Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule completes action taken previously to include Muscat (including other raisins with seeds), Sultana and Zante Currant raisins in the weight dockage system for immaturity under the Federal marketing order for California raisins. The inclusion of these varietal types of raisins under the dockage system permit handlers of these raisins to acquire them as natural condition standard raisins even though the lot has been determined to be off-grade because of an excess of immature raisins. This action is based on a recommendation of the Raisin Administrative Committee (RAC). The RAC works with USDA in administering the order.

EFFECTIVE DATE: Effective with the 1983–84 crop year, which began August 1, 1983.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250; (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because growers and handlers have been using, and would like to continue using without interruption, the weight dockage system in acquiring 1983–84 crop Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins. A break in the use of this successful industry acquisition system would restrict the benefits of the weight dockage system, disrupt raisin acquisitions and serve no useful purpose. This system quickens raisin acquisitions and reduces inspection and reconditioning costs.

An emergency interim final rule was published in the November 29, 1983, issue of the **Federal Register** (48 FR 53683) establishing on an interim basis authority for raisin producers and handlers to utilize the weight dockage system for the 1983–84 crop Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins.

The weight dockage system is contained in § 989.210 of Subpart—Supplementary Regulations (7 CFR 989.210—989.221; 48 FR 35347; 49214; 52028; 53683). Conforming changes are necessary in § 989.701 of Subpart Quality Control (7 CFR 989.701—989.703; 48 FR 49214; 53683). These subparts are operative pursuant to the marketing agreement, and Order No. 989, both as amended, regulating the handling of raisins produced from grapes grown in California (hereinafter referred to collectively as the "order"). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Authority for the weight dockage system is contained in § 989.58(a) of the order.

The emergency rule solicited written comments until December 14, 1983, and not one was received. The order permits Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins to be included under a weight dockage system for immaturity together with Natural (Sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Golden Seedless, and Monukka raisins. Inclusion of these three varietal types of raisins under the dockage system permits handlers to acquire them as natural condition standard raisins even though the raisins have been determined to be off-grade because of an excess of immature raisins. The immature raisins usually can be removed from the lot of raisins by the handler during normal processing so the balance of the lot meets grade requirements. The creditable weight of such lot is computed by multiplying the net weight of the lot by a dockage factor. The factor reduces the weight of the lot by an amount approximating the weight of the immature raisins needed to be removed from the lot in order for the balance of the lot to meet grade requirements.

Current minimum grade and condition requirements prescribed in § 989.701 for these three varietal types state that they shall be fairly free from immature (skinny) raisins and shall have a normal characteristic color, flavor, and odor of properly prepared raisins. The industry's interpretation of this requirement is that any lot of raisins containing 12 percent or less, by weight, of immature raisins meets this requirement. Thus, the regulation establishes a 12 percent minimum for a weight dockage system as recommended by the RAC in keeping with current industry practices.

Permitting handlers to acquire low maturity raisins of these three varietal types as standard raisins under this system will speed up acquisitions, save inspection costs, and save the producers of such raisins additional reconditioning costs.

Therefore, paragraph (h) is added to § 989.210 designating a dockage system applicable to Muscat (including other raisins with seeds), Sultana, and Zante Current raisins. Also, other conforming changes are made in § 989.210 and in § 989.701 in recognition of this designation.

After consideration of all relevant matter and information presented, including that in the emergency Interim

Final Rule, the recommendations of the Committee and other information, it is determined that the changes hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders; Grapes, Raisins, California.

PART 989—[AMENDED]

Therefore, the final rule is as follows:

1. Section 989.210 of Subpart—Supplementary Regulations (7 CFR 989.210–989.221; 48 FR 35347; 49214; 52028; 53683) is amended by revising the section heading, paragraphs (a) through (f), the heading for paragraph (g), and by adding a new paragraph (h) to read as follows:

Subpart—Supplementary Regulations

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.

(a) *General.* Subject to prior agreement between handler and tenderer, a handler may acquire as standard raisins any lot of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, and Oleate and Related Seedless raisins containing more than 6 percent beginning with the 1983-84 crop year, 4 percent beginning with the 1984–85 crop year, and 2 percent beginning with the 1985–86 and subsequent crop years, by weight, of substandard raisins under a weight dockage system. A handler also may, subject to prior agreement, acquire as standard raisins any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing more than 12 percent, by weight, of substandard raisins under a weight dockage system. The creditable weight of each lot of raisins acquired in this manner shall be that obtained by multiplying the net weight of the raisins in the lot by the applicable dockage factor from the appropriate dockage table prescribed in paragraphs (g) or (h) of this section.

(b) *Free and reserve tonnage percentages.* Whenever free and reserve percentages are designated for raisins of the varietal types specified in paragraph (a) of this section for a crop year, such percentages shall be applicable to the creditable weight of any lot of such raisins acquired by a handler pursuant to a weight dockage system.

(c) *Reserve tonnage.* A handler may hold as reserve tonnage raisins any lot, or portion thereof, of raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage system: *Provided,* That only the creditable weight of such lot, or portion thereof, may be applied by the Committee against the handler's reserve tonnage obligation.

(d) *Assessments.* Assessments on any lot of raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to a weight dockage system shall be applicable to the free tonnage portion of the creditable weight of such lot.

(e) *Payments for services on reserve tonnage.* Payment to a handler for services performed by him with respect to reserve tonnage raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage system shall be made on the basis of the creditable weight of such lot and at the applicable rate specified for such services in § 989.401 of Subpart—Schedule of Payments.

(f) *Identification.* Any lot of raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to the weight dockage system shall be so identified by the inspection service affixing to one container on each pallet, or to each bin, in such lot, a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed to the container or bin until the raisins are processed or disposed of as natural condition raisins. The control card shall only be removed by, or under the supervision of an inspector of the inspection service, or authorized Committee personnel.

(g) *Dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, and Oleate and Related Seedless raisins.*

* * * * *

(h) *Dockage table applicable to Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins.*

Percent substandard	Dockage factor
12.0 or less	(1)
12.1	.999
12.2	.998
12.3	.997
12.4	.996
12.5	.995
12.6	.994
12.7	.993
12.8	.992
12.9	.991
13.0	.990

[1] No dockage.

Note.—Percentages in excess of the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment.

2. Section 989.701 (d)(2), (e)(2) and (f)(2) of Subpart—Quality Control (7 CFR 989.701–989.703; 48 FR 49214; 53683) are revised to read as follows:

Subpart—Quality Control

§ 989.701 Minimum grade and condition standards for natural condition raisins.

* * * * *

(d) * * *

(2) shall have a normal characteristic color, flavor, and odor of properly prepared raisins and shall contain not more than 12 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well matured grapes);

* * * * *

(e) * * *

(2) shall have a normal characteristic color, flavor, and odor of properly prepared raisins and shall contain not more than 12 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well matured grapes);

* * * * *

(f) * * *

(2) shall have a normal characteristic color, flavor, and odor of properly prepared raisins and shall contain not more than 12 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well matured grapes);

* * * * *

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

Dated: January 10, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84-690 Filed 1-12-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 81–ANE–16; Amdt. 39–4790]

Airworthiness Directives; General Electric Company CF6–45 and CF6–50 Series Model Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) that requires the replacement of certain

titanium high pressure compressor (HPC) parts found on CF6–45 and CF6–50 series engines. High vibration, mechanical failures of HPC blades, or rotor unbalance causing severe rubbing of titanium HPC components have resulted in uncontained titanium engine fires. Once ignited, titanium combustion continues until either the titanium is depleted, the air pressure falls below some critical value, or the combustion progresses to a heavy section. Titanium fires are fast burning and extremely intense. The molten particles in titanium fires generate highly erosive hot sprays which have burned through titanium compressor casings with resulting radial expulsion of molten or incandescent metal. These uncontained molten sprays have the potential for igniting serious secondary fires. Uncontained fire aboard an aircraft presents an obvious danger to the aircraft and its occupants, especially in flight.

DATES: *Effective date*—this amendment is effective on February 10, 1984.

Compliance date: June 1, 1984.

The Director of the **Federal Register** approved the incorporation by reference provisions in this document on January 10, 1984.

ADDRESS: The applicable service bulletins may be obtained from General Electric Company, Neumann Way, Cincinnati, Ohio 45215.

A copy of the service bulletins is contained in the Rules Docket, Office of the Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Ted Pas, Transport Engine Section, ANE–141, Engine Certification Branch, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (617) 273–7347.

SUPPLEMENTARY INFORMATION:

Prior Regulatory History

A previous proposal to amend Part 39 of the Federal Aviation Regulations (14 CFR Part 39) by adding a new AD applicable to General Electric Company CF6–45 and CF6–50 series model turbofan engines was published in the **Federal Register** on October 5, 1981 (46 FR 48941). A minor correction to the proposed AD was published in the **Federal Register** on November 9, 1981 (46 FR 55273). Five comments were received on this proposal. Two commentators addressed publication errors and noted that compliance could be documented by referral to accomplishment of specified service bulletins rather than recording of individual part numbers. Three commentators stated that the proposed compliance date of December 31, 1982, would be difficult to achieve for some operators without excessive expense, based on planned kit delivery and engine removal schedules. The manufacturer of the engine questioned the need for an AD.

The current proposal to amend Part 39 of the Federal Aviation Regulations (14 CFR Part 39) by adding a new AD applicable to General Electric Company CF6–45 and CF6–50 series model turbofan engines was published in the **Federal Register** on April 14, 1983 (48 FR 16063). To date, there have been 33 titanium fires in CF6–50 engines. These fires are attributed to severe rubbing of titanium HPC components caused by high vibration, mechanical failures of HPC blades, or rotor unbalance. All 33 fires are considered to be uncontained in that the fires burned through the titanium compressor case. Although there have been no secondary fires to date as a result of these burn throughs, the outer shrouds of the fuel manifolds have been heat damaged and penetrated on two occasions. While the fuel manifolds consist of a double wall construction to provide additional protection from fuel leakage and/or external heating, any fuel leakage during a titanium fire event has the potential of being catastrophic.

This AD will require the replacement of the titanium forward HPC case, the inlet and first and second stage vanes, and the stages 6–9 blades with steel parts. Configuration changes are also simultaneously required on the titanium 3–9 spool and stages 3–5 blades. Service experience has confirmed earlier tests and analysis showing that the substitution of steel HPC components for titanium in critical areas will eliminate titanium fires.

Interested persons were invited to participate in the proposed rulemaking by submitting written comments on the proposal of the FAA. Two comments were received in response to the current Notice of Proposed Rulemaking (NPRM).

One commentator, a foreign air carrier, accepted the need for the AD but mentioned that the compliance date proposed in the current NPRM, December 31, 1983, would be difficult for it to achieve. Its engine update program is accomplished during scheduled shop visits for major refurbishment, but due to reductions in flight schedule caused by the economic climate, its last four engines are not scheduled for upgrading by December 31, 1983. It suggested that a compliance date of June 30, 1984, would result in a significant cost savings.

Another commentator, a United States air carrier, disagreed with the need for an AD, noting that its "operations stand to be substantially and directly impacted by the FAA's proposal, and it may well be the only carrier to be affected." It stated that the fuel and lube lines of its CF6–50 engines were protected with graphite shields, a measure deemed by the engine manufacturer to provide the necessary margin of safety. It also indicated that it had implemented and accelerated program to incorporate the steel HPC parts and requested that the compliance date be extended to December 31, 1984, should the FAA determine to proceed with the promulgation of the AD.

This commentator also contended that the engine manufacturer's comments submitted in connection with the previous NPRM on this subject were not directly addressed in the current NPRM, and that a copy of these comments were not on file in the public docket when a copy of the complete docket was mailed to the commentator.

The FAA acknowledges the inadvertent omission of the manufacturer's comments when the docket was duplicated for the commentator. The manufacturer's letter has been placed in the engineering project file. It was, however, fully considered in the subsequent evaluation process and was mentioned in the current NPRM. The commentator's submission indicates that it was aware of the matters asserted in the manufacturer's letter and it recited a portion of that letter. Accordingly, the FAA concludes that this commentator was not seriously prejudiced by the omission. As no other interested party requested an opportunity to inspect the public docket, it is concluded that other parties were not affected by this inadvertent omission.

This commentator also suggested that the provision of the AD which authorizes adjustment of the compliance date to permit compliance at "an established inspection period," if approved by the Engine Certification Branch, would provide an appropriate mechanism to adjust the compliance date if enforcement of the December 31, 1983, deadline would create substantial maintenance and operating difficulties resulting in undue hardship for a carrier. Contrary to this commentator's understanding, the FAA does not envision the use of this discretionary provisions except for very minor adjustments to permit compliance when engines are already scheduled for an

established inspection period which approximates the compliance date mandated by the AD.

In its comment to the previous NPRM, the manufacturer questioned the need for an AD asserting that: (1) Titanium fires in engines incorporating protective wrap on the fluid lines had not resulted in secondary fires, and (2) the structural integrity of the engine system would not be lost even if the compressor casing should be completely severed in a fire as the thrust reverser, when latched, provides a full secondary load path capable of carrying all flight loads. In the view of the manufacturer, a titanium fire, from an operations standpoint, would be equivalent to an in-flight shutdown which might occur for any number of reasons.

The manufacturer, nevertheless, has aggressively supported the retrofit of engines to the steel compressor configuration because of the number of fire incidents and the nature of damage.

The FAA does not concur with the manufacturer's assessment. While graphite shields do protect the fluid lines, the fuel manifold is not so protected, and the outer shroud of fuel manifolds have been heat damaged and penetrated in two titanium fire incidents with this model engine. Moreover, lines containing flammable fluids are routed within the nacelle. These lines could leak as a result of engine failure damage and would fuel a fire in the nacelle if ignited by burning titanium. Thus, the potential for a serious secondary fire does exist.

Although fire bottles are provided to extinguish nacelle fires, the preferred approach to control this danger is by preventing engine case burn through, rather than by attempting to control a fire after burn through has occurred. The FAA also notes that the claimed load bearing capability of the thrust reverser would not mitigate the requirement for engine structural integrity following a failure.

Therefore, notwithstanding the views articulated by the manufacturer and the United States air carrier, the FAA has determined that these titanium fire incidents must be considered serious uncontained failures of the engine, and although no catastrophic secondary fires have resulted yet, there is a risk of one if flammable fluids are present for any reason.

In consideration of all evidence presently available, the FAA has determined that mandatory compliance with the engine upgrade program is deemed necessary to provide an adequate level of safety.

A compliance date of June 1, 1984, is being incorporated in place of the December 31, 1983, date which was proposed in the NPRM. This date will provide an adequate opportunity for all remaining operators to complete the required modifications. The vast majority of operators have already completed the change. Indeed, only approximately 13 engines of a world-wide fleet total of 1,007 engines have not yet been modified. Continuation of unmodified engines in service beyond June 1, 1984, presents, in the judgment of the FAA, an unnecessary risk to the flying public.

Approximately 13 engines are affected by this AD, and the cost impact is estimated to be $5,980,000. For this reason, the proposed rule is not considered to be major under the criteria of Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected since the rule affects only operators of B747, DC-10, and A300 aircraft in which the CF6-45 and -50 engines are installed, none of which is believed to be a small entity.

The FAA has given careful consideration to the comments which were received and has determined that sufficient evidence exists in the interest of aviation safety to adopt the proposed rule.

List of Subjects in 14 CFR Part 39

Engines, Aircraft, Aviation safety.

Adoption of the Amendment

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

General Electric Company: Applies to CF6-45 and CF6-50 series model turbofan engines. Unless already accomplished, to preclude the possibility of uncontained titanium fires, replace as follows prior to June 1, 1984:

(a) Compressor stator assembly, including the compressor case, and stage 6 vanes in accordance with FAA approved General Electric CF6-45 and CF6-50 Service Bulletin 72-549.

(b) Compressor inlet stator vanes and stage 1 and 2 stator vanes in accordance with FAA approved General Electric CF6-45 and CF6-50 Service Bulletin 72-550.

(c) Compressor blades, stages 3 through 9, and the stage 3-9 spool in accordance with FAA approved General Electric CF6-45 and CF6-50 Service Bulletin 72-551.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request from the General Electric Company, Neumann Way, Cincinnati, Ohio 45215. These documents may also be examined at the FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts. A historical file on this AD is maintained by the FAA, New England Region Office, Burlington, Massachusetts.

Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Engine Certification Branch, FAA, New England Region, may adjust the compliance date(s) specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

This amendment become effective on February 10, 1984.

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

Note.—The FAA has determined for the reasons stated in **"SUPPLEMENTARY INFORMATION,"** that this document involves a regulation which is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) It is certified that the rule will not have a significant economic impact on a substantial number of small entities because the rule will affect only operators of B747, A-300, and DC-10 aircraft in which the CF6-45/50 engines are installed, none of which is believed to be a small entity. A final regulatory evaluation prepared for this document is contained in the public docket, and a copy may be obtained by writing to the FAA, Office of the Regional Counsel, Attn: Rules Docket No. 81-ANE-16, 12 New England Executive Park, Burlington, Massachusetts 01803.

Note.—The incorporation by reference provisions of this document were approved by the Director of the **Federal Register** on January 10, 1984.

Issued in Burlington, Massachusetts, on December 20, 1983.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84-932 Filed 1-10-84; 2:30 pm]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 385

[Reg. OR-214; Amdt. 136 to Part 385]

Delegations and Review of Action Under Delegation; Nonhearing Matters

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is delegating authority to its Comptroller to pay all properly documented claims from

appropriated funds consistent with Treasury, OMB, GAO, and CAB policies, make adjustments to payments based on CAB audit reports and internal claims examinations, and design air carrier subsidy claim forms. This action is taken to implement the Debt Collection Act, the Contract Disputes Act, and to clarify existing functions.

DATES: Adopted: January 10, 1984. Effective: January 13, 1984.

FOR FURTHER INFORMATION CONTACT: Edna S. Park, Office of the Comptroller, 202–673–5282 or Joanne Petrie, Office of the General Counsel, 202–673–5442, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: In PR–262, 48 FR 52887, November 23, 1983, the Board issued a new Part 316, Collection of Claims Owed the United States, to implement the Federal Claims Collection Act and the Debt Collection Act. That rule sets forth the procedures to be used by the CAB to collect debts owed the United States, and states how interest will be charged on unpaid claims. The rule further states when interest and penalty charges may be waived and what actions a person must take to respond to a notice of claim. The purpose of the rule is to ensure a fair and expeditious collection of these claims.

In reviewing the Board's delegations of authority to staff contained in Part 385, Delegations and review of action under delegation: Nonhearing Matters, the Board finds that three additional delegations are necessary to efficiently implement the Acts and certain general Board functions. This final rule clarifies the Comptroller's role as the Board's Financial Manager. In addition, it grants authority to perform ministerial acts pursuant to the Board's activities under the Debt Collection Act.

The first delegation gives the Comptroller authority to pay all properly documented claims from appropriated funds consistent with Treasury, OMB, GAO, and CAB policies. Section 384.7(a)(3) states that the comptroller is in charge of administering the Board's financial management systems, including fiscal administration activities and subsidy payment functions. This final rule merely clarifies the organizational structure by providing specific delegated authority to pay authorized bills.

Paragraph (j) delegates authority to make minor or routine adjustments to payments based on audit reports prepared by the Bureau of Carrier Accounts and Audits, and through routine internal examinations of claims and vouchers. This delegation applies only to routine adjustments that do not require a policy interpretation or decision by the Board. An example of an action authorized under this delegation would be an overpayment of $25 to a carrier because of incorrect addition or transposition of numerals. The delegation specifically does not include any dollar limitation because the significance of any adjustment varies with each case.

Paragraph (k) grants the Comptroller explicit authority to design air carrier subsidy claim forms. As a practical matter, the Comptroller has been informally exercising this function for years for the section 406 program. This delegation will allow the Comptroller to redesign the form if necessary to provide or highlight information needed by the Board.

Since this amendment is administrative in nature, affecting only rules of agency organization and procedure, we find that notice and public procedure are unnecessary. The rule will be effective upon publication in the Federal Register because the Board finds that the delegation is necessary to implement Part 316, the Debt Collection Act, and the Contract Disputes Act.

List of Subjects in 14 CFR Part 385

Administrative practice and procedure, Authority delegations (Government agencies).

PART 385—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 385, Delegations and Review of Action Under Delegation; Nonhearing Matters, as follows:

1. The authority for Part 385 is:

Authority: Secs. 102, 204, 401, 402, 403, 407, 416, Pub. L. 85–726, as amended, 72 Stat. 740, 743, 754, 757, 758, 766, 771; 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1377, 1386. Reorganization Plan No. 3 of 1961, 26 FR 5989.

2. Paragraphs (i), (j), and (k) are added to § 385.27 as follows:

§ 385.27 Delegation to the comptroller.

* * * * *

(i) Pay from appropriated funds all properly documented claims consistent with Treasury, OMB, GAO, and CAB policies.

(j) Make minor or routine adjustments to payments based on audit reports prepared by the Bureau of Carrier Accounts and Audits, and through routine internal examinations of claims and vouchers.

(k) Design air carrier subsidy claim forms.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–996 Filed 1–12–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 134, 148, 162, 171, and 172

[T.D. 84–18]

Penalties and Penalties Procedures

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to penalties and penalties procedures. The document: (a) Adds the revised penalty guidelines relating to 19 U.S.C. 1592 as an appendix to Part 171, Customs Regulations (19 CFR Part 171); (b) clarifies the requirements and criteria applicable to prior disclosures of violations of 19 U.S.C. 1592; (c) places a limitation on the number of supplemental petitions requesting relief from fines, penalties, and forfeitures and from liquidated damages claims; and (d) makes certain other minor, technical changes to the Customs Regulations.

The amendments are necessary in view of legislative and procedural changes relating to Customs fines, penalties, and forfeitures program.

EFFECTIVE DATE: February 13, 1984.

FOR FURTHER INFORMATION CONTACT: Edward T. Rosse, Chief, Commercial Fraud and Negligence Penalties Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8317).

SUPPLEMENTARY INFORMATION:

Background

Section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), provides for penalties and penalties procedures when by fraud, gross negligence or negligence, merchandise is entered, introduced, or attempted to be entered or introduced into the commerce of the United States, by means of any document, written or oral statement, or act, which is material and false, or by means of any material omission; or when a person aids or abets any other person in the entry, introduction, or attempted entry or introduction of merchandise by such means. Section

618, Tariff Act of 1930, as amended (19 U.S.C. 1618), provides for the remission or mitigation of fines, penalties, and forfeitures by the Secretary of the Treasury.

Public Law 95–410, the "Customs Procedural Reform and Simplification Act of 1978," amended 19 U.S.C. 1592. As a result of changes made by Pub. L. 95–410, and as a result of a consideration of its fines, penalties, and forfeitures program, the Customs Service believes that changes in its regulations are necessary.

This document amends the Customs Regulations by (a) adding the revised penalty guidelines relating to 19 U.S.C. 1592 as an appendix to Part 171, Customs Regulations (19 CFR Part 171); (b) clarifying the requirements and criteria applicable to prior disclosures of violations of 19 U.S.C. 1592, (c) placing a limitation on the number of supplemental petitions requesting relief from fines, penalties, and forfeitures and from liquidated damages claims; and (d) making certain other minor, technical changes to the Customs Regulations.

These changes were proposed in a notice published in the **Federal Register** on November 3, 1982 (47 FR 49853). Approximately 40 comments were received in response to the notice.

Discussion of Comments and Formulation of Final Rules

1. REVISED PENALTY GUIDELINES

A. The Guidelines as an Appendix to the Regulations

Several commenters object to the status of the guidelines as an appendix to the regulations. They contend that since the guidelines are substantive, they should appear as regulations subject to formal rule making procedure.

Customs does not consider the guidelines to be formal regulations; they are for instruction and guidance to Customs field officers. Customs is including the guidelines as an appendix to the regulations merely to advise the public of them.

B. Definitions

Several commenters request clarification of the term "unfair trade practice" under paragraph (A) of the guidelines. Language is being added to expand upon the unfair trade practice concept by stating "unfair trade practice under the antidumping, countervailing duty or a similar statute or an unfair act involving patent or copyright infringement."

Numerous commenters object ot the definition of negligence in paragraph (B)(1) of the guidelines, contending that the language "reasonable care and competence expected from a person in the same circumstances" is a drastic departure from the standard definition of negligence. They state that ineguitable results will occur if a greater degree of care is expected from an experienced importer. The commenters object to including in the definition of negligence the language "communicating information so that it may be understood by the recipient" because it is unfair to make the importer responsible for the competency of the Customs officers receiving the information.

Customs has chosen the language comprising the definition of negligence from the Restatement (Second) of Torts, section 552, comment b, which applies to the obligations of suppliers of information. According to the Restatement, a supplier of information, in order to fulfill the expected standard of care, must exercise the competance reasonably expected of one in the same circumstances. Therefore, experienced importers may be reasonably expected to exercise a higher degree of competence in ascertaining the facts stated in entry documents than the business novice or inexperienced inporter. Similarly, in order to fulfill the standard of care, the information supplied must not be communicated in such a manner that it is misleading. This definition imposes only a reasonable standard of care and does not, as the commenters suggest, make the importer a guarantor of the interpretation or understanding of the information presented.

The commenters state that the definitions of negligence and gross negligence use, but do not explain, the words "the offender's obligation under the statute."

Customs believes that 19 U.S.C.1592 clearly states a party's obligation pursuant to that statute, and that it is unnecessary to restate that obligation in the guidelines.

One of the commenters suggests that the language "violate the laws of the United States" in the definitions of gross negligence and fraud be expanded to read "violate the laws of the United States related to the entry or introduction or attempted entry or introduction of merchandise into the commerce of the United States."

Customs believes that the suggested expansion of this language is inappropriate since a false statement or omission may relate to an offender's obligations under laws of the United States other than the laws related exclusively to entry or introduction of merchandise, e.g., laws prohibiting possession or use of certain articles in the United States, such as controlled substances, automobiles which fail to meet safety or emission standards, etc.

With respect to the definition of fraud, Customs has deleted the word "demonstrable" and inserted the words "as established by clear and convincing evidence." This change is being made to have the guidelines parallel 19 U.S.C. 1592(e)(2) which states that in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty under 19 U.S.C. 1592 based upon fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence.

C. Assessment of Penalties

Clarification is requested by commenters who claim that the Customs field officer is not specifically authorized by the guidelines to evaluate mitigating factors in setting the amount in the pre-penalty notice.

In the proposal, Customs stated that the guidelines would instruct field officers to consider mitigating, aggravating and extraordinary factors in assessing a claim for monetary penalty. To ensure that field officers are aware of this policy, that instruction is being inserted in paragraph (C)(1)(b) of the guidelines, which directs field officers to consider mitigating, aggravating and extraordinary factors in issuing a pre-penalty notice in cases involving gross negligence and negligence. With respect to a penalty based on fraud, the amount in the pre-penalty and penalty notices shall be the domestic value of the merchandise. Language is also being added to the introductory paragraph preceding paragraph (A) of the guidelines to clarify that the assessed or mitigated penalty amount determined in accordance with the guidelines does not limit the penalty amount which the Government may seek in bringing civil enforcement action pursuant to 19 U.S.C. 1592(e).

Two commenters find fault with what they perceive to be an approach to assessment of penalties based on the fact that some violations may be less serious than others. They point out that the "seriousness" of a violation should not depend upon the amount of the loss of revenue. One commenter calls this approach inappropriate inasmuch as the statute creates its own criteria of seriousness by establishing degrees of culpability. Several commenters remark that fixed sum penalty amounts for non-serious violations should never exceed statutory maximums or the ranges set forth by the guidelines, and that the

guidelines fail to reflect this rule. A number of commenters point out that the examples provided in the guidelines for non-serious violations are not even violations because the falsities are not material. Customs believes that the amount of the loss of revenue is a factor to be considered along with other factors in determining a penalty amount within the range of penalty amounts appropriate to the degree of culpability. The provisions in paragraph (C)(1)(b) are intended to indicate several factors affecting the gravity of violations for general guidance in determining the amount of the penalty claim. We do not believe that these provisions can be interpreted as requiring an unreasonable categorization of violations. Language is being added to paragraph (C)(1)(c) to indicate that fixed sum penalty amounts for certain violations should not exceed either the statutory maximums or the maximums set forth in the guidelines, and to indicate that the falsities cited as examples must be material, as defined in the guidelines.

With respect to paragraph (C)(2) of the guidelines, commenters recommend that a loss of revenue of $1,000, rather than $500, be the threshold for the initiation of a penalty case, and that a penalty assessment be discretionary with the district director if the loss of revenue is between $1,000 and $5,000. One commenter suggests that Customs add language stating that, in a case involving a prior disclosure, the district director has the discretion whether or not to issue a penalty notice. A commenter states that it is illegal to set a higher degree of culpability in the penalty notice merely because the statute of limitations will expire within 3 months, and that a penalty notice should always state why the case is continuing, or the basis for not accepting the petitioner's arguments. One commenter recommends that the phrase of paragraph (C)(2)(a) "and in consideration of issuance of the penalty notice" be changed to "and in consideration whether or not to issue a penalty notice."

Customs believes that the threshold amount of a $500 loss of revenue for initiation of a penalty case is consistent with and necessary to Customs obligation to enforce the statute and deter future violations. The language in paragraph (C)(2)(c) is being amended to provide that a penalty case shall not be initiated in cases involving: (a) a prior disclosure of a violation resultant from gross negligence or negligence; and (b) either no actual loss of revenue to the Government, or an actual loss of revenue resulting in interest due under 19 U.S.C. 1592(c)(4) which is less than $500, provided that the actual loss of revenue has been tendered to Customs. Criteria limiting penalties for violation of 19 U.S.C. 1592 by arriving travelers are contained in paragraph (J)(2) of the guidelines.

Customs believes that the provision for reissuance or amendment of outstanding penalty claims, if the evidence substantiates a higher degree of culpability, is reasonable and not contrary to any statutory provision. Customs further believes that under 19 U.S.C. 1592(b)(2), a penalty claim need only specify all changes in the information provided in the pre-penalty notice. There is no requirement that the penalty notice address arguments made in response to the pre-penalty notice. It is clear that Congress intended that such findings be provided only in response to a petition for relief.

The recommended language change to paragraph (C)(2)(a) is being adopted.

D. Ranges of Mitigation

The commenters criticize the disposition ranges in paragraph (D) of the guidelines as being too high, especially in non-revenue-loss cases. They criticize the dispositions in prior disclosure cases in paragraph (E) because mitigation is not permitted below the statutory maximums.

Customs believes that the disposition ranges in paragraph (D) are consistent with Customs enforcement objectives and also allow substantial relief from penalty claims. Relief below the stated ranges is permitted in cases involving a prior disclosure (paragraph (E)), cases where extraordinary factors are present (paragraph (H)), and cases where a fixed sum penalty is appropriate (paragraph (C)(1)(c)). Customs does not believe that the penalties collected upon the disposition of prior disclosure cases are excessive. In a prior disclosure case in which the violation is due to negligence or gross negligence, and there is no loss of revenue or the loss of revenue is potential, no penalty is collected.

E. Mitigating Factors

Several commenters urge that contributory Customs error, which includes misleading or erroneous Customs advice, should be grounds for cancellation of a penalty case rather than merely a mitigating factor. They urge that the mitigating factor of cooperation with the investigation should include providing books and records, notwithstanding 19 U.S.C. 1508, which requires the maintenance of books and records, because the Government is saved the effort of procuring a subpoena. One commenter believes that the mitigating factor of immediate remedial action should include the payment of the actual loss of revenue after issuance of a penalty notice as long as it is made within 30 days of the determination of duties owed. Commenters also believe that prior good record and inexperience in importing should bear upon the level of culpability, and that prior good record should mitigate a fraud violation.

With respect to contributory Customs error, the guidelines are being amended to state that if it is determined that the Customs error was the sole cause of the violation, the penalty will be cancelled. If the Customs error contributed to the violation but the violator is nevertheless culpable, the error will be considered as a mitigating factor. Concerning cooperation, Customs believes that the fact that the Government may be saved the effort of procuring a subpoena does not warrant a provision that the act of supplying books and records should be considered as a mitigating factor.

Concerning the payment of the actual loss of revenue, § 162.79(b)(2), Customs Regulations (19 CFR 162.79(b)(2)), in implementing 19 U.S.C. 1592(d), provides that the amount of the actual loss of revenue shall be stated in the penalty notice and that payment or arrangements therefor shall be made within 30 days of the date of the notice. Customs does not believe that compliance with this provision should be regarded as a mitigating factor. With respect to culpability, the existence of a prior good record is not relevant to a determination as to whether the offender's violations with respect to subsequent importations were due to negligence, gross negligence or fraud, and this factor cannot, in any case, be found to mitigate a fraudulent violation of the statute. Similarly, Customs believes that although experience in importing may be considered in determining the competency reasonably to be expected of an importer, this aspect of experience or inexperience is separate and distinct from considerations affecting mitigation.

F. Aggravating Factors

Two commenters contend that obstructing the investigation, withholding evidence, and providing misleading informaton should be considered aggravating factors only if they were intentional. Other commenters believe that aggravating factors should only be considered if Customs Headquarters concurs.

Customs believes that the provision for aggravating factors is sufficient for

their application in appropriate circumstances without requiring a specific finding of intent, and that there is no demonstrable need for Customs Headquarters concurrence in a finding by Customs field officers that these factors are present.

G. Extraordinary Factors

One commenter contends that Customs knowledge of a violation should preclude the assessment of any penalty in a non-fraud case where Customs failure to notify the violator is a dereliction of duty. Another commenter proposes that substantial delay in the investigation attributable to the violator should not preclude application of this factor because the import specialist should be apprised of the error and can control the entries.

Customs does not believe that the fact that Customs failed to notify a violator concerning Customs knowledge of the violation can, under any circumstance, warrant cancellation or full remission of the penalty. Denial of the application of this factor when a substantial delay in the investigation is attributable to the violator is based on the premise that Customs is not in a position to provide the violator with information concerning a violation until the matter has been investigated.

H. Customhouse Brokers

A commenter criticizes that part of the guidelines which subjects to full penalty liability customhouse brokers who commit a grossly negligent violation of 19 U.S.C. 1592, whether or not the broker shared in the financial benefits of the violation over and above the prevailing brokerage fees. Customs has decided to strike this proposed departure from present practice and maintain its penalty limit of $500 in such a situation. Grossly negligent brokers who do share in the financial benefits of a violation will not be protected by the $500 limit.

The same commenter also criticizes the fact that the guidelines depart from previous practice in that they do not include language which shields an innocent broker who files an entry as the importer of record from liability for the actual loss of revenue on liquidated entries. Customs had already ruled (Headquarters decision dated September 8, 1982, file No. 213792) that an innocent broker filing an entry as importer of record is liable under 19 U.S.C. 1592(d) for any actual loss of revenue. By filing an entry as importer of record, i.e., using its own bond rather than its client's bond, the broker assumes the responsibility and risk not only for any increased duties found to be due on unliquidated entries, but for the actual loss of revenue on liquidated duties as well.

I. Arriving Travelers

Commenters have noticed that the guidelines providing for special limitations on liability for first offense, noncommercial, fraudulent violations by arriving travelers, do not provide for non-revenue-loss cases. Language indicating a range of penalty amounts for non-revenue-loss cases is being added. In addition, paragraph (J)(2)(b) is being revised to state certain circumstances with respect to both revenue-loss and non-revenue-loss cases where a penalty case shall not be initiated.

2. PRIOR DISCLOSURE

A. Writing Requirement

Numerous commenters object to the requirement of proposed § 162.74(a), Customs Regulations (19 CFR 162.74(a)), that a prior disclosure be in writing. They contend that 19 U.S.C. 1592(c)(4) does not authorize the imposition of formal requirements concerning the manner in which a prior disclosure must be made, and that the writing requirement would be prejudicial to inexperienced importers who may be unaware of the requirement.

Customs believes that it is implicit from the provisions of 19 U.S.C. 1592(c)(4) that the Secretary of the Treasury shall issue regulations which set forth the procedures for prior disclosure in order to ensure that the facts concerning the date, time, and contents of the disclosure are established in the record. Further, under 19 U.S.C. 1624, the Secretary is authorized to issue rules and regulations as may be necessary to carry out the provisions of 19 U.S.C. 1592(c)(4). The requirement that a prior disclosure must be in writing is reasonably related to the necessity to establish the date, time and contents of the purported prior disclosure.

In paragraph (H)(2) of the proposed guidelines it was stated that additional relief from a penalty will be granted if a person discloses the circumstances of a violation by providing evidence or information which is not in Customs possession or knowledge and/or which had not been requested by a Customs officer, although the disclosure does not meet the requirements for a prior disclosure in § 162.74, Customs Regulations (19 CFR 162.74). After further consideration, Customs has concluded that a person should be accorded the full benefit of prior disclosure treatment if the person provides information to Customs with respect to a violation of 19 U.S.C. 1592 which does not meet the requirement of a written disclosure statement if the district director is satisfied that: (1) The information was provided before or without knowledge of the commencement of a formal investigation; and (2) the information provided substantially comprises the information specified in section 162.71(e). This information need not be in writing. This amendment is stated in § 162.74(a)(2). Paragraph (H)(2) of the proposed guidelines is deleted.

B. Time of Disclosure

Numerous commenters believe that the time of disclosure as specified in § 162.74(b), should be the time of mailing, not the time of receipt, in order to conform with standard notice procedure. They contend that the regulation should obligate the Customs officer to give a receipt, rather than obligate the disclosing party to ask for a receipt. It is also recommended that the term "documents" be replaced with "the written statements provided for in § 162.71(e)." One commenter believes that the certified mail requirement is unreasonable because it may invalidate certain disclosures even when the fact of disclosure is conclusively established. Because the burden is upon the importer to prove disclosure, it is contended that the certified mail rule should be optional.

Customs has revised the proposed language of § 162.74(b) to provide that if the disclosing documents are sent by certified mail, return-receipt requested, and if they are received by Customs, the time of mailing shall be deemed to be the time of disclosure. If the documents are sent otherwise by mail or are delivered in person, the time of receipt by Customs shall be deemed to be the time of disclosure. Upon request, Customs will provide a receipt stating the time and date of receipt. The provision of information which is not in writing but which qualifies for prior disclosure treatment shall be deemed to have occurred at the time Customs was provided with information which substantially complies with the requirements of § 162.71(e).

C. Discloses the Circumstances of the Violation

Commenters object to proposed § 162.71(e)(4) because the disclosing party may not possess, at the time of the disclosure, "the true and accurate information or data which should have been provided in the entry documents." Customs has decided to add to this language "and agrees to provide any

information or data which is unknown at the time of disclosure within 30-days of the initial disclosure date or within an extension of such 30 day period as the district director may permit in order for the person to obtain the information or data."

D. Referral for Investigation

Commenters criticize the district director's obligation, pursuant to § 162.74(c), to refer any disclosure of a violation to the field office of the Office of Investigations as an unnecessary duplication of effort on Customs part inasmuch as an importer's disclosure should be presumed to be accurate and complete. One commenter suggests that such referral should be within the discretion of the district director. Two commenters have recommended that this section be merged with § 162.74(j), which provides for non-referral of minor violations.

Customs does not agree that determinations concerning the validity of a prior disclosure can be based solely on a presumption that the disclosure is complete and accurate. This provision is not intended to preclude a determination by the district director that referral is unnecessary because a minor violation is involved within the purview of § 162.74(j), or a determination, normally after consultation with the Office of Investigations, that commencement of a formal investigation is not necessary in the circumstances of the particular disclosure.

E. Commencement and Expansion of a Formal Investigation

Commenters object to the provisions in § 162.71 (d) and (e) that "contemporaneous notes" in the investigatory record may establish the date of commencement or expansion of a formal investigation. Commenters stress that "contemporaneous notes" should not stand on the same footing as a Memorandum of Information Received (MOIR) or an entry in a formal investigative record. They contend that more formal documentation is needed, such as the filing of an MOIR or the assignment of a file number. Customs disagrees. Whether a formal investigation has been commenced or expanded is not dependent upon the means for recording the fact, e.g., the preparation of an MOIR or assignment of a file number. More determinative of the commencement of an investigation of a specific violation is whether the investigatory record shows that information was received with would cause an investigative agent to believe that the possibility of a violation of 19 U.S.C. 1592 existed. We do not believe that in any such instance the actions of the agent in investigating the information can be regarded as routine.

Commenters also criticize the provisions in § 162.71 (d) and (e) that an agent's inquiry concerning the type of or circumstances of the violation will commence or expand an investigation. They contend that routine inquiries should be distinguished from formal investigations, and that routine inquiries should not preclude a subsequent prior disclosure. One commenter states that a request for books and records must precede a determination that a formal investigation should commence based upon those books and records. Customs believes that the act of a Customs investigative agent in making an inquiry concerning the type of or circumstances of a violation or in requesting specific books and records cannot be considered routine, and that such an inquiry or request is sufficient to inform a party that an investigation has been commenced or has expanded.

F. Proof of Lack of Knowledge

With respect to the language of proposed § 162.74(f), commenters contend that the imputation of knowledge of commencement of an investigation due to an agent's inquiry or request for books and records creates an irrebuttable presumption that is contrary to the actual knowledge test of the statute. One commenter suggests that the presumption be rebuttable. Another commenter suggests that the time period of proposed § 162.74(f) be changed from three years to one year.

Customs has determined to change the language of this section to provide that the presumption of knowledge created by an agent's inquiry or request for books and records may be rebutted by evidence that, notwithstanding the inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed violation. Additionally, Customs has decided to delete the three-year time period from § 162.74(f); the time of the agent's inquiry or request is only one factor to be considered in determining whether the person had knowledge of the commencement of the investigaton.

G. Penalty Claims Not Requiring Formal Investigation

One commenter suggests that § 162.74(g) make clear that a prior disclosure may occur up until the time of any of the acts of sub-paragraphs (1) through (4). Another commenter believes that a prior disclosure should be foreclosed on the date recorded in writing by an officer who discovered facts and circumstances relied upon by an authorized officer to determine that a penalty will be issued without formal investigation.

Customs believes that the language of proposed § 162.74(g) is sufficiently clear in stating that a prior disclosure may be made at any time before the appropriate Customs officer's determination that available evidence warrants issuance of the penalty claim. The officer's evaluation of the evidence and his further action in this regard are determinative. This situation is not analagous to that where Customs is merely commencing a formal investigation and, therefore, notice to the person is not necessary to preclude a prior disclosure. Secondly, the decision and action of the Customs officer, not the discovery of the evidence leading to the decision, preclude the subsequent prior disclosure. Language is being added to proposed § 162.74(g)(3) to indicate that determinations by Customs officers of possible violations without formal investigation may also be made as the result of the inspection of commercial merchandise in connection with entry.

3. SUPPLEMENTAL PETITIONS

A. Limit of Two Supplemental Petitions

Commenters contend that the limit of two supplemental petitions in proposed §§ 171.33(c) and 172.33(c) represents an arbitrary cut-off of the administrative review process and that no limit should be set, especially where the penalty amount has been paid. Commenters identify certain circumstances which should always warrant further review, i.e., (1) where the supplemental petition responds to a new issue of law or fact which the initial decision failed to identify; (2) where counsel has been retained for the first time; (3) where additional information has been obtained through Freedom of Information Act procedures; and (4) where a favorable court decision has been rendered with respect to related entries, or unrelated entries if the issues are the same (in which case the 60-day limit of proposed §§ 171.33(c)(2)(ii) and 172.33(c)(2)(ii) is criticized as too short). Commenters also state that the term "second supplemental petition" should not include an offer in compromise pursuant to 19 U.S.C. 1617.

Customs believes that the mitigation process under the regulations and revised penalty guidelines provides ample opportunity for oral and written presentations by any party involved in a penalty proceeding, and ample

opportunity for administrative review throughout the various stages of the proceeding. Any person to whom a pre-penalty notice is issued may make a written and an oral presentation as to why a penalty notice should not be issued. In determining whether to issue a penalty notice, and, if so, the amount of the penalty, the district director is to consider oral and written presentations made by the alleged violator, all available evidence with respect to the existence of material false statements or omissions, the degree of culpability, the existence of a prior disclosure, the seriousness of the violation, and the existence of mitigating, aggravating or extraordinary factors. Subsequent to the issuance of a penalty notice, the alleged violator may make a written and an oral presentation, and will receive a written decision which includes findings of fact and conclusions of law. If the alleged violator is not satisfied with that decision, a supplemental petition may be filed, additional presentations made, and an additional written decision will be issued. The petitioning party can also request that a supplemental petition be treated as an appeal to the Secretary of the Treasury.

As stated previously, Customs believes that these procedures provide ample opportunity for review of all aspects of the penalty case. If matters such as new information or new legal or factual issues arise, or new counsel is retained, the petitioner can receive yet another hearing either through a second supplemental petition, after payment of the penalty and actual loss of revenue, or by declining to pay and pursuing the matter with the Department of Justice after the case is referred to that agency by Customs. Customs believes that it is in the interest of the efficient administration of the penalty process that, for the purpose of §§ 171.33(c) and 172.33(c), the term "second supplemental petition" includes an offer in compromise under 19 U.S.C. 1617. In making an offer of compromise, however, only the amount of the offer must be deposited (see 19 CFR 161.5(b)).

B. Payment Prerequisite to Second Supplemental Petition

Commenters criticize the requirement of proposed §§ 171.33(c)(1) and 172.33(c)(1) that a second supplemental petition will not be accepted unless it is accompanied or preceded by full payment of all penalties and withheld duties determined to be due in the decision rendered on the first supplemental petition. They contend that prepayment will serve as a disincentive for Customs to seriously consider further submission. The commenters further state that since payment of the penalty may be considered voluntary under *Carlingswitch, Inc. v. United States*, 651 F. 2d 768 (C.C.P.A. 1981), and not a protestable "charge or exaction" under 19 U.S.C. 1514(a)(3), judicial review may be foreclosed since the Court of International Trade has no jurisdiction over a case brought by a petitioner to review a penalty.

Customs does not believe that there is any basis for the conclusion that Customs will fail to give meaningful consideration to supplemental petitions after the penalty and withheld duties are paid. In the pre-penalty stage of the case, the petitioner is afforded the opportunity to discuss all issues in the case with the field officers involved, and in any decision on the initial petition or first supplemental petition, Customs is required to state the findings of law and fact upon which the decision is based. The number of cases in which all significant issues will not be addressed before the penalty must be paid will be minimal and the possibilities suggested by commenters do not justify further delays in collection of the mitigated claim by the Government.

The *Carlingswitch* case concerned a voluntary payment of withheld duties. Thus, that decision will not affect Customs policy, pursuant to 19 U.S.C. 1520(a)(3), of refunding penalty amounts which are subsequently determined to be excessive. While it may be true that judicial review may be precluded if a peititioner files a second supplemental petition after payment of a penalty, and further relief is denied by Customs, Customs believes that the penalty process gives a petitioner adequate opportunity for review. If the petitioner wants to ensure judicial review, it can decline to pay the mitigated penalty after the first supplemental petition.

The notice stated that nothing in the proposed amendments should be construed as limiting or precluding the opportunity afforded under Treasury Order 219–2, published in the **Federal Register** on February 25, 1976 (47 FR 8192), to seek an appeal to the Secretary of the Treasury. Customs has decided to include the provisions of Treasury Order 219–2 in new § 171–33(d).

4. INTERNAL ADVICE REQUESTS

One commenter suggests, with respect to proposed section 162.78(b), that internal advice requests be prohibited during a pending penalty case inasmuch as advice from Headquarters on a classification or value issue may delay the penalty case and circumvent the district director's authority.

Customs does not believe that there is demonstrable evidence that adoption of this provision would cause substantial delays or circumvention of the district director's authority to proceed with the penalty case which would outweigh Customs interest in resolving complex legal issues at an early stage in the penalty proceeding. In connection with an internal advice request, a district director may indicate why he believes that consideration of a particular request is inappropriate.

5. ARRIVING PASSENGERS

The notice contained a minor, technical amendment to § 148.19, Customs Regulations (19 CFR 148.19). Section 148.19 is being further amended to state that, if a seizure is not made, an amount equivalent to the maximum penalty which may be assessed in accordance with the passenger's degree of culpability as provided for in 19 U.S.C. 1592 shall be demanded from the passenger, and that the amount demanded may be mitigated in accordance with the revised penalty guideline. The language "or to treat an article in some other manner in order to obtain a benefit" has been added to § 148.19.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document because the amendments will not have a significant economic impact on a substantial number of small entities. The amendments are not expected to have significant secondary or incidental effects on a substantial number of small entities, or to impose, or otherwise cause a significant increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Because this document will not result in a regulation which will be a "major rule" as defined in section 1(b) of E.O. 12291, a regulatory impact analysis as prescribed by section 3 of the E.O. is not required.

Drafting Information

The principal author of this document was Gerald J. O'Brien, Jr., Regulations Control Branch, Office of Regulations

and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 134

Customs duties and inspection, Imports.

19 CFR Part 148

Customs duties and inspection, Imports.

19 CFR Part 162

Customs duties and inspection, Imports, Administrative practice and procedure, Law enforcement, Penalties, Seizures and forfeitures, Prior disclosure.

19 CFR Part 171

Customs duties and inspection, Imports, Administrative practice and procedure, Law enforcement, Penalties, Seizures and forfeitures.

19 CFR Part 172

Customs duties and inspection, Imports, Administrative practice and procedure, Liquidated damages.

Amendments to the Regulations

Parts 134, 148, 162, 171, and 172, Customs Regulations (19 CFR Parts 134, 148, 162, 171, and 172), are amended as set forth below.

William von Raab,

Commissioner of Customs.

Approved: December 21, 1983.

John M. Walker, Jr.

Assistant Secretary of the Treasury.

PART 134—COUNTRY OF ORIGIN MARKING

§ 134.52 [Amended]

The first sentence of § 134.52(d) is amended by substituting "monetary penalty" for "forfeiture value."

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

Section 148.19 is revised to read as follows:

§ 148.19 False or fraudulent statement.

A passenger who makes any false or fraudulent statement or engages in other conduct within the purview of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), whereby a Customs officer is or may be induced to pass an article free of duty or at less than the proper amount of duty, or to treat an article in some other manner in order to obtain a benefit, shall be deemed to have violated 19 U.S.C. 1592. In any such case the article involved shall be seized only if one or more of the conditions set forth in section 162.75 of this chapter are present, if it is available for seizure at the time the violation is detected, and if such seizure is otherwise practicable, unless the article is in the possession of an innocent holder for value who has full right to possession as against any party to the Customs violation. It seizure is not made, an amount equivalent to the maximum penalty which may be assessed in accordance with the passenger's degree of culpability as provided in 19 U.S.C. 1592(c) shall be demanded from the passenger. The amount demanded in lieu of seizure shall be determined in accordance with the guidelines contained in the appendix to Part 171 of this chapter. In all cases, the estimated duties shall be demanded of the passenger as soon as possible after the discovery of the violation. Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

§ 162.41 [Reserved]

§ 162.80 [Redesignated from § 162.41(c)]

1. Part 162 is amended by removing § 162.41 (a) and (b) and by redesignating § 162.41(c) as new § 162.80. Section 162.41 is marked "[Reserved]."

2. Section 162.71 is amended by adding a new paragraph (e) to read as follows:

§ 162.71 Definitions.

* * * * *

(e) *Discloses the circumstances of the violation.* When used in § 162.74(a), the term "discloses the circumstances of the violation" means the act of providing to Customs a written statement which:

(1) Identifies the class or kind of merchandise involved in the violation;

(2) Identifies the importation included in the disclosure by entry number or by indicating each Customs port of entry and the approximate dates of entry;

(3) Specifies the material false statements or material omissions made; and

(4) Sets forth to the best of the violator's knowledge, the true and accurate information or data which should have been provided in the entry documents, and states that the person will provide any information or data which is unknown at the time of disclosure within 30 days of the initial disclosure date or within and extension of the 30-day period as the district director may permit in order for the person to obtain the information or data.

3. Section 162.74 is revised to read as follows:

§ 162.74 Prior disclosure.

(a) *In general.* (1) A prior disclosure is made if the person concerned discloses the circumstances of a violation (as defined in § 162.71(e) of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), in writing to a district director before, or without knowledge of, the commencement of a formal investigation of that violation, and makes a tender of any actual loss of duties in accordance with paragraph (h) of this section.

(2) A person shall be accorded the full benefit of prior disclosure treatment if that person provides information to Customs with respect to a violation of 19 U.S.C. 1592 which does not meet the requirements of a written disclosure statement pursuant to this section if the district director is satisfied that the information was provided before or without knowledge of the commencement of a formal investigation, and the information provided includes substantially the information specified in § 1621.71(e). The provision of this information need not be in writing.

(b) *Time of prior disclosure.* (1) If the documents which provide the disclosing information are sent by certified mail, return-receipt requested, and are ultimately received by Customs, the disclosure shall be deemed to have been made at the time of mailing.

(2) If the documents are sent otherwise by mail or are delivered in person, the disclosure shall be deemed to have been made at the time of receipt by Customs. If the documents are delivered in person, the person delivering the documents is to request a receipt from Customs, stating the time and date of receipt.

(3) The provision of information which is not in writing but which qualifies for prior disclosure treatment pursuant to paragraph (a)(2) of this section shall be deemed to have occurred at the time which Customs was provided with information which substantially complies with the requirements of § 162.71(e).

(4) Any documents relating to a prior disclosure should be addressed to the immediate attention of the district director.

(c) *Referral for investigation.* Any disclosure of a violation shall be referred immediately by the district

director to the appropriate field office of the Office of Investigations. Upon completion of its investigation, the field office shall immediately return the disclosure, together with its report, to the district director for appropriate action.

(d) *Commencement of formal investigation.* A formal investigation of a violation is considered to be commenced:

(1) In the case of a referral by an import specialist or other Customs officer of a matter involving the disclosing party and the disclosed information for investigation of a possible violation of 19 U.S.C. 1592, on the date recorded in writing as the date on which the matter was referred to the Office of Investigations;

(2) In the case of referral by an import specialist or other Customs officer of a request for value, classification, or other technical investigation, on the date recorded in writing by an investigating agent in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;

(3) In the case of an investigation prompted by an individual other than a Customs officer with regard to the disclosing party and the disclosed information, on the date recorded in writing by the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which the information was received;

(4) In all other cases, on the earliest of the following:

(i) The date recorded in writing by the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;

(ii) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation;

(iii) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the disclosed information.

(e) *Expansion of formal investigation.* A formal investigation is deemed to have commenced as to additional violations (outside the scope of the original investigation but committed by the same party) on the earliest of the following:

(1) The date recorded in writing by the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the additional violations;

(2) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of additional violations; or

(3) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the additional violations.

(f) *Proof of lack of knowledge.* A person who claims a lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. A person shall be presumed to have had knowledge of the commencement of a formal investigation of a violation if before the claimed prior disclosure of the violation:

(1) An investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(2) An investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the disclosed information.

That presumption may be rebutted by evidence that, notwithstanding the inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information.

(g) *Penalty claims not requiring formal investigation.* A prior disclosure may not be made after a determination by an authorized Customs officer that there is reasonable cause to believe that there has been a violation of 19 U.S.C. 1592 and that a claim for monetary penalty shall be issued without commencement of a formal investigation. Such determination shall be evidenced as follows:

(1) By the issuance of a pre-penalty notice:

(2) By the issuance of a penalty notice if a pre-penalty notice is not required;

(3) In the case of violations involving merchandise accompanying persons entering the United States or commercial merchandise inspected in connection with entry, by oral notification to the person of the officer's finding of a violation; or

(4) In the case of the seizure of merchandise under 19 U.S.C. 1592, by the act of seizure.

(h) *Tender of actual loss of duties.* A person who discloses the circumstances of the violation shall tender any actual loss of duties at the time of disclosure or within 30 days after the district director notifies the person in writing of his calculation of the actual loss of duties. The district director may extend the period if he determines there is good cause to do so.

(i) *Undisclosed violations.* Undisclosed violations discovered by Customs as the result of an investigation of a prior disclosure of another violation shall not be entitled to treatment under the prior disclosure provisions.

(j) *Minor violations.* The district director shall not refer a disclosed violation for investigation or establish a penalty case if:

(1) The disclosed violation involves a loss of duties of $500 or less;

(2) Any actual loss of duties has been deposited;

(3) There is no evidence that the violation was fraudulent; and

(4) There are no other compelling reasons for a penalty proceeding, such as history of similar violations.

§ 162.75 [Amended]

4. Section 162.75(d)(3) is amended by substituting "compliance made with the decision" for "the monetary penalty paid."

5. Section 162.78(b) is amended by adding the following between the first and second sentences;

§ 162.78 Presentations responding to pre-penalty notice

* * * * *

(b) * * * In addition, an extension may be granted if, upon request of the alleged violator, the Commissioner of Customs determines that the case involves an issue which is a proper matter for submission to Customs Headquarters under internal advice procedures (See § 177.11(b)(2)) * * *

* * * * *

§ 162.79 [Amended]

6. The second sentence of § 162.79(b)(2) is amended by substituting "section 592(d), Tariff Act of 1930, as amended (19 U.S.C. 1592(d))," for "section 162.79(b)."

7. New § 162.80 (redesignated from § 162.41(c)) reads as follows:

§ 162.80 Liability for duties; liquidation of entries.

(a)(1) When an entry is the subject of an investigation for possible violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), or of a penalty action established under that section, the district director, subject to the provisions of paragraph (a)(2) of this section, may liquidate the entry and collect duties before the conclusion of the investigation or final disposition of the penalty action if he determines that liquidation would be in the interest of the Government.

(2)(i) An entry not liquidated within 1 year from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless the time for liquidation is extended by the district director because—

(A) Information needed by Customs for the proper appraisement or classification of the merchandise is not available.

(B) The importer, his consignee, or agent requests an extension and demonstrates good cause why the extention should be granted, or

(C) The 1-year liquidation period is suspended as required by statute or court order.

(ii) An entry not liquidated within 4 years from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless liquidation continues to be suspended by statute or court order. In that event, the entry shall be liquidated within 90 days after removal of the suspension.

(iii) The district director promptly shall notify the importer or consignee concerned and any authorized agent and surety of the importer or consignee in writing of any extension or suspension of the liquidation period.

(b) When merchandise not covered by an entry is subject to section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), a demand shall be made on the importer for payment of the duty estimated to be due on such merchandise.

(c) Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 171—FINES, PENALTIES, AND FORFEITURES

§ 171.1 [Reserved]

1. Section 171.1 is removed and marked "[Reserved]."

§ 171.2 [Reserved]

§ 171.24 [Redesignated from § 171.2]

2. Section 171.2 is redesignated as § 171.24 and is amended by substituting "Department of Justice" for "United States attorney" in the first and second sentences. Section 171.2 is marked "[Reserved]."

3. Section 171.33(a) (1) and (2) are amended by substituting "from which further relief is requested" for "on the initial petition for relief."

4. Section 171.33 is further amended by adding a new paragraph (c) and (d) to read as follows:

§ 171.33 Supplemental petitions for relief.

* * * * *

(c) *Second supplemental petition.* (1) Only one further supplemental petition may be filed appealing a decision made with respect to an initial supplemental petition. The second supplemental petition will not be accepted unless accompanied or preceded by full payment of all penalties and withheld duties determined to be due in the decision rendered on the first supplemental petition. Such payment must be made within 60 days from the date of notice to the petitioner of the decision on the first supplemental petition if no effective period is prescribed in the decision, or within such time prescribed, if any. The second supplemental petition should be filed with the district director who initiated the case. For the purpose of this section, the term "second supplemental petition" shall include an offer in compromise under 19 U.S.C. 1617 made prior to the commencement of a civil action to enforce the penalty claim.

(2) A second supplemental petition will not be considered except in one of the following circumstances:

(i) If it is filed within 2 years from the date of notice to the petitioner of the decision on the first supplemental petition;

(ii) If it is filed within 60 days following an administrative or judicial decision with respect to the entries involved in the penalty case which reduces the loss of duties upon which the mitigated penalty amount was based; or

(iii) If the deciding official in his discretion determines that the acceptance of a second supplemental petition is warranted.

(d) Appeals to the Secretary of the Treasury. A petitioner filing a supplemental petition pursuant to this section from a decision of the Commissioner of Customs with respect to any liability assessed under 19 U.S.C. 1592 may request that the petition be accepted as an appeal to the Secretary of the Treasury. The Secretary will accept for decision any such supplemental petition when in his discretion he determines that such petition raises a question of fact, law or policy of such importance as to require a decision by the Secretary. If the Secretary declines to accept an appeal for decision, the petitioner will be so informed; in such a case, if the supplemental petition is an initial supplemental petition or a second supplemental petition eligible for consideration under paragraph (c) of this section, a decision thereon will be issued by Customs.

(R.S. 251, as amended, R.S. 5294, as amended, sec. 9, 24 Stat. 81, as amended, secs. 618, 624, 641, 46 Stat. 757, as amended, 759 (19 U.S.C. 66, 1618, 1624, 1641, 46 U.S.C. 7, 320))

PART 172—LIQUIDATED DAMAGES

1. Section 172.33(a) (1) and (2) are amended by substituting "from which further relief is requested" for "on the initial petition for relief."

2. Section 172.33 is further amended by adding a new paragraph (c) to read as follows:

§ 172.33 Supplemental petitions for relief.

* * * * *

(c) *Second supplemental petition.* (1) Only one further supplemental petition may be filed appealing a decision made with respect to an initial supplemental petition. The second supplemental petition will not be accepted unless accompanied or preceded by full payment of all penalties and withheld duties determined to be due in the decision rendered on the first supplemental petition. Such payment must be made within 60 days from the date of notice to the petitioner of the decision on the first supplemental petition if no effective period is prescribed in the decision, or within such time prescribed, if any. The second supplemental petition should be filed with the district director who initiated the case.

(2) A second supplemental petition will not be considered except in one of the following circumstances:

(i) If it is filed within 2 years from the date of notice to the petitioner of the decision on the first supplemental petition;

(ii) If is filed within 60 days following an administrative or judicial decision which reduces the loss of duties upon which the mitigated penalty amount was based; or

(iii) If the deciding official in his discretion determines that the acceptance of a second supplemental petition is warranted.

(R.S. 251, as amended, R.S. 5294, as amended, sec. 9, 24 Stat. 81, as amended, secs. 618, 623, 624, 641, 46 Stat. 757, as amended, 759, as amended (19 U.S.C. 66, 1618, 1623, 1624, 1641, 46 U.S.C. 7, 320))

PART 171—[AMENDED]

3. A new Appendix B is added to Part 171 to read as follows:

Appendix B to Part 171—Customs Regulations, Revised Penalty Guidelines, 19 U.S.C. 1592

A monetary penalty incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592; hereinafter referred to as section 592) may be remitted or mitigated under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), if it is determined that there exist such mitigating circumstances as to justify remission or mitigation. The guidelines below will be used by the Customs Service in arriving at a just and reasonable assessment and disposition of liabilities arising under section 592 within the stated limitations. It is intended that these guidelines shall be applied by Customs officers in pre-penalty proceedings and in determining the monetary penalty assessed in the penalty notice. The assessed or mitigated penalty amount determined in accordance with these guidelines does not limit the penalty amount which the Government may seek in bringing a civil enforcement action pursuant to 19 U.S.C. 1592(e).

(A) Violations of Section 592; Materiality

Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty thereby, a violation of section 592 occurs when a person, through fraud, gross negligence, or negligence, enters, introduces, or attempts to enter or introduce any merchandise into the commerce of the United States by means of any document, written or oral statement, or act which is material and false, or any omission which is material; or when a person aids or abets any other person in the entry, introduction, or attempted entry or introduction of merchandise by such means. A document, statement, act, or omission is material if it has the potential to alter the classification, appraisement, or admissibility of merchandise, or the liability for duty, or if it tends to conceal an unfair trade practice under the antidumping, countervailing duty or a similar statute, or an unfair act involving patent or copyright infringement. There is no violation if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of a pattern of negligent conduct.

(B) Degrees of Culpability

There are three degrees of culpability under section 592: negligence, gross negligence, and fraud.

(1) *Negligence.* A violation is determined to be negligent if it results from an act or acts (of commission or omission) done through either the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient. As a general rule, a violation is determined to be negligent if it results from the offender's failure to exercise reasonable care and competence to ensure that a statement made is correct.

(2) *Gross Negligence.* A violation is determined to be grossly negligent if it results from an act or acts (of commission or omission) done with actual knowledge of or wanton disregard for the relevant facts and with indifference or disregard for the offender's obligations under the statute, but without intent to defraud the revenue or violate the laws of the United States.

(3) *Fraud.* A violation is determined to be fraudulent if it results from an act or acts (of commission or omission) deliberately done with intent to defraud the revenue or to otherwise violate the laws of the United States, as established by clear and convincing evidence.

(C) Assessment of Penalties

(1) *Issuance of Pre-Penalty Notice.* (a) As provided in § 162.77, Customs Regulations (19 CFR 162.77), if the district director has reasonable cause to believe that a violation of section 592 has occurred and determines that further proceedings are warranted, he shall issue to each person concerned a notice of his intent to issue a claim for a monetary penalty. In issuing such pre-penalty notice, the district director shall make a tentative determination of the degree of culpability and the amount of the proposed claim. A pre-penalty notice is not required if the violation involves a non-commercial importation or if the proposed claim does not exceed $1,000.

(b) If the violation is determined to be the result of fraud, the proposed claim shall be equal to the domestic value of the merchandise. In cases involving gross negligence and negligence, in determining the amount of the proposed claim, the district director shall take into account the gravity of the offense, the amount of loss of revenue, the extent of wrongdoing, mitigating, aggravating and extraordinary factors, and other factors bearing upon the seriousness of the violation, but in no case shall the assessed penalty exceed the statutory ceilings prescribed in section 592. In cases involving gross negligence and negligence, penalties equivalent to the ceilings stated in paragraph (D) regarding disposition of cases may be appropriate in cases involving serious violations, e.g., violations involving a high loss of revenue and quota evasions. To be serious, a violation need not result in a loss of revenue. The violation may be serious because it affects the admissibility of merchandise or the enforcement of other laws, as in the case of quota evasions, false statements to conceal the dumping of merchandise, or violations of exclusionary orders of the International Trade Commission.

(c) Violations where the loss of revenue is nonexistent or minimal and which have an insignificant impact on enforcement of the laws of the United States may justify a proposed penalty in a fixed amount not related to the value of merchandise, but an amount believed sufficient to have a deterrent effect, i.e., violations involving the subsequent sale of merchandise or vehicles entered for personal use; violations involving failure to comply with declaration or entry requirements which do not change the admissibility or entry status of merchandise, its appraised value or classification; violations involving the illegal diversion to domestic use of instruments of international traffic; and local point-to-point traffic violations. This category also includes violations in which the falsity or omission is revelant only to the assessment of duties, but in which it is finally determined that the falsity or omission did not result in any loss of duties, i.e., failure to report commissions paid which are ultimately determined to be non-dutiable; or a false statement as to the relationship of the parties if the fact of the relationship is determined not to affect appraisement. In order for there to be a violation of section 592, the falsity or omission must be material, as defined in paragraph (A) of these guidelines. Generally, a penalty in a fixed amount ranging from $100 to $500 would be appropriate in cases where there are no prior violations of the same kind. Fixed sums ranging from $500 to $10,000 may be appropriate, however, in the case of multiple or repeated violations. Fixed sum penalty amounts may not exceed the maximum amounts stated in section 592 and in these guidelines.

(d) In determining the amount of the proposed penalty, the district director shall also take into account any mitigating, aggravating, or extraordinary factors that are clearly established by the evidence available at the time.

(2) *Issuance of Penalty Notice.* (a) Following issuance of the pre-penalty notice, and in consideration whether or not to issue a penalty notice pursuant to § 162.79, Customs Regulations (19 CFR 162.79), and if so, in what amount, the district director shall give consideration to all available evidence with respect to the existence of material false statements or omissions (including evidence presented by the alleged violator), the degree of culpability, the existence of a prior disclosure, the seriousness of the violation, and the existence of mitigating, aggravating, or extraordinary factors. In all cases involving fraud, the penalty notice shall be in the amount of the domestic value of the merchandise. In general, the degree of

culpability stated in a pre-penalty notice shall not be increased in the penalty notice. If, subsequent to the issuance of a pre-penalty notice and upon further review of the evidence, the district director determines that a higher degree of culpability exists, the pre-penalty notice should be cancelled and a new pre-penalty notice issued indicating the higher degree of culpability and increased penalty amount proposed, with supporting evidence reflected therein. If, however, less than 3 months remain before expiration of the statute of limitations, the higher degree of culpability and higher penalty amount may be indicated in the notice of penalty. Alternatively, the district director shall consider whether a lower degree of culpability is warranted by the evidence. The penalty notice shall contain other changes in the information provided in the pre-penalty notice.

(b) No penalty case shall be initiated for revenue-loss violation, if the district director is certain that the violation has resulted from negligence, the combined actual and potential loss of revenue from entries within that district is $500 or less, and the circumstances make it certain it is a violation which does not extend to other districts. In cases in which the loss of revenue is between $500 and $1,000, the district director may initiate a penalty case if, in his consideration of all the circumstances, the claim for monetary penalty is warranted as a deterrent for future violations. Any actual loss of revenue shall be collected pursuant to § 162.79b, Customs Regulations (19 CFR 162.79b).

(c) No penalty case shall be initiated for a violation involving gross negligence or negligence where a prior disclosure has been made and there is no actual loss of revenue, or where the actual loss of revenue has been tendered to Customs and the interest thereon is less than $500.

(D) Disposition of Cases

(1) *In General.* In mitigating claims for monetary penalty, the district director or appropriate customs official shall consider all the information in the petition and all available evidence, taking into account any mitigating, aggravating, and extraordinary factors in determining the final assessed penalty. All factors used by the district director or appropriate customs official in determining the penalty should be stated in this decision. If a penalty in a fixed amount is deemed not to be appropriate (see (C)(1)(c)), disposition in revenue-loss and non-revenue-loss cases shall proceed in the manner set forth below.

(2) *Violations Determined to be Fraudulent.* Absent extraordinary factors justifying further relief, a penalty for a fraudulent violation shall be mitigated as follows:

(a) For revenue-loss violations, to an amount ranging from a minimum of five times the loss of revenue to a maximum of the lesser of the domestic value of the merchandise of eight times the loss of revenue. However, a penalty equal to the greater of the domestic value of the merchandise or eight times the loss of revenue may be warranted due to the existence of aggravating factors.

(b) For non-revenue-loss violations, to an amount ranging from 50 to 80 percent of the dutiable value of the merchandise. However, a penalty equal to the domestic value of the merchandise may be warranted due to the existence of aggravating factors.

(3) *Violations Determined to be Grossly Negligent.* Absent extraordinary factors justifying further relief, a penalty for a grossly negligent violation shall be mitigated as follows:

(a) For revenue-loss violations, to an amount ranging from a minimum of two and one-half times the loss of revenue to a maximum of the lesser of the domestic value of the merchandise or four times the loss of revenue;

(b) For non-revenue-loss violations, to an amount ranging from 25 to 40 percent of the dutiable value of merchandise.

(4) *Violations Determined to be Negligent.* Absent extraordinary factors justifying further relief, a penalty for a negligent violation shall be mitigated as follows:

(a) For revenue-loss violations, to an amount ranging from a minimum of one-half the loss of revenue to a maximum of the lesser of the domestic value of the merchandise or two times the loss of revenue.

(b) For non-revenue-lost violations, to an amount ranging from five to 20 percent of the dutiable value of the merchandise.

(5) *Cancellation of Claim.* The district director shall cancel a claim for monetary penalty whenever it is determined that an essential element of the violation has not been established by the available evidence.

(6) *Remission of Claim.* If, following consultation with the regional counsel, the district director determines by clear and convincing evidence that the statute of limitations would be available as a defense to enforcement of a claim for monetary penalty, then the district director shall remit such claim, if it is within his authority as provided in section 171.21, Customs Regulations (19 CFR 171.21). Any such case not within the district director's authority should be referred to the Commercial Fraud and Negligence Penalties Branch at Customs Headquarters. If the district director believes that a claim for monetary penalty should be remitted for a reason not set forth in these guidelines, he shall first obtain approval from the Chief, Commercial Fraud and Negligence Penalties Branch, Headquarters, Customs Service.

(E) Prior Disclosure: Disposition of Cases

(1) In non-revenue-loss cases and potential-revenue loss cases involving a prior disclosure where the degree of culpability is determined to be negligence or gross negligence, the claim for monetary penalty is to be remitted in full.

(2) In non-revenue-loss cases involving a prior disclosure where the degree of culpability is determined to be fraud, the claim for monetary penalty shall be equal to ten percent of the dutiable value of the merchandise. There shall be no further mitigation in the absence of extraordinary factors.

(3) In actual-revenue-loss cases involving a prior disclosure where the degree of culpability is determined to be negligence or gross negligence, the claim for monetary penalty shall be equal to the interest computed from the date of liquidation on the amount of the actual loss of revenue resulting from the violation.

(4) In revenue-loss cases involving a prior disclosure where the degree of culpability is determined to be fraud, the claim for monetary penalty shall be equal to 100 percent of the total actual and potential loss of revenue resulting from the violation. There shall be no further mitigation in the absence of extraordinary factors.

(F) Mitigating Factors

The following factors shall be considered in mitigation of the penalty, provided that sufficient evidence establishes their existence. The list is not exclusive.

(1) *Contributory Customs Error.* This factor includes misleading or erroneous advice given by a Customs official only if it appears that the violator reasonably relied upon the information. If the claimed erroneous advice was not given in writing, the violator has the burden of establishing this claim by a preponderance of the evidence. The concepts of comparative negligence may be utilized in determining the weight to be assigned to this factor. If it is determined that the Customs error was the sole cause of the violation, the penalty is to be cancelled. If the Customs error contributed to the violation, but the violator is also culpable, the Customs error is to be considered as a mitigating factor.

(2) *Cooperation with the Investigation.* In order to obtain the benefits of this factor, the violator must exhibit cooperation beyond that expected from a person under investigation for a Customs violation. Some examples of the cooperation contemplated include assisting Customs officers to an unusual degree in auditing the books and records of the violator, and assisting Customs in obtaining additional information relating to the subject violation or other violations. Merely providing the books and records of the violator may not be considered cooperation justifying mitigation.

(3) *Immediate Remedial action.* This factor includes the payment of the actual loss of duties prior to the issuance of a penalty notice and within 30 days of the determination of the duties owed. In certain extreme circumstances, this factor may include the removal of an offending employee. The correction of organizational or procedural defects will not be considered a mitigating factor. It is expected that any importer or other involved individual will seek to remove or change any condition which contributed to the existence of a violation.

(4) *Inexperience in Importing.* Inexperience is a factor only if it contributes to the violation and the violation is not due to fraud or gross negligence.

(5) *Prior Good Record.* For the violator to benefit from this factor, the violation must have occurred as a result of negligence or gross negligence, and the violator must be able to show a consistent pattern of importations without violation of section 592, or any other statute prohibiting false or fraudulent importation practices.

(G) Aggravating Factors

Certain factors may be determined to be aggravating factors in arriving at the final mitigated penalty decision. Examples of aggravating factors include obstructing the investigation, withholding evidence, providing misleading information concerning the violation, and prior substantive violations of section 592 for which a final administrative finding of culpability has been made.

(H) Extraordinary Factors Justifying Further Relief

(1) The four factors specified below may be considered in connection with further relief. Such relief may be accorded for extraordinary factors not specified below only upon the concurrence of the Chief, Commercial Fraud and Negligence Penalities Branch, Headquarters.

(a) *Inability to obtain jurisdiction over the violator or inability to enforce a judgement against the violator.*

(b) *Inability to Pay the Mitigated Penalty.* The party claiming the existence of this factor must present documentary evidence in support thereof, i.e., copies of income tax returns, current financial statements, and independent audit reports.

(c) *Extraordinary Expenses.* This factor may include such expenses as those incurred in providing one-time computer runs solely for submission to Customs to aid it in analyzing a case involving an unusual number of entries, with each entry involving several factors, i.e., violations involving item 807, Tariff Schedules of the United States. Usual accounting and legal expenses (both general and Customs), or the cost incurred in instituting remedial action would not be considered extraordinary expenses.

(d) *Customs Knowledge.* Additional relief in non-fraud cases will be granted if it is determined that Customs had actual knowledge of a violation and failed to inform the violator so that it could have taken earlier corrective action. In such cases, if a penalty is to be assessed involving repeated violations of the same kind, the maximum penalty amount for violations occurring after the date on which actual knowledge was obtained by Customs will be limited to two times the loss of revenue in non-revenue-loss cases or five percent of dutiable value in non-revenue-loss cases if the continuing violations were the result of gross negligence, or the lesser of one time the loss of revenue in non-revenue-loss cases or two percent of dutiable value in non-revenue-loss cases if the violations were the result of negligence. This factor shall not be applicable when a substantial delay in the investigation is attributable to the violator.

(I) Customhouse Brokers

A customhouse broker shall be subject to the above guidelines only if he is determined to have (1) committed a fraudulent or grossly negligent violation; or (2) committed a grossly negligent or negligent violation and shared in the financial benefits of the violation to an extent over and above the prevailing brokerage fees.

If the broker committed a grossly negligent violation without sharing in the financial benefits over and above the prevailing brokerage fees, the penalty should ordinarily be mitigated to a flat sum which should not exceed $500.

If the broker committed a negligent violation without sharing in the financial benefits over and above the prevailing brokerage fees, the penalty should ordinarily be mitigated to a flat sum not to exceed $250. A broker is not negligent if he acts with reasonable care (as measured by the prevailing standards of the profession) in the preparation and presentation of the entry or the entry summary, and reasonably relies on the information or documents supplied to him by the actual owner, consignee, shipper, or their agent.

(J) Arriving Travelers

(1) *Liability.* Assessment of penalties and determination of degrees of culpability for violations by an arriving traveler must be determined in accordance with the above guidelines.

(2) *Limitations on Liability.* (a) In the absence of a referral for criminal prosecution, monetary penalties assessed in the case of a first-offense, non-commercial, fraudulent violation by an arriving traveler will generally be limited: (1) In the case of revenue-loss violations, to an amount ranging from a minimum of three times the loss of revenue to a maximum of five times the loss of revenue, provided the loss of revenue is also paid; (2) in the case of non-revenue-loss violations, to an amount ranging from a minimum of 30 percent of the dutiable value to a maximum of 50 percent of the dutiable value.

(b) With respect to revenue-loss violations, no penalty case shall be initiated against an arriving traveler if the violation is not fraudulent or commercial, the loss of revenue is $100 or less, and there are no other concurrent or prior violations of section 592 or other statutes prohibiting false or fraudulent importation practices. However, all lawful duties shall be collected. With respect to non-revenue-loss violations, no penalty case shall be initiated against an arriving traveler if the violation is not fraudulent or commercial, there are no other concurrent or prior violations of section 592, and a penalty is not believed necessary to deter future violations or to serve a law enforcement purpose.

(K) Violations of Laws Administered by Other Federal Agencies

Violations of laws administered by other federal agencies (such as Foreign Assets Control, Agriculture, Fish and Wildlife) should be referred to the appropriate agency for its recommendation. Such recommendation, if promptly tendered, will be given due consideration, and may be followed provided the recommendation would not result in a disposition inconsistent with these guidelines.

[FR Doc. 84-829 Filed 1-12-84; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 610 and 660

[Docket No. 82N-0358]

General Biological Products Standards—Sterility; Additional Standards for Diagnostic Substances for Laboratory Tests—Amendment of Final Container Requirements for Certain in Vitro Diagnostic Products

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the requirements concerning the sterility, transparency, and color of final containers used in packaging certain in vitro diagnostic products used to detect hepatitis in blood intended for transfusion. This final rule authorizes the Director, National Center for Drugs and Biologics, to exempt certain products from the sterility requirement and to require instead that the products meet certain microbial load specifications. This final rule also replaces the requirements that final containers be both colorless and transparent with a requirement that final containers be sufficently transparent to permit visual inspection of the contents for presence of particulate matter and increased turbidity. The final rule thus allows the use of plastic containers, thereby reducing manufacturing costs.

EFFECTIVE DATE: January 30, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, National Center for Drugs and Biologics (HFN-813), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 6, 1983 (48 FR 20433), FDA proposed to amend § 610.12 of the general biologics regulations (21 CFR 610.12) to allow the manufacture of final containers of certain in vitro diagnostic products for detecting hepatitis that are not absolutely sterile. This final rule is based on that proposal. The products affected are Hepatitis B Surface Antigen and Antibody to Hepatitis B Surface Antigen. These are in vitro diagnostic products used for the detection of hepatitis B surface antigen or antibody to hepatitis B surface antigen in units of blood and blood products intended for transfusion to ensure absence of infectious haptitis B virus. The agency proposed to amend the sterility requirements of § 610.12 for

in vitro diagnostics to allow for an alternative to absolute sterility of the contents of a final containers when scientific evidence supports the alternative and it is approved by the Director, Office of Biologics. In addition, the agency proposed to amend §§ 660.2(d) and 660.41(c) (21 CFR 660.2(d) and 660.41(c)) of the additional standards for diagnostic substances for laboratory tests to (1) require that the effectiveness of the contents of the final container of hepatitis in vitro diagnostics be maintained throughout the dating period, regardless of whether the contents of the final container are sterile; and (2) to permit use of plastic containers as an alternative to glass containers by removing the words "colorless and transparent" and substituting the phrase "sufficently transparent to permit visual inspection of the contents for presence of particulate matter and increased turbidity."

Interested persons were given until July 5, 1983, to submit written comments regarding this proposal.

Three letters of comment were received on the proposed rule. Two of the letters fully endorsed the proposed rule. The third letter of comment, while endorsing the proposed rule, expressed three concerns.

First, the comment suggested that although FDA proposed to discontinue the requirement of absolute final product sterility, the agency should define specific product control standards. Second, the comment asserted that plastic vials for the affected products may develop a leakage problem unless specially constructed closures are used. Finally, the comment expressed concern that plastic containers for certian unlicensed (nonhepatitis B) hepatitis test kits currently on the market are not sufficently transparent to allow visual inspection of the contents for turbidity as would be required by proposed §§ 660.2(d) and 660.41(c).

FDA agrees that specific product control standards, such as microbial load specifications, must be established for in vitro diagnostics such as hepatitis in vitro products that may not require absolute final product sterility to assure their continued safety, purity, potency, and effectiveness. FDA will not approve an exemption from final product sterility requirements for such products unless a manufacturer submits adequate supporting data, including microbial load specifications, that demonstrate that the continued safety, purity, potency, and effectiveness of the hepatitis in vitro product are not compromised.

FDA advises that pursuant to § 600.11(h), all final containers and closures for biological products must be made of material that will not allow undue deterioration of the product or otherwise render it less suitable for the intended use, and the sealing of the container must maintain the integrity of the product. FDA believes that § 600.11(h) requires that final product containers, whether glass or plastic, be leakproof.

FDA is not aware of any currently marketed unlicensed hepatitis test kits in which the safety, purity, potency, and effectiveness of the in vitro reagents are compromised by the lack of transparency of plastic final containers. To assure potency and effectiveness of hepatitis B surface antigen and antibody to hepatitis B surface antigen diagnostic products, the agency believes that the plastic containers for these licensed products must be sufficiently transparent to detect turbidity. Turbidity in these two liquid products is an indication of possible deterioration and loss of potency and effectiveness. Accordingly, FDA will not approve plastic containers for Hepatitis B Surface Antigen or Antibody to Hepatitis B Surface Antigen unless the plastic containers allow satisfactory inspection of the contents for turbidity.

The agency is changing proposed § 610.12(g)(4) by replacing the phrase "Director, Office of Biologics" with the phrase "Director, National Center for Drugs and Biologics" consistent with a recent reorganization within FDA. Accordingly, FDA is adopting the proposed regulations with minor clarifying changes.

In accordance with Executive Order 12291 and the Regulatory Flexibility Act, the agency has considered the impact of the final rule. FDA believes that the rule will relieve a burden on manufacturers of certain in vitro diagnostic products by allowing more flexibility concerning final container requirements. There currently are four manufacturers of Hepatitis B Surface Antigen and nine manufacturers of Antibody to Hepatitis B Surface Antigen. The final rule is expected to have a favorable economic impact on these establishments. Therefore, the agency concludes that the final rule does not warrant designation as a major rule under any of the criteria specified under section 1(b) of Executive Order 12291. The agency certifies that a regulatory flexibility analysis is not required because the final rule would not have a sugnificant impact on a substantial number of small entities.

List of Subjects

21 CFR Part 610

Biologics.

21 CFR Part 660

Biologics, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 701,, 52 Stat. 1040–1042 as amended, 1049–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 351, 352, 371)) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 610 and 660 are amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. In Part 610 by revising § 610.12(g)(4) to read as follows:

§ 610.12 Sterility.

* * * * *

(g) * * *

(4) *Test percluded or not required.* (i) The tests prescribed in this section need not be performed for Whole Blood (Human), Cyroprecipitated Antihemophilic Factor (Human), Platelet Concentrate (Human), Leukocyte Typing Serum, Red Blood Cells (Human), Single Donor Plasma (Human), Source Plasma (Human), Smallpox Vaccine, or Reagent Red Blood Cells.

(ii) Where a manufacturer submits data which the Director, National Center for Drugs and Biologics, finds adequate to establish that the mode of administration, the method of preparation, or the special nature of the product precludes or does not require a sterility test or that the sterility of the lot is not necessary to assure the safety, purity, and potency of the product, the Director may exempt a product from the sterility requirements of this section subject to any conditions necessary to assure the safety, purity, and potency of the product.

* * * * *

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

2. In Part 660:

a. By revising § 660.2(d) to read as follows:

§ 660.2 General requirements.

* * * * *

(d) *Final container.* A final container shall be sufficiently transparent to permit visual inspection of the contents for presence of particulate matter and

increased turbidity. The effectiveness of the contents of a final container shall be maintained throughout its dating period.

* * * * *

b. By revising § 660.41(c) to read as follows:

§ 660.41 Processing.

* * * * *

(c) *Final container.* A final container shall be sufficiently transparent to permit visual inspection of the contents for presence of particulate matter and increased turbidity. The effectiveness of the contents of a final container shall be maintained throughout its dating period.

* * * * *

Effective date. This regulation becomes effective February 13, 1984.

(Secs. 201, 502, 701, 52 Stat. 1040–1042 as amended, 1050–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 352, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262).)

Dated: December 22, 1983.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-910 Filed 1-12-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 640

[Docket No. 82N-0400]

Additional Standards for Human Blood and Blood Products; Normal Serum Albumin (Human) and Plasma Protein Fraction (Human); Removal of Requirements for Samples, Protocols, and Official Release

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing the specific lot release requirements for both Normal Serum Albumin (Human) and Plasma Protein Fraction (Human) to provide the agency the flexibility to modify or waive the lot release requirements for these two products when such requirements are unnecessary to assure that the products are safe and effective.

EFFECTIVE DATE: January 13, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, National Center for Drugs and Biologics (HFN–813), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 3, 1983 (48 FR 19897), FDA proposed to amend §§ 640.85 and 640.95 of the biologics regulations (21 CFR 640.85 and 640.95) by eliminating the specific lot release regulations for Normal Serum Albumin (Human) and Plasma Protein Fraction (Human). Normal Serum Albumin (Human) and Plasma Protein Fraction (Human) are injectable biological products derived from the fractionation of human blood and are similar in nature. Both products may be used to treat a burn patient by helping to overcome loss of fluid, to treat a shock trauma patient, or to replace plasma proteins in a patient with a lower than normal level of protein in the blood. Both products are stable biological preparations, are free of the risk of transmitting hepatitis, and are subject to procedures for manufacture and quality control testing that are well understood.

The specific lot release regulations for Normal Serum Albumin (Human) and Plasma Protein Fraction (Human) supplement the general lot release regulation in § 610.2(a) (21 CFR 610.2(a)) which is applicable to any biological product. The specific lot release regulations for both products require the submission to FDA of a protocol (i.e., a summary of the history of the manufacture of the lot), require a specific quantity of samples of the product for required testing, and prohibit the manufacturer's release of the lot for distribution without receipt of notification that FDA has officially released the lot.

In proposing to eliminate the specific lot release regulations for these products, FDA stated that it would rely instead on the general biologics regulation in § 610.2(a) which authorizes the agency to require official lot release for any biological product at any time it believes lot release is necessary. The proposed rule provides the agency with the flexibility to modify or waive a manufacturer's lot release requirements when the safety and effectiveness of these products can be assured without compliance with such requirements.

Interested persons were given until July 5, 1983, to submit written comments regarding the proposed rule. FDA received three comments, each of which fully supported the proposed rule.

Accordingly, the agency is removing §§ 640.85 and 640.95 concerning samples, protocols, and official release for Normal Serum Albumin (Human) and Plasma Protein Fraction (Human) and will instead rely, as needed, on the provisions of § 610.2(a). Manufacturers of these products may at any time request exemptions from the requirements for submission of samples, protocols, and lot release. However, manufacturers of these products still are required to receive FDA's official release under § 610.2(a) for these products unless notified otherwise by the Director, National Center for Drugs and Biologics.

The agency has determined pursuant to 21 CFR 25.24(d)(13) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with Executive Order 12291 and the Regulatory Flexibility Act, the agency has considered the impact of this final rule. FDA believes that the amendment will relieve a burden on manufacturers of Normal Serum Albumin (Human) and Plasma Protein Fraction (Human) by allowing more flexibility concerning lot-release requirements. The removals are expected to have a favorable economic impact on the 14 current manufacturers of Normal Serum Albumin (Human) and the five manufacturers of Plasma Protein Fraction (Human). The agency concludes that the removals do not warrant designation as a major rule under any of the criteria specified under section 1(b) of Executive Order 12291. The agency certifies that a regulatory flexibility analysis is not required because the removals would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 21 CFR Part 640

Blood.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

§§ 640.85 and 640.95 [Removed]

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 640 is amended by removing § 640.85 *Samples; protocols; official release* and § 640.95 *Samples; protocols; official release.*

Effective date. This regulation is effective January 13, 1984.

(Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262).)

Dated: December 22, 1983.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-906 Filed 1-12-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 163

General Forest Regulations

December 16, 1983.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is publishing a final rule which updates the General Forest Regulations to include new provisions for revocable road use permits for removal of commercial forest products, insect and disease control, and forest development. Also included are substantive changes within existing text, general administrative changes and correction of gender specific terms. Five to 23 years have elapsed since the last revision and publication of the forestry regulations. During the interim, there have been changes in technology, economic conditions and national Indian policy. This action is required to align this rule with these changes. The final rule will simplify program accomplishment and ease burdens on small Indian and non-Indian logging contractors.

EFFECTIVE DATE: This final rule shall become effective February 13, 1984.

FOR FURTHER INFORMATION CONTACT: Fred G. Malroy, Division of Forestry, Bureau of Indian Affairs, Code 230, 1951 Constitution Avenue, N.W., Washington, D.C. 20245, telephone number (202) 343–6067.

SUPPLEMENTARY INFORMATION: This final rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 D 8. The Bureau of Indian Affairs published a redesignation table on March 30, 1982 (47 FR 13326) which renumbered Part 141, General Forest Regulations as Part 163. Therefore, all references in this document are made to Part 163.

Five to 23 years have elapsed since the last revision and publication of the forestry regulations. During the interim, there have been changes in technology, economic conditions and national Indian policy. This action is required to align this rule with these changes.

The final rule will simplify program accomplishment and ease burdens on small Indian and non-Indian logging contractors. These amended regulations were published as proposed regulations on March 18, 1983. Comments were reviewed, considered and revisions were adopted or not adopted as indicated below:

A. Revisions Made Due to Comments Received

(1) Several commenters recommended that § 163.1 be amended to include a definition for commercial forest resources and provide additional clarifications. The Bureau considered the recommendation and agrees. Accordingly, § 163.1 is amended to include a definition for "commercial forest resources." Several other definitions have been slightly amended to provide clarification suggested by comments.

(2) Several commenters questioned the sufficiency of the Bureau's stated forestry objectives in § 163.3. The Bureau considered the comments and as a result, § 163.3(h) is revised to include "soil productivity" as one of the resources to be protected and/or enhanced.

(3) Several commenters observed the need for more specific definition of the contents of the Forest Management Plan. The Bureau considered these recommendations. Accordingly, § 163.4 is revised to specify inclusion of a statement of objectives in management plans and other minor clarifications.

(4) At the suggestion of one commenter, § 163.9 is amended to include clarifying conjunctions in the text.

(5) One commenter noted that small timber sales were commonplace in the Lake States and expressed the need for a more appropriate formula for establishing bid deposit requirements for small states. As a result, § 163.10(a)(1) is amended to provide for a smaller bid deposit when advertising timber for sale at values less than $1,000.00.

(6) One astute commenter observed that we had improperly cited another section of this part. Accordingly, § 163.13(b) is amended to correct an erroneous citation.

(7) At the recommendation of one commenter, § 163.18 is amended to improve the quality of one line of text and correct a typographical error.

(8) One commenter recommended that the term "individual", as it is used in § 163.19, requires a unique definition for purposes of this text. The Bureau considered this and agrees. Therefore, § 163.19 is revised to define within the text the term "individual." Other minor clarifications were made.

(9) One commenter observed that for purposes of consistency, the words "construction permits" should be included in the title of § 163.23. The Bureau considered this and agrees. Accordingly, the heading for § 163.23 is revised.

(10) Several commenters noted that requirements for environmental protection were inadequately referenced. The Bureau considered this and agrees. Consequently, a new § 163.27 is added to clearly affirm the Bureau's policy concerning compliance with environmental quality and requirements relative to the General Forest Regulations.

B. Comments Not Adopted

A number of comments were submitted which reflected the commentors' unfamiliarity with the contents of the Bureau manual part 53 BIAM or the significance and requirements of the Timber Management Plan. It was determined that such comments were not substantive and they were not adopted. Several comments recommended more detail and specificity, thereby attempting to impose more rigid constraints into permissible program activities than the Bureau desires at this stage of program control. These recommendations were not adopted.

Likewise, comments were not adopted which reflected lack of understanding of the Federal budgetary process or for which provision has already been made within the Bureau's ongoing operational system.

In regard to § 163.18, the proposed version of these regulations made reference to a May 5, 1982, opinion of the Solicitor. On April 15, 1983, the Solicitor modified his opinion "to concur in the expressed opinion of Congress" that "the Secretary has the authority to reduce the amount of administrative fees deposited into the Treasury." Therefore, no changes have been made to this section regarding the utilization, expenditure, and size of such deductions.

The primary author of this document is Fred G. Malroy, Forester, Central Office, Bureau of Indian Affairs, telephone number (202) 343–6067.

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. The rationale for this conclusion is that the proposed rule is designed to relax certain of the existing rules and provide more flexibility for resource managers to work with "small" contract loggers. Perhaps 100 very small business entities will be potentially impacted favorably. Their magnitude of economic activity resulting from these rules will have

inconsequential impact on regional or area economies.

The information collection requirements contained in §§ 163.6(a), 163.7(c)(2), 163.8(a), 163.9(a), 163.10(d), 163.14, 163.19(a), 163.19(d) and 163.23 have been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) *et seq.* and assigned clearance number 1076–0080.

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

List of Subjects in 25 CFR Part 163

Forests and forest products, Indians—lands.

Part 163 of Chapter I of Title 25 of the Code of Federal Regulations is hereby revised to read as follows:

PART 163—GENERAL FOREST REGULATIONS

Sec.

Authority: Secs. 7, 8, 36 Stat. 857, 25 U.S.C. 406, 407; and sec. 6, 48 Stat. 986, 25 U.S.C. 466; 47 Stat. 1417, 25 U.S.C. 413. § 141.23 issued under 5 U.S.C. 301, 25 U.S.C. 2, unless otherwise noted.

§ 163.1 Definitions.

"Approval" means authorization by the Secretary, Area Director, Superintendent, tribe or individual Indian in accordance with appropriate delegations of authority.

"Commercial forest land" means Indian forest land capable of bearing merchantable forest products, currently or prospectively accessible, and not withdrawn from such use.

"Commercial forest resources" includes all the benefits derived by man from commercial forest lands such as forest products, soil productivity, water, fisheries, wildlife, recreation, aesthetic and other traditional values of the forest.

"Forest products" includes major forest resources such as lumber, lath, crating, ties, bolts, logs, bark, pulpwood, fuelwood, posts, Christmas trees, split products or other marketable materials authorized for removal.

"Forest protection" includes the protection of Indian forest resources from damages and losses by disease, insects, fire, animals (domestic and wild) and trespass. It also includes protection of wild lands from fire.

"Indian forest lands" means lands held in trust by the United States for Indian tribes, individual Indians, or Alaskan Natives or lands which are owned by such tribes and individuals subject to restrictions against alienation. Such lands are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover. A formal inspection and land classification action is not required before applying the provisions of this part to the management of any particular tract of land.

"Secretary" means the Secretary of the Interior or his/her authorized representative.

"Stumpage rate" means the stumpage value per thousand board feet or other unit of measure.

"Stumpage value" means the value of uncut timber as it stands in the woods.

"Sustained yield" means the yield of forest products that a forest can produce continuously at a given intensity of management.

§ 163.2 Scope and information collection.

(a) The regulations in this part are applicable to all Indian forest lands except as this part may be superseded by special legislation.

(b) The information collection requirements contained in sections 163.6(a), 163.7(c)(2), 163.8(a), 163.9(a), 163.10(d), 163.14, 163.19(a), 163.19(d), and 163.23 have been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) *et seq.* and assigned clearance number 1076–0080. The information is being collected to properly account for the resource. The information will be used to conduct program planning and management of timber resources. Response is required to obtain or retain a benefit.

§ 163.3 Objectives.

The following objectives apply to the management of Indian forest lands.

(a) The development, maintenance and enhancement of commercial forest lands in perpetually productive state by providing effective management and protection through the application of sound silvicultural and economic principles to the reforestation, growth and harvesting of timber and other forest products. This includes making adequate provision for new forest growth as the timber is removed.

(b) Regulation of the forest resources through the establishment and development of a timber sales program that is supported by written tribal objectives, and a long-range multiple use plan (as included in a forest management plan) that requires sound forest management practices.

(c) The regulation of the commercial forest in a manner which will insure method and order in harvesting the tree capital, so as to make possible continuous production and a perpetual forest business.

(d) The development of Indian forests by Indian people to promote self-sustaining communities, so that Indians may receive from their own property not only the stumpage value, but also the benefit of whatever labor and profit it is capable of yielding.

(e) The sale of Indian timber on the open market, when the volume available and/or utilized for harvest is in excess of that which is being developed by the local Indian forest enterprise(s).

(f) The preservation of the forest in its natural state whenever the authorized Indian representatives determine that the recreational, cultural, aesthetic, or traditional values of the forest represent the highest and best use of the land to the Indians.

(g) The management and protection of forest resources to retain the beneficial effects of regulating water runoff and minimizing soil erosion.

(h) The management and protection of forest lands to maintain and/or improve timber production, soil productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural, and other traditional values of the forest to the extent that such action is in the best interest of the Indians.

§ 163.4 Sustained yield management.

To further the objectives enumerated in § 163.3, the timber harvest from Indian forest lands will not be authorized until practical methods of

harvest, based on sound economic, silvicultural and other forest management principles, have been prescribed. Harvest schedules shall be directed toward achieving an approximate balance at the earliest practical time, between maximum net growth and harvest, and shall salvage timber that is deteriorating from fire damage, insect infestation, disease, overmaturity or other causes. On all Indian reservations with commercial forest lands, appropriate management and operating plans shall be prepared and revised as needed. Such documents will contain a statement defining the objectives sought and describing the manner in which the policies of the tribe and the Secretary will be applied to the forest, with a definite plan of silvicultural management, analysis of the short-term and long-term effects of the plan, and a program of action, including a harvest schedule, for a specified period in the future.

§ 163.5 Cutting restrictions.

(a) Harvesting Indian timber will not be permitted unless provisions for natural and/or artificial forestation are included in planning the harvest.

(b) Clearing of large contiguous areas will be permitted only on lands that, when cleared, will be devoted to a more beneficial use than growing timber crops. This restriction shall not prohibit clearcutting when it is silviculturally good practice to harvest a particular stand of timber by such methods and conforms with § 163.3.

§ 163.6 Indian operations.

Indian tribal forest enterprises may be initiated and organized with consent of the authorized tribal representatives. Such enterprises may contract for the purchase of non-Indian owned forest products. Subject to approval by the Secretary the following actions may be taken:

(a) Authorized tribal enterprises may enter into formal agreements with tribal representatives for the use of tribal forest products, and with individual Indian owners for allotted forest products.

(b) Authorized officials of tribal enterprises, operating under approved agreements for the use of tribal or allotted forest products pursuant to this section, may sell the forest products produced according to generally accepted trade practices without compliance with § 3709 of the Revised Statutes.

(c) With the consent of the Indian owners, such enterprises may, without advertisement, contract for the purchase of forest products on Indian lands at stumpage rates authorized by the Secretary.

(d) Determination of and payment for stumpage and/or products utilized by such enterprises will be authorized in accordance with § 163.15. However, the Secretary may issue special instructions for payment by methods other than those in § 163.15.

(e) Performance bonds may or may not be required in connection with operations on trust lands by such enterprises as determined by the Secretary.

§ 163.7 Timber sales from unallotted and allotted lands.

(a) If the volume of timber available for harvest on a reservation exceeds that being developed and/or utilized by local Indian forest enterprise(s) or individual Indians, open market sales of Indian timber may be authorized. This provision requires consent of the authorized representatives of the tribe for tribal timber, and the owners of a majority Indian interest in trust or restricted timber on allotted lands. Consent of the Secretary is required in all cases.

(b) On any Indian forest lands not formally designated for retention in its natural state by authorized Indian representatives, the Secretary may sell the timber from lands held under a trust or other patent containing restrictions on alienations without the consent of the owners when in his/her judgment such action is necessary to prevent loss of values resulting from fire, insects, diseases, withthrow or other catastrophes.

(c) Unless otherwise authorized by the Secretary, sales of timber from unallotted lands, allotted lands, or a combination of these two ownerships having a stumpage value exceeding $10,000 will not be approved until:

(1) an examination of the timber to be sold has been made by a forest officer, and

(2) a report setting forth all pertinent information has been submitted to the officer authorized to approve the contract as provided in § 163.13. In all such sales the timber shall be appraised and sold at stumpage rates not less than those established by the Secretary.

§ 163.8 Advertisement of sales.

Except as provided in §§ 163.6, 163.7, 163.9, and 163.19 sales of timber shall be made only after advertising.

(a) The advertisement shall be approved by the officer who will approve the contract. Advertised sales shall be made under sealed bids, or at public auction, or under a combination thereof. The advertisement may limit sales of Indian timber to Indian forest enterprises, members of the tribe, or may grant to Indian forest enterprises and/or members of the tribe who submitted bids the right to meet the higher bid of a non-member. If the estimated stumpage value of the timber offered does not exceed $10,000, the advertisement may be made by posters and circular letters. If the estimated stumpage value exceeds $10,000, the advertisement shall also be made in at least one edition of a newspaper of general circulation in the locality where the timber is situated. If the estimated stumpage value does not exceed $50,000, the advertisement shall be made for not less than 15 days; if the estimated stumpage value exceeds $50,000 but not $200,000, for not less than 30 days; and if the estimated stumpage value exceeds $200,000, for not less than 60 days.

(b) The approving officer may reduce the advertising period because of emergencies such as fire, insect attack, blowdown, limitation of time, or when there would be no practical advantage in advertising for the prescribed periods.

(c) If no contract is executed after such advertisement, the approving officer may, within one year from the last day on which bids were to be received as defined in the advertisement, permit the sale of such timber in the open market. The sale will be made upon the terms and conditions in the advertisement and at not less than the advertised value or the appraised value at the time of sale, whichever is greater.

§ 163.9 Timber sales without advertisement.

(a) Sales of timber may be made without advertisement to Indians or non-Indians with the consent of the authorized representatives of the tribe for tribal timber or with the consent of the owners of a majority Indian interest in trust or restricted timber on allotted lands, and the approval of the Secretary when:

(1) The timber is to be cut in conjunction with the granting of a right-of-way;

(2) Granting an authorized occupancy;

(3) It must be cut to protect the forest from injury;

(4) It is impractical to secure competition by formal advertising procedures; or

(5) Otherwise specifically authorized by statutes or regulations.

(b) The approving officer shall establish a documented record of each negotiated transaction. This will include:

(1) A written determination and finding that the transaction is of a type or class allowing the negotiation procedures or warranting departure from the procedures provided in § 163.8;

(2) The extent of solicitation and competition, or a statement of the facts upon which a finding of impracticability of securing competition is based; and

(3) A statement of the factors on which the award is based, including a determination as to the reasonability of the price accepted.

(c) This section shall not serve to impede the use of § 163.6 as approved by the Secretary.

§ 163.10 Deposit with bid.

(a) A deposit shall be made with each proposal for the purchase of either allotted or unallotted Indian timber. Such deposits shall be at least:

(1) Ten (10) percent if the appraised stumpage value is less than $100,000 and in any event not less than $1,000 or full value whichever is less;

(2) Five (5) percent if the appraised stumpage value is $100,000 to $250,000 but in any event not less than $10,000.

(3) Three (3) percent if the appraised stumpage value exceeds $250,000 but in any event not less than $12,500.

(b) Deposits shall be in the form of either a certified check, cashier's check, bank draft, postal money order, or irrevocable letter-of-credit, drawn payable to the order of the Bureau of Indian Affairs, or in cash.

(c) The deposit of the apparent high bidder, and of others who submit written request to have their bids considered for acceptance will be retained pending acceptance or rejection of the bids. All other deposits will be returned following the opening and posting of bids.

(d) The deposit of the successful bidder will be retained if the bidder does not:

(1) Furnish the performance bond required by § 163.14 within the time stipulated in the advertisement of timber sale,

(2) Execute the contract, or

(3) Perform the contract.

(e) This section does not limit or waive any further damages available under applicable law or the terms of the contract.

§ 163.11 Acceptance and rejection of bids.

(a) Applicants or bidders may be Indian forest enterprises, members of the tribe, individuals, associations of individuals, partnerships, or corporations. The high bid received in accordance with any advertisement issued under authority of this part shall be accepted, except that the approving officer, having set forth the reason(s) in writing, shall have the right to reject the high bid if:

(1) The high bidder is considered unqualified to fulfill the contractual requirement of the advertisement, or

(2) There are reasonable grounds to consider it in the interest of the Indians to reject the high bid.

(b) If the high bid is rejected, the approving officer may authorize:

(1) Rejection of all bids, or

(2) Acceptance of the offer of another bidder who, at bid opening, makes written request that their bid and bid deposit be held pending a bid acceptance.

(c) The officer authorized to accept the bid shall have the discretion to waive minor technical defects in advertisements and proposals, such as typograghical errors and misplaced entries on forms that do not affect clarity, value or money deposits.

§ 163.12 Contracts required.

Except as provided in § 163.19, in sales of timber with an appraised stumpage value exceeding $10,000, the contract forms approved by the Secretary must be used unless a special form for a particular sale or class of sales is approved by the Secretary. Essential departures from the fundamental requirements of standard and approved contract forms shall be made only with the approval of the Secretary. Unless otherwise directed, the contracts shall require that the proceeds be paid by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent. By mutual agreement, contracts may be extended, modified, or assigned subject to approval of the approving officer, and may be terminated by the approving officer upon completion or by mutual agreement.

§ 163.13 Execution and approval of contracts.

(a) All contracts for the sale of tribal timber shall be executed by the authorized tribal representative(s). Contracts must be approved by the Secretary to be valid. There shall be included with the contract, an affidavit executed by the appropriate tribal representative(s) setting forth the resolution or other authority of the governing body of the tribe authorizing the sale.

(b) Contracts for the sale of allotted timber shall be executed by the Indian owners or the Secretary acting pursuant to a power of attorney from the Indian owner, subject to conditions set forth in §§ 163.7 and 163.13(b) (1), (2), and (3). Contracts must be approved by the Secretary to be valid.

(1) The Secretary may, after consultation with any legally appointed guardian, execute contracts on behalf of minors and Indian owners who are non compos mentis.

(2) The Secretary may execute contracts for those persons whose ownership in a decedent's estate has not been determined or for those persons who cannot be located after a reasonable and diligent search and the giving of notice by publication.

(3) Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary may include such unrestricted interest in a sale of the trust or restricted interests in the timber, pursuant to this part, and perform any functions required of him/her by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the deductions as service fees from such payments of sums in lieu of administrative expenses.

§ 163.14 Bonds required.

Performance bonds will be required in connection with all sales of Indian timber, except they may or may not be required, as determined by the approving officer, in connection with the use of timber by tribal enterprises pursuant to §163.6 or in timber cutting permits issued pursuant to § 163.19. In sales in which the estimated stumpage value, calculated at the appraised stumpage rates, does not exceed $10,000, the bond shall be at least 20 percent of the estimated stumpage value. In sales in which the estimated stumpage value exceeds $10,000 but is not over $100,000, the bond shall be at least 15 percent of the estimated stumpage value but not less than $2,000; in sales in which the estimated stumpage value exceeds $100,000, but is not over $250,000, the bond shall be at least 10 percent of the estimated stumpage value but not less than $15,000; and in sales in which the estimated stumpage value exceeds $250,000, the bond shall be at least 5 percent of the estimated stumpage value but not less than $25,000. Bonds shall be in a form acceptable to the approving officer and may include a corporate surety bond by an acceptable surety company; or cash bond designating the approving officer to act under a power of attorney; or negotiable United States Government securities supported by appropriate power of attorney; or an irrevocable letter-of-credit.

§ 163.15 Payment for timber.

(a) The basis of volume determination for timber sold shall be the Scribner Decimal C log rules, cubic volume, lineal measurement, piece count, weight, or such other form of measurement as the Secretary may authorize for use. With the exception of tribal enterprises pursuant to § 163.6, payment for timber will be required in advance of cutting.

(b) Methods of payment include advance payments, installment payments and advance deposits as specified in timber contract documents. Each advance deposit shall be at least 10 percent of the value of the minimum volume of timber required to be cut annually, figured at the appraised stumpage rates: *Provided,* that the approving officer may reduce the size of the last advance deposit before the completion of the sale or before periods of approximately three months or longer during which no timber cutting is anticipated. If a contract stipulates no minimum annual cutting requirements, the amount of each advance deposit shall be determined by the approving officer. The advance payments that may be required in the sale of trust timber, pursuant to § 163.16, shall not operate to reduce the size of advance deposits required by this section.

§ 163.16 Advance payment for allotment timber.

(a) Unless otherwise authorized by the Secretary, and except in the case of lump sum (predetermined volume) sales, contracts for the sale of timber from Indian forest lands shall provide for the payment of up to 25 percent of the stumpage value, calculated at the bid price, within 30 days from the date of approval and before cutting begins. Additional advance payments may be specified in contracts that are more than three years in duration. However, no advance payment will be required that would make the sum of such payment and of advance deposits and advance payments previously applied against timber cut from each appropriate ownership exceed 50 percent of the bid stumpage value. For each appropriate ownership, advance payments shall be credited against the timber as it is cut and scaled at the stumpage rates governing at the time of scaling.

(b) Terms and conditions for payment of timber under lump sum sales shall be specified in timber contract documents. Advance payments are not refundable.

§ 163.17 Time for cutting timber.

Unless otherwise authorized by the Secretary, the maximum period which shall be allowed, after the effective date of a timber contract, for harvesting the estimated volume of timber purchased shall be five years.

§ 163.18 Deductions for administrative expenses.

In sales of forest products from Indian forest lands, a reasonable deduction shall be made from the gross proceeds to cover in whole or in part the cost of managing and protecting the forest lands. Such costs will include the cost of sale administration, and forest regeneration. However, such deductions are not intended to cover the costs that are paid from funds appropriated specifically for fire suppression or forest pest control. Unless special instructions have been given by the Secretary as to the amount of the deduction, or the manner in which it is to be made, the deduction shall be 10% of the gross amount received for timber sold. Service fees in lieu of administrative deductions shall be determined in a similar manner.

§ 163.19 Timber cutting permits.

(a) Except as provided in §§ 163.6 and 163.20, all cutting of forest products that is not done under formal contract, pursuant to § 163.12, shall be done under timber cutting permit forms approved by the Secretary. Permits will be issued only with the written consent of the Indian owner(s) or the Secretary, for allotted lands, as authorized in § 163.13. To be valid, permits must be approved by the Secretary. Such consents to the issuance of cutting permits shall stipulate the minimum product rate at which timber may be sold under permit. Payment and bonding requirements will be stipulated in the permit document as appropriate.

(b) Free-use cutting permits may be issued for specified species and types of forest products. Timber cut under this authority may be limited as to sale or exchange for other goods or services. The stumpage value which may be cut in a fiscal year by any individual under this authority shall not exceed $2,500. Individual shall mean an individual or any operating entity comprised of several individuals.

(c) Paid permits subject to deductions for administrative expenses, as provided in § 163.18, may be issued. Unless otherwise authorized by the Secretary, the stumpage value which may be cut under paid permits in a fiscal year by any individual under this authority shall not exceed $10,000. This paragraph (c) does not apply to special allotment timber cutting permits. Individual shall mean an individual or any operating entity comprised of several individuals.

(d) An Indian having sole beneficial interest in an allotment may be issued an approved form of special permit to cut and sell designated timber from such allotment. The special permit shall include provision for payment by the Indian of administrative expenses pursuant to § 163.18. Unless waived by the Secretary, the permit shall also require the Indian to make a deposit with the Secretary to be returned to the Indian upon satisfactory completion of the permit or to be used by the Secretary in his/her discretion for planting or other work to offset damage to the land or the timber caused by failure to comply with the provisions of the permit. As a condition to granting a special permit under authority of this paragraph, the Indian may be required to provide evidence acceptable to the Secretary that he/she has arranged a bona fide sale of the timber to be cut, on terms that will protect the Indian's interests.

§ 163.20 Free-use cutting without permits.

With the consent of the Indian owners and the Secretary, Indians may cut designated types of forest products from Indian forest lands without a permit or contract, and without charge. Timber cut under this authority shall be for the Indian's personal use, and shall not be sold or exchanged for other goods or services.

§ 163.21 Fire management measures.

(a) The Secretary is authorized to maintain facilities and staff, hire temporary labor, rent fire fighting equipment, purchase tools and supplies, and pay for their transportation as needed, to maintain an adequate level of readiness to meet normal wildfire protection needs and extinguish forest or range fires on Indian reservations or other Indian trust lands. No expenses for fighting a fire outside a reservation may be incurred unless the fire threatens the reservation or other Indian trust lands or unless such expenses are incurred pursuant to an approved cooperative agreement with another protection agency. The rates of pay for fire fighters and for equipment rental shall be the rates for such fire fighting services that are currently in use by public and private wildfire protection agencies adjacent to Indian reservations on which a fire occurs, unless there are in effect at the time different rates that have been approved by the Secretary. The Secretary may also enter into reciprocal agreements with any fire organization maintaining protection facilities in the vicinity of Indian reservations or other Indian trust lands for mutual aid in wildfire protection. This section does not apply to the rendering of emergency aid, or

agreements for mutual aid in fire protection pursuant to the Act of May 27, 1955 (69 Stat. 66).

(b) The Secretary will conduct a wildfire prevention program to reduce the number of person-caused fires on Indian reservations or other Indian trust lands.

(c) The Secretary is authorized to expend funds for emergency rehabilitation measures needed to stabilize soil and watershed on Indian reservations or other Indian trust lands damaged by wildfire.

(d) Upon consultation with the Indian landowners, the Secretary may use fire as a a management tool on Indian reservations to achieve land or resource management objectives.

§ 163.22 Trespass.

(a) In addition to liability for trespass on Indian lands, as indicated in this part, persons responsible for such trespass may be prosecuted criminally under any applicable federal law. Penalties are prescribed by the following statutes:

(1) Timber trespass (18 U.S.C. 1853).

(2) Fire trespass (18 U.S.C. 1855, 1856). Tribal ordinances may apply where appropriate.

(b) The extraction, severance, injury or removal of forest products from Indian lands under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department, is an act of trespass. Trespassers will be liable in damages to the United States and the Indian owners, and will be subject to prosecution for such unlawful acts.

(c) The rule of damages to be applied in cases of timber and other trespass will be the measure of damages prescribed by the laws of the State in which the trespass is committed, unless by federal law a different rule is prescribed or authorized.

(d) The Secretary may identify and forbid the removal of forest products from restricted or trust Indian lands or direct their removal to a point of safekeeping when there is reason to believe that such products were unlawfully cut. Any such forest products that can be positively identified as Indian trust property should be sold to prevent their deterioration. When any forest products cut in trespass are found to be removed to land not under Government supervision, the owner of the land should be notified that such products are Indian trust property and any further action should be upon advice of the Office of the Solicitor of the Department of the Interior. Any forest products sold under this § 163.22 may be disposed of under the provisions of this part, insofar as they are applicable. The Secretary may accept payment of damages in full in the settlement of civil trespass cases without resort to court action. The Secretary may also accept a recommended settlement per Solicitor's Regulations Manual I.4.1 when exercised in accordance with Departmental procedures contained in 344 DM 3. All other matters relating to the collection of debts under this section will be in accordance with departmental Manual, Part 344.

(e) The Secretary will provide for timely action on any reports of trespass on Indian trust lands including pending Native allotments (25 U.S.C. 9).

§ 163.23 Revocable road use and construction permits for removal of commercial forest products.

(a) The Secretary may request tribes and/or all other trust landowners to sign landowners revocable permits designating the Secretary as Agent for the landowner and empowering him/her to issue revocable road use and construction permits to users for the purpose of removing commercial forest products.

(b) When a majority of trust interest in a tract has consented, the Secretary may issue revocable road use and construction permits for removal of commercial forest products over and across individually owned lands. In addition, the Secretary may act for individual owners when:

(1) the individual owner of the land or of an interest therein is a minor or a person non compos mentis, and the Secretary finds that such grant, in total or for an interest therein, will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;

(2) the whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts are known or majority thereof, consent to the grant;

(3) the heirs or devisees of a deceased owner of the land or interest therein have not been determined, and the Secretary finds the grant will cause no substantial injury to the land or any owner thereof, provided that once the heirs or devisees of the deceased owner are determined, their consent is obtained.

(c) Nothing in this section shall preclude acquisition of rights-of-way for roads, Subchapter H, Part 169, 25 CFR, or conflict with provisions of that part.

§ 163.24 Insect and disease control.

(a) The Secretary is authorized to protect and preserve from disease, or the ravages of beetles, or other insects, timber on Indian reservations or other Indian lands under the jurisdiction of the Department of the Interior. (Sept. 20, 1922, Ch. 349, 42 Stat. 857). The Secretary shall consult with authorized tribal representatives or owners of other Indian lands concerning control actions.

(b) The Secretary is responsible to control and mitigate harmful effects of insects and diseases on Indian forest lands. The Secretary will coordinate this control with the Secretary of Agriculture in accordance with Section 5, Pub. L. 95–313, July 1, 1978, 92 Stat. 336.

§ 163.25 Forest development.

This section pertains to that segment of the forestry program which addresses the improvement of timber resources. The program shall consist of forestation, timber stand improvement work, and related investments that enhance productivity. It shall be conducted with emphasis on on-site activities. Forest development funds will be used to establish, re-establish, maintain, and/or improve growth of desirable commercial timber species and stocking level. Forest development activities will be planned and executed using cost/benefit analyses as one of the determinants in establishing priorities.

§ 163.26 Appeals under timber contracts and permits.

Any action taken by an approving officer exercising delegated authority from the Secretary of the Interior or by a subordinate official of the Department of the Interior exercising an authority by the terms of the contract may be appealed. Such appeal shall not stay any action under the contract unless otherwise directed by the Secretary of the Interior. Such appeals shall be filed in accordance with the provision of 25 CFR Part 2, Appeals from Administrative Actions, or any other applicable general regulations covering appeals. Appropriate Indian representatives shall be notified upon receipt of an appeal initiated by the purchaser. Likewise, the purchaser shall be notified upon receipt of an appeal initiated by the seller.

§ 163.27 Environmental protection.

Before implementing these regulations, forestry personnel will review their timber sale activities for potential environmental impacts in accordance with the National Environmental Policy Act (NEPA) of 1969 and applicable Council on

Environmental Quality Regulations (40 CFR 1500–1508). NEPA compliance is further explained in Departmental Manual Part 516 DM (Environmental Quality) and 30 BIAM Supplement 1 (NEPA Handbook) of the Bureau of Indian Affairs, from which specific guidance is obtained.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 84-773 Filed 1-12-84; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7935]

Common Trust Funds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to common trust funds. Changes to the applicable tax law were made by the Tax Reform Act of 1976, by the Act of September 17, 1976, by the Crude Oil Windfall Profit Tax Act of 1980, and by the Economic Recovery Tax Act of 1981, and by the Technical Corrections Act of 1982. These regulations provide the public with guidance necessary to comply with those Acts and with other rules affecting common trust funds. The regulations affect common trust funds and their participants.

EFFECTIVE DATES: The amendments conforming to sections of the Tax Reform Act of 1976 are effective for taxable years as follows:

Section 1402(b)(1) relating to 26 CFR 1.584–4(c)(4) for taxable years beginning in 1977;

Section 1402(b)(2) relating to 26 CFR 1.584–4(c)(4) for taxable years beginning after December 31, 1977;

Section 1901(b)(1)(G) relating to 26 CFR 1.584–2(b)(1) for taxable years beginning after December 31, 1976;

Section 2131(d) relating to 26 CFR 1.584–4(a) for taxable years ending after April 7, 1976;

Section 2138(a) relating to 26 CFR 1.584–1(b)(1) for taxable years ending after October 3, 1976.

The amendments conforming to the Act of September 17, 1976 relating to 26 CFR 1.584–1(c) are effective for taxable years beginning after December 31, 1975.

The amendment conforming to the Crude Oil Windfall Profit Tax Act of 1980 (as amended by section 302(b)(1) of the Economic Recovery Tax Act of 1981) relating to § 1.584–2(b)(1) is effective with respect to taxable years beginning after December 31, 1980, and before January 1, 1982. The clarifying amendment under § 1.584–2(c)(3), relating to the pass-through of unrelated business income to participants in the common trust fund, is effective for taxable years of participants beginning on or after September 22, 1980.

FOR FURTHER INFORMATION CONTACT: Mitchell H. Rapaport of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T (202–566–3459).

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1980, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 584 and 6032 of the Internal Revenue Code of 1954 (45 FR 62848). The amendments were proposed to make certain clarifying changes and to conform the regulations to the following statutory changes:

Section 1402(b) (1) and (2) of the Tax Reform Act of 1976 (90 Stat. 1732) amended section 584 to reflect the new holding period provisions for determining long-term and short-term capital gains and losses under section 1222.

Section 1901(b)(1)(G) of the Tax Reform Act of 1976 (90 Stat. 1790) amended section 584 to delete references to sections 35, 242, and 171.

Section 2131(b) of the Tax Reform Act of 1976 (90 Stat. 1924) amended section 584 to provide that the admission of a participant shall be treated as a purchase of, or exchange for, the participating interest.

Section 2138(a) of the Tax Reform Act of 1976 (90 Stat. 1932) amended section 584 to provide for the allowance of accounts established under the Uniform Gifts to Minors Act or similar state law.

Section 1 and 2 of the Act of September 17, 1976 (90 Stat. 1273), amended Code section 584 to provide that when banks become members of the same affiliated group (within the meaning of Code section 1504) they are, for purposes of section 584, to be treated as one bank for the period of their affiliation.

A public hearing was held on February 19, 1981. All comments and testimony regarding the proposed amendments were considered. Those proposed amendments are adopted as revised by this Treasury decision. The following three technical changes to those regulations have been made.

Exemption of Certain Interest Income

The Crude Oil Windfall Profit Tax Act of 1980 (as amended by section 302 (b)(1) of the Economic Recovery Tax Act of 1981) amended section 116 of the Code to provide for the exemption of certain interest income from tax. Section 404(b)(3) of the Crude Oil Windfall Profit Tax Act of 1980 amended Code section 584(c)(2) to conform this exemption to interest income earned by a common trust fund. Section 128 of the Code provides that gross income does not include any amount received by an individual during the taxable year as interest on a depository institution tax-exempt savings certificate. Section 103 (a)(2) of the Technical Correction Act of 1982 amended Code section 584(c)(2) to conform this exemption to interest earned by a common trust fund. This final regulation makes corresponding changes to § 1.584–2(b)(1).

Treatment of Amounts in Hands of Participants

The proposed regulations, in § 1.584–2 (c)(3), provided that, for purposes of determining the character in the hands of a participant of any item of income or deduction, each participant is treated as if it made directly the investment by the common trust fund from which the item was derived. In response to comments that section 584 does not specifically provide for the flow-through of all items from a common trust fund, § 1.584–2 (c)(3) has been modified. The modified regulation provides that any amount of income or loss of the common trust fund that is included in the computation of a participant's taxable income is to be treated as income or loss from an unrelated trade on business to the extent that such amount would have been income or loss from an unrelated trade or business if the participant had made directly the investment in the common trust fund. Thus, any amounts of income or loss to be included in a participant's computation of taxable income will be computed as specifically provided in section 584, while the treatment in the hands of the participant as income or loss from an unrelated trade or business of amounts so computed will be determined as if the participant had made directly the investments of the common trust fund. A cross reference in the regulations under section 512 is added.

The proposed regulation did not specify an effective date for § 1.584–2 (c)(3), relating to the treatment of amounts of income or loss included in the computation of the participant's taxable income. As a result, the

amendment would have had retroactive effect. In response to comments received on this subject, the final regulations provide a prospective effective date for this rule, commencing on the date of publication of the notice of proposed rulemaking. Therefore, the portion of the regulations relating to the rule in § 1.584–2(c)(3) applies to computations of taxable income for taxable years beginning on or after September 22, 1980.

Admission or Withdrawal of Participants

Under § 1.584–4 of the proposed regulations the transfer of a participating interest by two or more banks that are members of the same affiliated group as a result of the division of a single common trust fund will not be considered to be an admission or a withdrawal. However, this rule only applies where the dividing and resulting common trust funds have diversified portfolios and each participant's pro rata interest in each of the resulting common trust funds is substantially the same as was the participant's pro rata interest in the dividing fund. If a common trust fund in which several affiliated banks participate is divided because of the termination of the affiliation this rule would require that each of the participants in the dividing common trust fund become a participant in each of the resulting common trust funds. One commentator has stated that in many situations this will not be possible. In order to allow disaffiliating banks to divide a common trust fund without causing the participants to recognize gain, the final regulations provide that each of the participants in the dividing common trust fund need not become a participant in each of the resulting common trust funds. However, this rule shall only apply where the written plans of operation of the resulting common trust funds are substantially identical to the plan of operation of the dividing common trust fund, each of the assets of the dividing common trust fund are distributed substantially pro rata to each of the resulting common trust funds, and each participant's aggregate interest in the assets of the resulting common trust funds of which he or she is a participant is substantially the same as was the participant's pro rata interest in the assets of the dividing common trust fund. The plan of operation of a resulting common trust fund will not be considered to be substantially identical to that of the dividing common trust fund where, for example, the plan of operation of the resulting common trust fund contains restrictions as to the types of participants that may invest in the common trust fund where such restrictions were not present in the plan of operation of the dividing common trust fund. The requirement that the distribution of the assets of the dividing common trust fund must be "substantially" pro rata is intended to allow distributions in order to eliminate fractional shares.

Provisions Applicable to Participants

Under § 1.584–2(d) of the existing and of the proposed regulations, participants accounted for their proportionate share of income from a common trust fund according to provisions under subchapter J, chapter 1 of the Code. This final regulation clarifies that certain participants may account for such income according to the provisions under subchapter D, F, or H, as the case may be.

Explanation of Provisions Unchanged From the Notice

The Act of September 17, 1976, amended Code section 584 to provide that when banks become members of the same affiliated group (within the meaning of Code section 1504) they are, for purposes of section 584, to be treated as one bank for the period of their affiliation. This Treasury decision makes it clear that banks that are members of the same affiliated group may contribute to common trust funds of other member banks without disqualifying the funds as common trust funds.

Rules and regulations promulgated by the Comptroller of the Currency permit the contribution of cash and, in limited circumstances, non-cash property to a fund. The Tax Reform Act of 1976 amended section 584 to make the contribution of non-cash property to a common trust fund a taxable event. In addition, the Act extended common trust fund treatment to custodial accounts established pursuant to a State law that is substantially similar to the Uniform Gifts to Minors Act. The Tax Reform Act also repealed an obsolete portion of section 584 dealing with partially tax-exempt interest and amended the section to reflect the new holding period provisions for determining long-term and short-term capital gains and losses under section 1222. This Treasury decision incorporates these changes as they relate to common trust funds and their participants.

The final regulations adopted by this Treasury decision impose no new reporting or recordkeeping requirements. The principal purpose of the final regulations is to conform existing regulations under sections 584 and 6032 of the Code to changes made by the Act of September 17, 1976, the Tax Reform Act of 1976, the Crude Oil Windfall Profit Tax Act of 1980, the Economic Recovery Tax Act of 1981 and the Technical Corrections Act of 1982. Evaluation of the effectiveness of these regulations after issuance will be based on comments received from offices within the Treasury, the Internal Revenue Service, other governmental agencies, and the public.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this proposed regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for interpretative regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of this regulation is Mitchell H. Rapaport of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulation on matters of substance and style.

List of Subjects

26 CFR 1.501(a)–1—1.528–10

Income taxes, Exempt organizations, Foundations, Nonprofit organizations, Cooperatives, Political organizations, Homeowners associations.

26 CFR 1.581–1—1.601–1

Income taxes, Banks.

26 CFR 1.6001–1—1.6109–2

Income taxes, Administration and procedure, Filing requirements.

PART—[AMENDED]

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. Section 1.512(a)-1 is amended by adding a new sentence at the end of paragraph (a). The added sentence reads as follows:

§ 1.512(a)-1 Definition.

(a) *In general.* * * *

For the treatment of amounts of income or loss of common trust funds, see § 1.584-2(c)(3).

* * * * *

Par. 2. Section 1.584-1 is amended by removing the third sentence of paragraph (a), by revising paragraph (b), and by adding new paragraph (c). These added and amended provisions read as follows:

§ 1.584-1 Common trust funds.

* * * * *

(b) *Conditions for qualification.* (1) For a fund to be qualified as a common trust fund it must be maintained by a bank (as defined in section 581) in conformity with the rules and regulations of the Comptroller of the Currency, exclusively for the collective investment and reinvestment of contributions to the fund by the bank. The bank may either act alone or with one or more other fiduciaries, but it must act solely in its capacity as one or a combination of the following: (i) As a trustee of a trust created by will, deed, agreement, declaration of trust, or order of court; (ii) as an executor of a will or as an administrator of an estate; (iii) as a guardian (by whatever name known under local law) of the estate of an infant, of an incompentent individual, or of an absent individual; or (iv) on or after October 3, 1976, as a custodian of a Uniform Gifts to Minors account. A Uniform Gifts to Minors account is an account established pursuant to a State law substantially similar to the Uniform Gifts to Minors Act. (*See* the Uniform Gifts to Minors Act of 1956 or the Uniform Gifts to Minors Act of 1966, as published by the National Conference of Commissioners on Uniform State Laws.) The Commissioner will publish a list of the States whose laws he determines to be substantially similar to such uniform acts. A bank that maintains a Uniform Gifts to Minors Act account must establish, to the satisfaction of the Commissioner or his delegate, that with respect to the account the bank has duties and responsibilities similar to the duties and responsibilities of a trustee or guardian.

(2) A common trust fund may be a participant in another common trust fund.

(c) *Affiliated groups.* For taxable years beginning after December 31, 1975, two or more banks that are members of the same affiliated group (within the meaning of section 1504) are treated, for purposes of section 584, as one bank for the period of their affiliation. A common trust fund may be maintained by one or by more than one member of an affiliated group. Any member of the group may, but need not, contribute to the fund. Further, for purposes of this paragraph, members of an affiliated group may be, but need not be, co-trustees of the common trust fund.

Par. 3. Section 1.584-2 is amended by:

1. Revising paragraph (a);
2. Revising paragraph (b);
3. Revising paragraph (c)(1) and (c)(2);
4. Redesignating existing paragraph (c)(3) as paragraph (c)(4) and revising the first sentence of paragraph (c)(4) as so redesignated;
5. Adding a new paragraph (c)(3);
6. Redesignating existing paragraph (c)(4) as subdivision (v) of redesignated paragraph (c)(4);
7. Adding a new subdivision (vi) to redesignated paragraph (c)(4); and
8. Revising paragraph (d).

These revised and added provisions read as follows:

§ 1.584-2 Income of participants in common trust fund.

(a) Each participant in a common trust fund is required to include in computing its taxable income for its taxable year within which or with which the taxable year of the fund ends, whether or not distributed and whether or not distributable:

(1) Its proportionate share of short-term capital gains and losses, computed as provided in § 1.584-3;

(2) Its proportionate share of long-term capital gains and losses, computed as provided in § 1.584-3; and

(3) Its proportionate share of the ordinary taxable income or the ordinary net loss of the common trust fund, computed as provided in § 1.584-3.

(b)(1) Each participant's proportionate share of dividends and interest to which section 116 or 128 applies received by the common trust fund shall be deemed to have been received by such participant as such dividends and as such interest.

(2) Any tax withheld at the source from income of the fund (*e.g.*, under section 1441) is deemed to have been withheld proportionately from the participants to whom such income is allocated.

(c)(1) The proportionate share of each participant's short-term capital gains and losses, long-term capital gains and losses, ordinary taxable income or ordinary net loss, dividends and interest received, and tax withheld at the source shall be determined under the method of accounting adopted by the bank in accordance with the written plan by which the common trust fund is established and administered, provided such method clearly reflects the income of each participant.

(2) Items of income and deductions shall be allocated to the periods between valuation dates established by the plan within the taxable year in which they were realized. Ordinary taxable income or ordinary net loss, short-term capital gains and losses, long-term capital gains and losses, and tax withheld at the source shall be computed for each period. The participants' proportionate shares of income and losses for each period shall then be determined.

(3) For taxable years beginning on or after September 22, 1980, any amount of income or loss of the common trust fund which is included in the computation of a participant's taxable income for the taxable year shall be treated as income or loss from an unrelated trade or business to the extent that such amount would have been income or loss from an unrelated trade or business if such participant had made directly the investments of the common trust fund.

(4) The provisions of this paragraph may be illustrated by the following example:

* * * * *

(vi) Assume in the above example that participant Trust A qualified as a trust forming part of a pension, profit sharing, or stock bonus plan under section 401(a). Assume further that 20 percent of the ordinary taxable income of the common trust fund would be unrelated business taxable income (as defined under section 512(a)(1)) if received directly by Trust A. Under paragraph (c)(3), participant Trust A, for purposes of computing its taxable income, must treat its proportionate share of the common trust fund's ordinary taxable income as income from an unrelated trade or business to the extent such amount would have been income from an unrelated trade or business if Trust A had directly made the investments of the common trust fund. Therefore, participant Trust A must take into account 20 percent of its proportionate share of the common trust fund's ordinary taxable income as income from an unrelated trade or business.

(d) The provisions of part I, subchapter J, chapter 1 of the Code, or, as the case may be, the provisions of subchapters D, F, or H of chapter 1 of the Code, are applicable in determining the extent to which each participant's proportionate share of any income or loss of the common trust fund is taxable to the participant, or to a person other than the participant.

Par. 4. Section 1.584-3 is amended by inserting the word "and" at the end of

paragraph (b), by removing the semicolon and the word "and" and inserting a period in lieu thereof at the end of paragraph (c), and by removing paragraph (d).

Par. 5. Section 1.584–4 is amended by adding a new sentence after the first sentence of paragraph (a), by adding three new sentences after the last sentence of paragraph (a), and by revising paragraph (c)(4). These added and amended provisions read as follows:

§ 1.584–4 Admission or withdrawal of participants in the common trust fund.

(a) *Gain or loss.* * * * For taxable years of participants ending after April 7, 1976, and for transfers occurring after that date, the transfer of property by a participant to a common trust fund is treated as a sale or exchange of the property transferred. * * * When a participating interest is transferred by a bank or by two or more banks that are members of the same affiliated group (within the meaning of section 1504), as a result of the combination of two or more common trust funds or the division of a single common trust fund, the transfer to the surviving or divided common trust fund is not considered to be an admission or a withdrawal if—

(1) The combining, dividing, and resulting common trust funds have diversified portfolios within the meaning of section 368(a)(2)(F)(ii) and the regulations thereunder, and

(2) In the case of a division, each participant's pro rata interest in each of the resulting common trust funds is substantially the same as was the participant's pro rata interest in the dividing fund. However, in the case of the division of a common trust fund maintained by two or more banks that are members of the same affiliated group resulting from the termination of such affiliation, the division will be treated as meeting the requirements of this subparagraph if the written plans of operation of the resulting common trust funds are substantially identical to the plan of operation of the dividing common trust fund, each of the assets of the dividing common trust fund are distributed substantially pro rata to each of the resulting common trust funds, and each participant's aggregate interest in the assets of the resulting common trust funds of which he or she is a participant is substantially the same as was the participant's pro rata interest in the assets of the dividing common trust fund. The plan of operation of a resulting common trust fund will not be considered to be substantially identical to that of the dividing common trust fund where, for example, the plan of operation of the resulting common trust fund contains restrictions as to the types of participants that may invest in the common trust fund where such restrictions were not present in the plan of operation of the dividing common trust fund.

* * * * *

(c) *Addition to basis.* * * *

(4) The excess of the gains over the losses recognized to the common trust fund upon sales or exchanges of capital assets held (i) for more than 18 months for taxable years beginning after December 31, 1937, and before January 1, 1942, (ii) for more than 6 months for taxable years beginning after December 31, 1941, and before January 1, 1977, (iii) for more than 9 months for taxable years beginning 1977, and (iv) for more than 1 year for taxable years beginning after December 31, 1977, and * * *

Par. 6. Section 1.6032–1 is amended by adding new sentences immediately following the first and sixth sentances. The added provisions read as follows:

§ 1.6032–1 Return of banks with respect to common trust funds.

* * * Member banks of an affiliated group that serve as co-trustees with respect to a common trust fund must act jointly in making a return for the fund. * * * If the common trust fund is maintained by two or more banks that are members of the same affiliated group, the return must also identify the member bank in the group that has contributed each participant's property or money to the fund. * * *

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: December 22, 1983.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 84–889 Filed 1–12–84; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW–8 FRL–2506–7]

Hazardous Waste Management Programs; North Dakota and Utah; Request for Extension of Phase I Interim Authorization Beyond January 22, 1984

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of extension of application submission and interim authorization period.

SUMMARY: The States of North Dakota and Utah, respectively, requested 60 day extensions added to the 180 day extensions already granted beyond the July 26, 1983, deadline for continuation of Phase I Interim Authorization in the absence of an application for Interim Phase II, Component C Authorization (authority to permit storage, treatment and disposal facilities) under the Resource Conservation and Recovery Act of 1976 as amended. EPA is granting these extensions. This extension avoids termination on January 22, 1984, of the Interim Authorization which EPA granted previously to the States for the Phase I portions of the hazardous waste program. The extensions is based on the State's schedules calling for submission of the complete applications for Final Authorization in March, 1983.

EFFECTIVE DATE: January 13, 1984.

FOR FURTHER INFORMATION CONTACT: Louis W. Johnson, Chief, Waste Management Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295 (8AW–WM). Telephone: (303) 837–2221.

SUPPLEMENTARY INFORMATION:

Background

40 CFR 271.122(c)(4) (formerly 123.122(c)(4); 47 FR 32377, July 26, 1982) requires that States which have received any, but not all, Phases/Components of Interim Authorization amend their original submissions by July 26, 1983, to include all Components of Phase II. 40 CFR 271.137(a) (formerly 123.1347(a); 47 FR 32378, July 26, 1982) further provides that on July 26, 1983, interim authorizations terminate except where the State has submitted by that date an application for all Phases/Components of interim authorization.

Where the authorization (approval) of the State program terminates, EPA is to administer and enforce the Federal program in these States. However, the Regional Administrator may, for good cause, extend the July 26, 1983, deadline for submission of the interim authorization application and the deadline for termination of the approval of the State program.

Note.—40 CFR Part 123, including the July 26, 1982, amendments (47 FR 32373), was recodified on April 1, 1983, as 40 CFR Part 271 (48 FR 14248).

Utah received Phase I Interim Authorization on December 12, 1980, and North Dakota received partial Phase I Interim Authorization on December 12,

1980. In each case, these States' ability to apply for Phase II A, B, and C Interim Authorization was delayed by pending actions in the State Legislatures, completion of State land disposal regulations, and decisions by the States to apply directly for Full Authorization. New delays are due to changes which need to be made to the States' Final Authorization applications as brought out in reviews of their draft applications submitted in September of 1983.

	North Dakota	Utah
1. State Hearing on Hazardous Waste Regulations.	June 1983	Sept. 1983.
2. Submit Draft Final Authorization Application.	Sept. 1983	Sept. 1983.
3. Consolidated Comments from EPA to the State.	Nov. 1983	Nov. 1983.
4. Submit Complete Application for Final Authorization.	Mar. 1983	Mar. 1983.

Decision

In consideration of the efforts of the States of North Dakota and Utah to finalize RCRA equivalent regulations and the above schedules for Final Authorization Application, I find good cause to exist to grant the States' requests for an additional 60 day extension beyond the January 22, 1984, deadline for applying for Interim Authorization as follows:

North Dakota—240 days to March 22, 1984

Utah—240 days to March 22, 1984

Therefore, these States must officially submit a complete application for Final Authorization to EPA on or before March 22, 1984. If either or both of the States of North Dakota and/or Utah fails to submit a complete application by March 22, 1984, approval of that State's Phase I program will terminate automatically and administration of the hazardous waste management program will revert to EPA.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

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

Dated: January 3, 1983.

John G. Welles,

Regional Administrator.

[FR Doc. 84-953 Filed 1-12-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 716

[OPTS-84006A; TSH-FRL 2480-3]

Submission of Lists and Copies of Health and Safety Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule adds certain chemical substances and a designated mixture to the list of chemical substances and mixtures for which lists and copies of unpublished health and safety studies must be submitted under section 8(d) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(d). The chemical substances being added were recommended for testing by the Interagency Testing Committee (ITC), established under section 4(e) of TSCA, in its Eleventh Report to EPA. EPA is also adding a designated mixture containing substances recommended by the ITC in its Tenth Report. The Agency will use the studies to support its investigations of the risks posed by the chemicals and, in particular, to support its decisions whether to require industry to test chemicals under section 4 of TSCA.

EFFECTIVE DATE: This regulation becomes effective on February 13, 1984.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the U.S.A.: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number: 2070-0004.

In the **Federal Register** of September 2, 1982 (47 FR 38780), EPA issued regulations under section 8(d) of TSCA to require submission of lists and copies of unpublished health and safety studies on specifically listed chemicals by chemical manufacturers and processors. Other persons in possession of such studies may be asked to submit them on a voluntary basis. The rule established standardized reporting requirements and provides for amending the list of chemicals subject to the rule. Chemicals may be added that have been recommended by the ITC for testing consideration under section 4 of TSCA or have been separately selected by the Environmental Protection Agency for evaluation.

The ITC, established under section 4(e) of TSCA (15 U.S.C. 2603(e)), recommends chemical substances, categories of substances, and mixtures for priority consideration by EPA in the issuance of testing rules under section 4(a) of TSCA (15 U.S.C. 2603(a)). Section 4(e) directs the ITC to revise its list of recommendations every six months as the ITC determines to be necessary.

When recommending chemicals to EPA for testing, the ITC can add these chemicals to the section 4(e) Priority List either one of two ways. A chemical can be designated for response by EPA within 12 months or recommended but not designated for response within 12 months. Chemicals recommended by the ITC can be added to the section 8(d) rule under the automatic reporting provision of the rule (40 CFR 716.17(b)). However, up to the time the section 8(d) rule was developed, all of the ITC's recommendations had included designation for EPA response within 12 months. Therefore, the rule and preamble did not distinguish between chemicals that are designated and those recommended but not designated for 12-month review. Therefore, only 12-month designated chemicals will be added under 40 CFR 716.17(b). EPA is preparing an amendment to the section 8(d) rule which will change 40 CFR 716.17(b) to clearly include chemicals recommended by the ITC but not designated for 12-month review. However, prior to adoption of such an amendment, non-designated chemicals will be added by notice and comment rulemaking under § 716.17(a) of the rule.

Under 40 CFR 716.17(a), EPA proposed and is now amending the list of chemicals by adding the carbofuran intermediates and certain trimethylbenzenes which were added to the section 4(e) Priority List, but not designated for response by EPA within 12 months, by the ITC in its Eleventh Report. Also, EPA is adding a designated mixture named "Aromatic C_9 fraction from petroleum refining" which is primarily composed of mixed trimethylbenzenes (1,2,3-trimethylbenzene, 1,2,4-trimethylbenzene, and 1,3,5-trimethylbenzene) and mixed ethyltoluenes (ortho-, meta-, and para-ethyltoluene). 1,2,4-Trimethylbenzene and ethyltoluene (mixed isomers) were designated by the ITC in its Tenth Report. The other trimethylbenzenes were recommended in the ITC's Eleventh Report. EPA is adding this

designated mixture because EPA has responded to the ITC's recommendations on mixed ethyltoluenes and the trimethylbenzenes by proposing that an aromatic C_9 fraction (containing these substances) be tested. The Agency's proposed action for these substances was published in the **Federal Register** of May 23, 1983 (48 FR 23088).

No comments were received in response to the proposal of this amendment, which was published in the **Federal Register** of June 22, 1983 (48 FR 28483). Therefore, EPA has not changed the content of this rule since proposal.

We are adding the following chemcial substances and designated mixture.

Chemicals Added to Rule

Chemical Substances

Substances	CAS Nos.
Trimethylbenzene (mixed isomers)	25551-13-7
1,2,3-Trimethylbenzene	526-73-8
1,3,5-Trimethylbenzene	108-67-8
Methallyl 2-nitrophenyl ether	13414-54-5
7-Amino-2,2-dimethyl-2,3-dihydrobenzofuran	68298-46-4
7-Nitro-2,2-dimethyl-2,3-dihydrobenzofuran	13414-55-6

Designated Mixtures

Aromatic C_9 fraction from petroleum refining: The C_9 fraction is primarily composed of 1,2,3-trimethylbenzene (CAS No. 526-73-8), 1,2,4-trimethylbenzene (CAS No. 95-63-6), 1,3,5-trimethylbenzene (CAS No. 108-67-8), mixed trimethylbenzenes (CAS No. 25551-13-7), ortho-ethyltoluene (CAS No. 611-14-3), meta-ethyltoluene (CAS No. 620-14-4), para-ethyltoluene (CAS No. 622-96-8), and mixed ethyltoluenes (CAS No. 25550-14-5) in varying proportions.

Under the rule implementing section 8(d) of TSCA, EPA will acquire unpublished health and safety studies on these chemicals from manufacturers and processors of the chemicals.

Economic Impact

EPA estimates that these additional chemicals will cost industry $43,400 to submit the required data.

Corporate rule review	$18,300
Corporate review (site identification)	3,400
File search	7,300
Title listing	300
Photocopying (materials)	400
Photocopying (labor)	1,400
Managerial review	10,800
Ongoing reporting	1,500
Total	43,400

If we assume ±30 percent margin of error in these estimates the range of probable cost varies from $30,400 to $56,400.

If the studies submitted allow EPA to eliminate even one potential section 4 mandated test on a subject chemical, the cost avoided could exceed the total cost of this rule. In addition, the studies submitted may help EPA identify public health and environmental problems which may require action by EPA to control or mitigate. Thus, the cost of this rule is low compared to the potential benefits.

Public Record

EPA has established a public record (docket number OPTS-84006) for this rulemaking document which, along with a complete index, is available for inspection in the OPTS Reading Room, Rm. E-107 from 8:00 a.m. to 4:00 p.m. on working days (401 M St., SW., Washington, D.C. 20460). This record includes basis information considered by the Agency in developing this rule.

Additional documents may be added to the Public Record. Within 30 days of the date of publication, please notify EPA of any errors or omissions in the Public Record. Address all correspondence to: Document Control Officer (TS-793), Rm. E-108, Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Below is a list of the documents which constitute the record for this rulemaking. The Agency will supplement the record with additional information as it is received.

(1) Health and Safety Study Reporting Regulations (40 CFR Part 716), Public Record, Docket No. 084003.

(2) Reports Impact Analysis for 40 CFR Part 716 and this rulemaking.

(3) Tenth and Eleventh Reports of the Interagency Testing Committee (ITC); 47 FR 22585 (Tenth Report) and 47 FR 54626 (Eleventh Report).

(4) **Federal Register** notice and entire record compiled to date in C_9 test rule.

Regulatory Assessment Requirements

Paperwork Reduction Act, Executive Order 12291, and Regulatory Flexibility Act

The final section 8(d) rule (40 CFR Part 716) has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (PRA) of 1980, 44 U.S.C. 3501 *et seq.* The OMB control number is 2070-0004.

The amendment was submitted to OMB for review as required by Executive Order 12291.

Only 18 companies are expected to report under this rule. Therefore, in accordance with the Regulatory Flexibility Act (Pub. L. 96-354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

(Sec. 8(d), Pub. L. 94-469, 90 Stat 2029 (15 U.S.C. 2607(d))

List of Subjects in 40 CFR Part 716

Chemicals, Health and safety, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements.

Dated: November 16, 1983.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore, Title 40, Chapter I is amended by adding paragraphs (a)(5) and (b) to § 716.17 to read as follows:

§ 716.17 Substances and designated mixtures to which this subpart applies.

(a) * * *

(5) As of February 13, 1984, the following chemical substances are subject to this subpart.

Substances	CAS Nos.
Trimethylbenzene (mixed isomers)	25551-13-7
1,2,3-Trimethylbenzene	526-73-8
1,3,5-Trimethylbenzene	108-67-8
Methallyl 2-nitrophenyl ether	13414-54-5
7-Amino-2,2-dimethyl-2,3-dihydrobenzofuran	68298-46-4
7-Nitro-2,2-dimethyl-2,3-dihydrobenzofuran	13414-55-6

(b)(1) *Designated mixtures.* As of February 13, 1984, the following designated mixtures are subject to this subpart.

Designated Mixtures

Aromatic C_9 fraction from petroleum refining: The C_9 fraction is primarily composed of 1,2,3-trimethylbenzene (CAS No. 526-73-8), 1,2,4-trimethylbenzene (CAS No. 95-63-6), 1,3,5-trimethylbenzene (CAS No. 108-67-8), mixed trimethylbenzenes (CAS No. 25551-13-7), ortho-ethyltoluene (CAS No. 611-14-3), meta-ethyltoluene (CAS No. 620-14-4), para-ethyltoluene (CAS No. 622-96-8), and mixed ethyltoluenes (CAS No. 25550-14-5) in varying proportions.

(2) [Reserved].

[FR Doc. 84-970 Filed 1-12-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 761

[OPTS-211011; TSH-FRL 2487-7]

Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Denial of Citizen's Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule related notice, denial of citizen's petition.

SUMMARY: This notice announces EPA's decision to deny a citizen's petition submitted by Cannelton Industries, Incorporated (CI) under section 21 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2620). CI requested that EPA amend its polychlorinated biphenyl (PCB) regulations (40 CFR Part 761) to provide EPA Regional Administrators authority to approve alternative disposal methods for non-liquid PCBs, including contaminated soil. The contaminated soil referred to in the petition is PCB-soaked rock, gravel and other mining debris resulting from a transformer spill in a mine shaft in West Virginia.

ADDRESS: Copies of the petition and all related information are located in: TSCA Public Information Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–107, 401 M St., SW., Washington, D.C. 20560.

They are available for review and copying from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, toll free: (800–424–9065), in Washington, D.C.: (554–1404), outside the USA: (Operator 202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 6(e)(1)(A) of TSCA requires that EPA promulgate rules for the disposal of PCBs. Disposal means intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items.

The rules implementing section 6(e)(1)(A) were published in the **Federal Register** of May 31, 1979 (44 FR 31514) and recodified in the **Federal Register** of May 6, 1982 (47 FR 19527). The rules require that various types of PCBs and PCB Articles be disposed of in landfills (40 CFR 761.75); destroyed in incinerators (40 CFR 761.70) or high efficiency boilers (40 CFR 761.60); or by an alternative method which can achieve a level of performance equivalent to incinerators or high efficiency boilers.

Under the rules' provisions, non-liquid PCBs, including contaminated soil, resulting from the cleanup and removal of spills, must be disposed of in EPA-approved incinerators or chemical waste landfills. No disposal alternatives are currently authorized for this type of PCB material.

In March 1982, CI was preparing to close and seal one of its underground coal mines (No. 105) in Kanawha County, West Virginia. During the operation, on or about March 25, 1982, a PCB Transformer owned by CI ruptured within the mine. As a result, approximately 447 gallons of 46 percent PCB dielectric fluid spilled onto the crushed rock, gravel, and other mining waste material ("gob") lining the floor of the mine. The spill was isolated and contained within an area approximately 190 feet long and 10 feet wide. Following the incident, the company continued its closure operation and subsequently sealed off the mine during the first week in April 1982.

On October 12, 1983, CI petitioned the EPA, under section 21 of TSCA, to amend its PCB regulations governing disposal. The PCB disposal regulations (40 CFR 761.60(a)(4)) mandate that contaminated soil from PCB spills be disposed of by incineration or chemical waste landfill. The petition seeks to leave the PCB-contaminated soil in place as an alternative disposal method.

CI asserts that EPA should grant its request for the following reasons:

1. There is a greater risk of PCB exposure to humans and the environment associated with removal of the PCB-contaminated material from the abandoned coal mine and transportation to an EPA-approved landfill than is associated with leaving the PCBs in place.

2. PCBs will not migrate outside the area of containment.

3. Even if migration should occur and PCBs are transported by water from the area of containment, the resultant dilution would render the PCBs undetectable.

4. Removal and disposal of the spilled PCBs, in accordance with EPA regulations, would place an unreasonable and unnecessary economic burden on CI.

5. In-place burial of PCB-contaminated soil in underground mine shafts is consistent with the primary purpose of TSCA and the statutory provisions governing the promulgation of disposal rules.

II. Decision

EPA has reviewed the contents of the CI petition and recognizes that spill cleanup and removal operations are special situations involving various site-specific factors. However, in order to approve the petition, EPA would have to find that the disposal alternative proposed by CI is equivalent or superior to EPA-approved chemical waste landfills and incinerators for soil and debris contaminated with PCBs. On the basis of present evidence, EPA cannot make this finding.

CI's petition specifically seeks to provide EPA Regional Administrators discretion to approve one-time, in-place burial as an acceptable disposal alternative for PCB-contaminated soil from spills which occur underground in mine shafts. EPA has concluded that the petition lacks adequate information to enable the Agency to determine the likelihood or degree of adverse effects to human health or the environment from the proposed action. Removal and transportation of the PCB material to an EPA-approved landfill would not pose unreasonable exposure risks. EPA and the Department of Transportation (DOT) have regulations to prevent or minimize the health and safety risks of PCB handling and transportation. Properly trained and equipped workers are capable of removing PCB-contaminated soil and debris with little or no risk of exposure. Their clothing and equipment can be properly disposed of or decontaminated with little or no risk of exposure. Disposal by chemical waste landfill has been shown to pose a minimum and controllable risk to human health and the environment. Landfills can be monitored for PCB migration using groundwater monitoring wells. Leaving a PCB spill in place in a mine leads to an unquantifiable risk over an unquantifiable area. Based on available information, EPA is unable to find support for the petitioner's determination that burial in place would be safe and present less risk of PCB exposure to humans or the environment than disposal in accordance with EPA regulations.

Indeed, on the basis of current information, EPA believes that disposal of PCBs by in-place burial could result in an uncontrolled human and environmental exposure potential. According to the CI petition, substantial construction and maintenance are necessary to provide roof support in Mine No. 105. It is not clear, therefore, that the shale lining of the mine is capable of forming a stable and impermeable enclosure around the

spilled material. EPA-approved chemical waste landfills, on the other hand, must be located in relatively impermeable formations.

The petition does not provide a petrographic permeability analysis of the geology of Mine No. 105. CI's use of the term "historically dry" to describe the mine is intended only as a relative means of comparison with other coal mines in the area. Since mining operations have fractured the shale lining of the coal shaft, it is very possible that groundwater infiltration may occur to the spill area through open pores in the walls and floor of the mine. Although PCBs are known to have a strong affinity for fine soil particles, this adsorption phenomenon is not recognized on larger rocks associated with gravel and gob. In this environment, PCBs may be leached or released by erosion. Migration by water transport is therefore a potential pathway of PCB movement from the contamination area. It would be extremely difficult to design a system capable of adequately monitoring PCB migration from Mine No. 105. The CI proposal does recognize the possiblity of water infiltration and discharge from the mine but claims that such a discharge would not pose a detectable exposure level since the PCBs would be diluted. Dilution for purposes of avoiding the disposal regulations is prohibited in the PCB rule. Therefore, dilution is not an acceptable alternative to EPA-approved disposal.

CI maintains that reopening Mine No. 105 and disposing of the PCB-contaminated soil and debris by incineration or chemical waste landfill is too economically burdensome. The petition does not contain any economic cost data to support this contention. EPA believes that the cost of properly disposing of this material is not excessive. By failing to comply promptly with applicable Federal laws, i.e., spill reporting and cleanup procedures, CI may now incur higher removal and disposal costs than it would have incurred had it properly handled the spilled PCBs in March 1982. However, under the circumstances, the added expense incurred by CI is self-imposed.

EPA has concluded that approved chemical waste landfills and incinerators are methods of PCB disposal which have been shown to pose a minimum risk to human health and the environment. A properly designed chemical waste landfill at an appropriate site will effectively isolate and control the movement of PCBs. Exposure to humans and the environment should be insignificant if the site for the landfill is properly selected, and the criteria outlined in 40 CFR 761.75 are followed for management and monitoring of the landfill. Since the proposed in-place burial of PCBs poses an unknown and uncontrollable risk, approval of such a disposal method would not be consistent with the intent of TSCA.

Accordingly, CI's petition for an amendment to the PCB regulations is denied.

III. Official Record for the Petition

The following documents constitute the record for this action:

1. CI Petition to the Environmental Protection Agency, dated October 7, 1983.

2. 44 FR 40132, July 9, 1979. USEPA. "Disposal of PCB-Contaminated Soil and Debris; Denial of Citizen's Petition."

3. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31, 1979.

4. Record of meeting between EPA, CI, and Robert Shingler of L. Robert Kimball and Associates, dated September 13, 1983.

5. Memorandum of telephone conversation between Leopold Kokoszka, EPA Headquarters, and Robert Davis, EPA Region III, November 4, 1983.

Dated: January 6, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-1015 Filed 1-12-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6582]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program; Michigan et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 287-0222, 500 C Street, Southwest, FEMA Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where the flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are inpracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal

Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Michigan: Montcalm	Eureka, township of	260735	Dec. 12, 1983, emergency	
Nevada: Lincoln	Unincorporated areas	320014A	do	2-22-83
Illinois: Hancock & Henderson	Dallas City, city of	170278B	July 10, 1975, emergency; Oct. 18, 1983, regular; Oct. 18, 1983, suspended; Dec. 9, 1983, reinstated.	3-22-74 & 7-30-76
North Dakota: Dunn	Killdeer, city of	380030B	May 27, 1975, emergency; Dec. 1, 1983, regular; Dec. 1, 1983, suspended; Dec. 13, 1983, reinstated.	6-28-74 & 1-02-76
Missouri: Pulaski	Unincorporated areas	290826	Dec. 21, 1983, emergency	
Pennsylvania: Butler	Middlesex, township of	421229A	Dec. 10, 1974, emergency; Dec. 1, 1983, regular; Dec. 1, 1983, suspended; Dec. 16, 1983, reinstated.	7-26-74 & 7-02-76
Washington: Pierce	Tacoma, city of	530148B	July 2, 1974, emergency; Dec. 1, 1983, regular; Dec. 1, 1983, suspended; Dec. 16, 1983, reinstated.	10-18-74 & 2-18-77
Arizona: Yavapai	Cottonwood, town of	040096B	May 5, 1975, emergency; Sept. 16, 1981, regular; Sept. 16, 1981, suspended; Dec. 20, 1983, reinstated.	6-07-74, 5-02-75 & 9-16-81
Idaho: Bingham	Firth, city of	160136A	Dec. 21, 1983, emergency; Dec. 21, 1983, regular	4-23-76, 9-07-82 & 9-15-83
Pennsylvania: Bedford	St. Clairsville, borough of	421328	Dec. 28, 1983, emergency	1-31-75
Washington: Walla Walla	Unincorporated areas	530194B	Dec. 23, 1971, emergency; Dec. 1, 1983, regular; Dec. 1, 1983, suspended; Dec. 21, 1983, reinstated.	12-27-74 & 9-13-77
West Virginia: Mercer	Matoaka, town of	540126B	Dec. 13, 1974, emergency; Dec. 15, 1983, regular; Dec. 15, 1983, suspended; Dec. 28, 1983, reinstated.	5-31-74 & 7-30-76
Nevada: Churchill	Unincorporated areas	320030A	Dec. 30, 1983, emergency	12-27-77
Region III				
Pennsylvania: Bucks	Bedminster, township of	421049A	Dec. 1, 1983, suspension withdrawn	1-31-75
West Virginia: Mercer	Bramwell, town of	540125B	do	5-24-74 & 3-26-76
Region IV				
North Carolina: Haywood	Clyde, town of	370122B	do	6-14-74 & 10-15-76
Region V				
Illinois:				
Hardin	Cave-In-Rock, village of	170274B	do	1-23-74 & 7-30-76
McLean	Heyworth, village of	170497B	do	6-14-74 & 7-14-74
Indiana: Jefferson	Brooksburg, town of	180105A	do	11-29-74
Ohio:				
Harrison & Jefferson	Adena, village of	390295B	do	7-23-76 & 10-3-80
Jefferson	Amsterdam, village of	390296B	do	4-12-74 & 5-28-76
Licking	Unincorporated areas	390328B	do	3-10-78
Wisconsin: Oconto	Suring, village of	550300C	do	5-3-74, 6-4-76 & 2-12-82
Region VI				
Texas: Harris	Morgans Point, city of	480305B	do	6-28-74 & 9-19-75
Region VIII				
North Dakota:				
Dunn	Dunn Center, city of	380028A	do	11-22-74
Do	Halliday, city of	380029A	do	11-22-74
Region IX				
Nevada: Washoe	Sparks, city of	320021B	do	2-8-74 & 6-27-75
Region X				
Washington:				
Snohomish	Index, town of	530166B	do	2-8-74 & 12-27-74
Do	Monroe, city of	530169B	do	11-5-76 & 1-16-79
Mason	Shelton, city of	530116B	do	6-14-74 & 3-19-76
Region I				
Massachusetts:				
Berkshire	Amherst, town of	250156C	Dec. 15, 1983, suspension withdrawn	7-19-74, 12-3-76 & 2-4-81
Do	Otis, town of	250035B	do	9-20-74 & 3-11-77
Region II				
New Jersey:				
Ocean	Bay Head, borough of	345281D	do	8-17-71, 7-1-75, 4-18-75 & 3-19-76

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Monmouth	Manasquan, borough of	345303C	do	5-13-72, 7-1-74 & 1-16-76
Bergen	Ridgewood, village of	340067B	do	8-31-73 & 7-7-78
New York: Nassau	Roslyn Harbor, village of	361035B	do	6-28-74, 12-19-75 & 12-19-75
Region III				
Virginia: Rockingham	Bridgewater, town of	510134B	do	8-28-74 & 5-28-76
West Virginia:				
Brooke	Unincorporated areas	540011B	do	11-22-74 & 7-8-77
Monongalia	Granville, town of	540272A	do	11-29-74
Region V				
Illinois:				
Carroll	Unincorporated areas	170019	do	6-2-78
Fulton	Liverpool, village of	170762D	do	12-28-73, 8-1-75, 12-28-79 & 6-15-81
Indiana: Lake	Highland, town of	185176C	do	5-19-72, 7-1-74 & 10-10-75
Michigan: Eaton	Eaton Rapids, township of	260391A	do	9-12-75
Ohio:				
Hamilton	Newtown, village of	390230C	do	2-1-74, 5-28-76 & 11-3-78
Madison/Union	Plain city, village of	390625	do	7-25-75
Wisconsin: Washington	Unincorporated areas	550471	do	9-1-83
Region VI				
Oklahoma: McClain	Newcastle, city of	400103B	do	6-7-74 & 5-21-76
Texas:				
Brazoria	Baileys Prairie, town of	480065B	do	11-8-74 & 10-22-76
Do	Brazoria, city of	480066B	do	1-9-74 & 5-21-76
Lamar	Paris, city of	480427B	do	6-14-74 & 7-9-76
Bexar	San Antonio, city of	480045B	do	4-5-74 & 6-27-78
Brazoria	West Columbia, city of	480081B	do	6-14-74 & 1-16-76
Region IX				
Arizona: Yuma	Unincorporated areas	040099B	do	4-12-74, 10-25-77 & 4-18-78
California: Tulare	Farmersville, city of	060405C	do	10-1-76 & 5-31-77

(National Flood Insurance Act of 1968 (title XIII, Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: January 6, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-913 Filed 1-12-84; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

National Flood Insurance Program; Changes in Flood Elevation Determinations; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the Flood

Insurance Rate Maps (FIRM) for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 65).

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the flood plain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
LA, Rapides Parish (FEMA Docket No. 6369).	Alexandria, City	*Daily Town Talk:* 7/27/82 and 8/3/82.	Honorable John K. Snyder, Mayor of Alexandria, P.O. Box 71, Alexandria, LA 71301.	5/15/84	220146B

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; delegation of authority to Administrator, Federal Insurance Administration)

Issued: January 4, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84–912 Filed 1–12–84; 8:45 am]

BILLING CODE 6718–03–M

[Docket No. FEMA–6580]

44 CFR Part 65

Changes in Special Flood Hazard Areas Under the National Flood Insurance Program; Montana

AGENCY: Federal Emergency Management Agency.

ACTION: Interim Rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance of existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Map(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations, together with the flood plain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or

pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Montana: Cascade	Unincorporated Areas	*Great Falls Tribune*, Jan. 3, 1984; Jan. 10, 1984.	Chairman Jack T. Whitaker, Board of Commissioners, Cascade County, Courthouse Annex, Room 111, Great Falls, Montana 59401.	Dec. 28, 1983	300008B
Oklahoma: Oklahoma	Edmond, City	*Edmond Sun*, Nov. 25, 1983; Dec. 2, 1983.	Honorable Carl F. Reherman, Mayor of Edmond, P.O. Box 1260, Edmond, Oklahoma 73034.	Nov. 17, 1983, Letter of Map Revision.	400252A
Canadian, Cleveland, McClain, Oklahoma, Pottawatomie	Oklahoma City, (City)	*Oklahoma Advertiser*, Jan. 5, 1984; Jan. 12, 1984.	Honorable Andrew Coats, Mayor of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, OK 73102.	Dec. 29, 1983, Letter of Map Revision.	405378C
South Dakota: Pennington	Town of New Underwood	Dec. 23, 1983; Dec. 30, 1983, *Rapid City Journal.*	Honorable I. L. Oliff, Mayor, Town of New Underwood, Box 278, New Underwood, South Dakota.	Dec. 16, 1983	460092C
Texas: Dallas and Tarrant	Grand Prairie, City	*Grand Prairie Daily News*, Jan. 4, 1984; Jan. 11, 1984.	Honorable Anne Gresham, Mayor of Grand Prairie, P.O. Box 11, Grand Prairie, TX 75051.	Dec. 28, 1983, Letter of Map Revision.	485472B
Dallas	Irving, City	*Daily News*, Nov. 25, 1983; Dec. 2, 1983.	Honorable Bobby Joe Raper, Mayor of Irving, P.O. Box 2288, Irving, TX 75061.	Nov. 17, 1983, Letter of Map Revision.	480180A
Tarrant	North Richland Hills, City	*Mid-Cities Daily News*, Jan. 4, 1984; Jan. 11, 1984.	Honorable Dick Faram, Mayor of North Richland Hills, P.O. Box 18609, North Richland Hills, TX 76118.	Dec. 28, 1983, Letter of Map Revision.	480607B

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: January 4, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-911 Filed 1-12-84; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 96

Low Income Home Energy Assistance Reallotment Report; Adjustment of Annual Median Income for Household Size

AGENCY: Office of the Secretary, HHS.

ACTION: Correction of Interim Rule.

SUMMARY: In the preamble to the interim regulations which appeared in the **Federal Register** of November 16, 1983 (48 FR 52059), we inadvertently omitted the effective date.

That regulation provided a method as required by statute for adjusting median income by family size and clarified a requirement for a reallotment report.

This document supplies the correct effective date.

FOR FURTHER INFORMATION CONTACT: Laurence Love (202) 245–2000.

SUPPLEMENTARY INFORMATION: We found that we inadvertently omitted the effective date in the preamble to the interim regulations. In order to correct the omission we are now adding the effective date. Accordingly, we are correcting the DATES section of the preamble to include the effective date of these regulations. The DATES section should read as follows:

DATES: These interim regulations are effective November 16, 1983. Consideration will be given to written comments received on or before January 16, 1984.

(Catalog of Federal Domestic Assistance Program No. 13.818 Low Income Home Energy Assistance)

Dated: January 6, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-814 Filed 1-12-84; 8:45 am]

BILLING CODE 4190-11-M

LEGAL SERVICES CORPORATION

45 CFR Part 1627

Subgrants, Fees and Dues; Correction

AGENCY: Legal Services Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule governing subgrants, fees and dues which appeared at pp. 54206–10 in the **Federal Register** of November 30, 1983. This action is necessary to conform the text of this final rule to the text adopted by the Legal Services Corporation Board as reflected in the minutes of the November 7, 1983 meeting. It allows any subgrant expiring before March 1, 1984 to be extended to March 1, 1984, rather than limiting this extension to subgrants expiring between January 1 and March 1, 1984.

EFFECTIVE DATE: December 30, 1983 (unchanged).

FOR FURTHER INFORMATION CONTACT: John C. Meyer, Deputy General Counsel, 733 15th Street NW., Washington, D.C. 20005; telephone 202–272–4010.

The following correction is made in FR Doc. 83–31937, appearing on pp. 54206–10 in the issue of November 30, 1983; in § 1627.3 on p. 54209, subparagraph (a)(4) in column 2 is corrected by deleting "between January 1 and" and substituting "before" in line 3. Thus the corrected portion of the subparagraph reads: "Any subgrant which is a continuation of a previous

subgrant and which expires before 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 * * *."

Dated: January 9, 1984.

Alan R. Swendiman,

General Counsel.

[FR Doc. 84-954 Filed 1-12-84; 8:45 am]

BILLING CODE 6820-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 19142; RM-1569; RM-3333; FCC 83-609]

Children's Television Programming and Advertising Practices

AGENCY: Federal Communications Commission.

ACTION: Report and Order; Policy Statement.

SUMMARY: In resolving the issues raised by the Notice of Proposed Rule Making in this proceeding concerning children's television, the Commission continues to recognize the obligation of the broadcaster to serve children. It concludes that given the totality of video programming sources and their offerings for children, constitutional concerns regarding interference with the exercise of a licensee's programming discretion, and regulatory anomalies that often result from inflexible standards, specific quantification rules are undesirable. The Commission continues, however, to recognize the special obligations of broadcasters to serve the child audience.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden: Mass Media Bureau (202) 632-7792, and Brian Fontes: Mass Media Bureau (202) 632-6302.

Report and Order; Proceeding Terminated

In the matter of Children's Television Programming and Advertising Practices (Docket No. 19142, RM-1569, RM-3333).

Adopted: December 22, 1983.

Released: January 4, 1984.

By the Commission: Commissioner Rivera dissenting and issuing a statement at a later date; Commissioner Patrick not participating.

1. Now before the Commission for consideration are the comments filed in response to the *Notice of Proposed Rule Making* ("*Notice*") in the above-captioned proceeding concerning television programming for children.[1] The *Notice* is the most recent step in a thirteen year inquiry into television programming and advertising addressed to children.

History of the Proceeding

2. In 1970, Action for Children's Television ("ACT") submitted a petition proposing a rule requiring commercial television broadcasters to provide, on a weekly basis, minimum amounts of age-specific programming for children. In 1971, we adopted our *First Notice of Inquiry* to explore and define the fundamental issues in children's television.[2] A Children's Television Task Force ("Task Force") was setup at that time to help achieve these goals. We concluded the inquiry in 1974 with the issuance of a *Report and Policy Statement* ("*Policy Statement*").[3] The *Policy Statement* specifically asked commercial television licensees to: (1) Make a "meaningful effort" to increase the amount of programming for children; (2) air a "reasonable amount" of programming for children designed to educate and inform and not simply to entertain; (3) air informational programming separately targeted for both preschool and school-age children; and (4) air programming for children scheduled during weekdays as well as on weekends. Commercial television broadcasters also were expected to: (1) Limit the amount of advertising in children's programming;[4] (2) insure an adequate separation between program content and commercial messages; and (3) eliminate host-selling and tie-in practices.[5]

3. On appeal, the U.S. Court of Appeals affirmed the *Report and Policy Statement.*[6] The Court held that the Commission's decision to provide policy guidelines and not to adopt specific regulations governing advertising and programming practices for children's television was a reasoned exercise of its broad discretion.

4. In 1978, the Commission re-established the Children's Television task Force to inquire into the effectiveness of broadcast industry self-regulation under the *Report and Policy Statement.*[7] The Task Force was to inquire into children's programming and advertising practices and investigate the impact of new technologies and alternative sources of programming on the availability of children's programming. The Task Force presented its report to the Commission on October 30, 1979. It concluded that broadcasters had not complied with the programming guidelines of the *Policy Statement* but, in general, had complied with the advertising guidelines.[8]

5. In coming to its conclusion concerning programming, the Task Force examined the amount of time commercial broadcasters devoted to children's programs during the 1973–74 broadcast season, the season prior to the *Policy Statement's* adoption, and the 1977–78 season, the most recent complete broadcast season at the time its report was written.[9] This study revealed a 7.2% increase in the overall amount of time commercial broadcasters devoted to children's television programming. Although an increase was noted, the Task Force nonetheless determined that licensees had not complied with the guideline for overall amount of children's programs because: (1) The increase in the average per-station amount of time devoted to children's programs was due to the increased broadcast of syndicated programs carried on independent stations; (2) independent stations exist primarily in large markets; (3) network affiliates' time devoted to children's programs remained essentially the same between the two broadcast seasons; and (4) reliance on syndicated rather than local programming increased at both independent and network-affiliated stations. The Task Force also concluded that: (a) No significant increase had occurred in the number of educational and instructional programs aired for children; (b) licensees had not made an effort to air age-specific programs; and (c) the proportion of children's programs

[1] 75 F.C.C. 2d 138 (1980), 45 FR 1976 (published January 9, 1980).

[2] 28 F.C.C. 2d 368 (1971), 36 FR 1429 (published January 29, 1971).

[3] 50 F.C.C. 2d 1 (1974), 39 FR 39396 (published November 6, 1974).

[4] The broadcast industry adopted advertising restrictions that were endorsed by the Commission in the *Policy Statement.* Both the National Association of Broadcasters ("NAB") and the Association of Independent Television Stations ("INTV") planned a phased-in reduction that by January, 1976, would restrict advertisements to 9 minutes and thirty seconds on weekends and 12 minutes during the week.

[5] The *Policy Statement* was reaffirmed on reconsideration. 55 F.C.C. 2d 691 (1975).

[6] *Action for Children's Television v. F.C.C.*, 564 F.2d 458 (D.C. Cir. 1977).

[7] *Second Notice of Inquiry* in Docket No 19142, 68 F.C.C. 2d 1344 (1978), 43 FR 37136 (published August 21, 1978).

[8] A summary of the Task Force's conclusions and recommendations is contained in Appendix A, along with a summary of comments initially filed in response to the 1980 *Notice of Proposed Rulemaking*, 75 F.C.C. 2d 138 (1979), 45 Fed. Reg. 1976 (published January 9, 1980).

[9] Television Programming for Children: A Report of the Children's Television Task Force, Federal Communications Commission, Vol. IV, October, 1979.

scheduled on the weekend had decreased somewhat but nearly half of children's programs were still shown on weekends.

6. In the opinion of the Task Force, the economic incentives of the advertiser-supported broadcasting system do not encourage the provision of specialized programming for children. Advertisers desire the largest possible audience of potential buyers for their advertised products, but young children have an influence on decisions to buy only a relatively few advertised products. Thus, the amount of money spent on children's advertising appears to be small relative to the amount spent advertising to adults. The Task Force believed that the small numbers of children and the limited appeal of the children's market to advertisers, combined with the small number of outlets in most markets, create incentives for the commercial television system to neglect the specific needs of the child audience.[10]

7. As a result of the Task Force Report, the Commission adopted the *Notice of Proposed Rule Making* herein. The *Notice* contained the following five options for possible Commission action:

(1) Rescind the *Policy Statement* and find that commercial television broadcasters no longer have any specific obligation to serve the child audience. Instead, reliance would be placed on other program sources.

(2) Because of concerns about the constitutional limits to Commission authority, maintain or modify the *Policy Statement.*

(3) Adopt mandatory programming rules on an interim basis.

(4) Adopt quantitative renewal processing guidelines for children's programming.

(5) Increase the number of video outlets per market to increase the amount and diversity of programming serving children.

8. In response to the *Notice of Proposed Rule Making,* voluminous comments were filed in the summer of 1980. A broad range of interests made their views known and indicated their concerns. Broadcast associations, networks, licensees, advertising groups and program producers and distributors represented the broadcast industry. Public interest and media organizations, educational associations, religious groups and individuals represented nonindustry views.

9. A thorough discussion of the comments filed in response to the *Notice of Proposed Rule Making* appears in Appendix A of this document. Nevertheless, it is appropriate at this juncture to briefly discuss the commenters' rebuttal to the Task Force's conclusion that broadcasters had failed in making a meaningful effort to increase the amount of programming for children. By its own extensive study, the National Association of Broadcasters ("NAB") confirmed the data developed in the Task Force report. It disagreed, however, with the conclusion drawn from these results. NAB argued that the Task Force report, in fact, showed a significant increase in the amount of time devoted to children's programs in the top 52 markets which account for 66.6% of the total 2–11 year old population. Further, NAB noted that if public broadcasters were included, the average amount of time per week devoted to children's programs would increase from 11.23 hours to 15.09 hours. Thus, NAB, as well as the networks, argued that a substantial amount of programming is available to children.

Recent Proceedings

10. On March 28, 1983, the Commission reopened the children's television proceeding.[11] We sought to update the record to enable us better to resolve the important questions raised by the *Notice.* Therefore, we held an *en banc* meeting on April 28, 1983, to hear oral presentations from 24 participants and permitted the submission of additional written comments from interested parties.[12]

11. As in 1980, presentations (oral and written) were made on behalf of the broadcast industry, as well as non-broadcast interests. Commercial broadcasters continue to acknowledge their "public service obligation" to develop and present programs which serve the unique needs of the child audience. To support the proposition that such programming in fact has been and will continue to be aired, the networks and the National Association of Broadcasters exhibited videotapes of past and future programs of interest to children. Broadcasters continue to believe that responsible self-regulation and reliance upon marketplace forces are the most effective means of meeting their obligation to the child audience. According to ABC, the most important development that has occurred since comments were last submitted (1980) in this proceeding has been the steady progress of marketplace changes that continue to enhance the overall diversity and availability of children's programming. It is alleged that a veritable explosion is occurring in the use of various visual and audio devices to be used with or in addition to the home television receiver. Broadcasters submit that videocassettes and discs make available a wide range of programming directed to children. They assert that the playback and "time-shift" capability of this technology offers new and exciting possibilities for tailoring programming to the needs of children. In addition, these parties note that the number of children's features available on basic and pay cable services,[13] as well as the number of children's programs offered by public broadcasting,[14] has grown substantially in recent years.

12. Broadcasters also direct our attention to those Commission actions taken in the last two years that individually and cumulatively offer the opportunity for more and diverse children's and other specialized programming: (1) the authorization of a direct broadcast satellite ("DBS") service; (2) the authorization of a new low power television service; and (3) the further deregulation of the subscription television ("STV") service. The industry also notes that other technologies, such as Multipoint Distribution services, Satellite Master Antenna TV, Teletext and Videotext, undoubtedly will give rise to still more ways in which children receive programming. Therefore, the parties conclude that commercial television should not be viewed in isolation.

13. While there was some minor disagreement as to whether the *Policy Statement* should be clarified, phased-out or eliminated, the industry generally oppose a more expansive regulatory approach. The parties contend that rules are unnecessary because: (1) The youth audience has been well served by television;[15] (2) there is no factual basis

[10] Television Programming for Children: A Report of the Children's Television Task Force, Federal Communications Commission, October 1979, Vol. II.

[11] 48 FR 18860, published April 26, 1983.

[12] *See* Appendix B for a listing of those who made oral presentations and Appendix C for a listing of parties filing supplemental comments.

[13] The Disney Channel, a pay cable service, which debuted earlier this year joined other children's programming initiatives such as Nickelodeon, Calliope and Carousel, offered by Warner Amex, USA Cable and Showtime, respectively.

[14] CBS submits that it is in no sense an abdication of the responsibilities of commercial broadcasters to point out the special role of public television in this area. It argues that public stations were established to serve needs that may not be fully met by the commercial system.

[15] Most of these parties give a detailed description in their written comments updating their efforts in programming for children. They also argue that the Task Force survey seriously understated the children's programming available in the markets selected for study.

for the imposition of mandatory programming rules with respect to children's television;[16] (3) the adoption of rules compelling the presentation of mandated amounts of particular types of programming at specified times would be arbitrary, as well as an infringement of the editorial discretion of broadcasters in violation of the first amendment and the Communication Act,[17] and (4) more hours of children's television actually might mean less in the sense that increased quantity may precipitate a decrease in the quality of such programming.

14. ABC and Forward Communications suggest that we issue a general reaffirmation of the principles of the *Policy Statement*, clarify licensee obligations under the *Policy Statement* based upon a more realistic assessment of practical conditions and public interest needs, and adopt a regulatory program looking toward a gradual phase-out of the *Policy Statement* commensurate with marketplace developments. They contend that emphasis should be placed upon broad affirmative licensee responsibilities. The obligation to serve children should be coupled with a renewed emphasis on licensee discretion. They further recommend that *Policy Statement* language suggesting a special status for "educational" or "instructional" children's programming should be deleted. It is argued that entertainment-oriented features often can be highly effective in serving children. Further, certain family-oriented program material, not primarily designed for children, but nevertheless having special appeal to youthful viewers, should be recognized as reflective of a broadcaster's overall effort in this area. The Commission is also asked to discard the concept of subgroupings of the child audience. It is argued that broadcasters and the marketplace should be permitted to develop the appropriate mix of school-age, teenage and pre-school programming. ABC and Forward Communications Corporation recommend a gradual phase-out of the *Policy Statement* and a total reliance upon marketplace forces. The American Association of Advertising Agencies, Inc. ("AAAA"), submits that because industry self-regulation is proving itself a most effective means of serving the interests of children, there is no basis upon which to support either a continuation of the *Policy Statement* or promulgation of additional policies or guidelines in this regard.[18]

15. Public television representatives do not address the question of regulating children's TV. Rather, they express their commitment to children's programming but submit that all broadcasting, not just the public sphere, is responsible for serving children. To improve the relationship between television and education, John Murray of Boys Town suggests the establishment of a National Endowment for Children's Telecommunications which would be largely supported by public and private philanthropy through a consortium of foundations, professional organizations and the broadcast industry.[19]

16. Generally, non-industry interests request that the Commission adopt rules relating to children's television programming and advertising practices, as well as establish license renewal guidelines. They would have the Commission require: (1) More programming designed for children; (2) the scheduling of children's programs throughout the week; (3) the presentation of programs designed for specific age groups of chidren; [20] and compliance with the advertising standards set forth in the 1974 *Policy Statement*. According to these organizations, the rationale for regulating children's television is fourfold: (1) Industry "backsliding;" (2) the abolition of the NAB Code; (3) the adoption of the short-form renewal; and (4) *Policy Statement* standards which are too broad to be enforceable.

17. In challenging the concept of industry self-regulation, commenters assert there has been a decline in the amount and availability of programming for the child audience. Of particular concern to ACT is the lack of regularly scheduled weekday children's programs. Also, WATCH submits there has been an overall reduction in the diversity of shows for children. It also argues that the demise of "regulation by raised eyebrow" has removed the major incentive for broadcasters to serve children.

18. Commenters are quite concerned that the abolition of the NAB Code will result in overcommercialization during the broadcast of children's programs.[21] They argue that the Commission took no regulatory action in regard to advertising standards for children because the broadcast industry adopted commercialization limits for children's television. Without this Code, it is submitted, overcommercialization again may appear. Therefore, commenters assert a rule limiting commercial material during children's programs should be adopted.

19. Public interest groups also argue that the "new" simplified renewal application is yet another reason for regulating children's programming. In March 1981, the Commission reduced the broadcast license renewal application (Form 303) from a document requesting, among other things, information on children's television, to a postcard format (simplified renewal application) consisting of five questions, none of which concern children's programming.[22] Commenters argue that without industry-wide data comparable to that previously gathered by means of the renewal application, the Commission cannot monitor how well licensees and the marketplace serve children. Further, without this data, it is alleged, the public is without the necessary information to assist the Commission in ascertaining whether its licensees are meeting their public interest responsibilities.

20. Two commenting parties, Citizens Communications Center ("CCC") and WATCH are concerned particularly with what they consider to be vague standards governing children's programs. CCC asserts that the precise numerical standards used in rules are not nearly as important as the need for some consistently applied quantitative measure that would provide certainty and guidance to the industry and the public. CCC cites *FCC v. Pacifica Foundation* [23] as holding that the

[16] CBS, as well as other parties, submit that throughout the week, television offers a wide variety of programs defined by the Commission as "children's programs," as well as many other programs recognized by parents, educators and critics as highly worthwhile for young audiences.

[17] These parties also contend that expanded renewal reporting in the area of children's programming would not only fail to achieve any legitimate public interest objective, but it would directly undermine the basic regulatory purpose behind the current short form renewal application.

[18] The AAAA submits that children have strong likes and dislikes and will not repudiate their favorite programs. In fact, it argues that most programs watched by children are not produced for them.

[19] The National Education Association recommends the creation of a Temporary Commission on Children's Television to provide a forum for dialogue in a nonadversarial atmosphere.

[20] WATCH recommends that the Commission require each station to air 5 hours of programming per week for pre-school children and 2½ hours per week for elementary school age children.

[21] In March 1982, the U.S. District Court for the District of Columbia found that certain provisions of the NAB Code could violate the Sherman Antitrust Act. A consent decree through which NAB agreed to stop enforcing all the challenged provisions was then entered (November 1982). *United States v. National Association of Broadcasters*, 536 F. Supp. 149 (D.D.C. 1982). Soon after this final judgment, NAB abolished the entire Code.

[22] *Revision of Applications for Renewal of License*, 46 Fed. Reg. 26236, published May 11, 1981. Five percent of all license renewal applicants are randomly selected each renewal period and required to fill out an Audit Form (FCC Form 303–C) that contains questions on, among other things, children's programming and advertising practices.

[23] 438 U.S. 726 (1978).

governmental interest in the well-being of its youth justifies restrictions on broadcasters' first amendment rights. It submits that the Commission's authority to establish and favor program categories has been upheld in the face of first amendment challenges.[24] CCC further asserts that the establishment of mandatory minimal percentages is not consitutionally suspect because it does not prohibit the broadcast of other programming by station licensees. Thus, it would provide the public with additional information rather than repressing existing sources. Any "chilling effect" upon broadcasters' ability to provide other programming is seen as minimal. CCC also submits that the first amendment benefits to the public clearly outweigh the broadcasters' first amendment claims.

21. In reply comments, ABC argues that the request for mandatory standards regarding advertising for children goes beyond the established parameters of the current proceeding. It further assert that the elimination of the NAB Code has not impaired the implementation of its own more vigorous children's television standards, and contends that expanded renewal reporting in the area of children's programming not only would fail to achieve any legitimate public interest objective, but would undermine the basic regulatory purpose behind the current short-form renewal application.

22. In reply to comments made by the broadcast industry, ACT argues that the responsibility for children's television programming rests squarely on the shoulders of each broadcast licensee. Therefore, relying on other sources of children's programming is contrary to the law and antithetical to the interests of children. Under the theory of "market" responsibility, maintains ACT, the fact that some stations serve children would act as a disincentive to any expansion of children's programming.[25] Furthermore, this approach would destroy licensee accountability to the public and to the Commission. ACT further argues that shifting responsibility for children's programming to public broadcasting would have an adverse effect on the diversity of children's programming. Nor, in ACT's view, should this responsibility be shifted to the new technologies. First, consumers would incur substantial costs (installation and monthly charges) to subscribe to these services. Second, because these new technologies are not subject to the public interest standard of the Communications Act, there is no guarantee that they will serve children. ACT argues that the question is not what kinds of children's programming are being offered, or how good such programs are, but rather how much time is allocated to children's programming, and when such programs are scheduled. ACT acknowledges that family programming may be appropriate for child viewers and be enjoyed by them. However, it contends that family programming is not designed specifically for children and thus does not necessarily meet their special needs.

Discussion

23. In attempting to resolve the issues in this proceeding it is appropriate that we turn first to the recommendations of the Children's Television Task Force. The Task Force, believing that greater attention to the needs of the child audience was desirable, focused on three broad options to improve the situation: (1) Mandatory programming requirements, (2) increased governmental funding (or other incentives) for the production and distribution of such programming, and (3) increasing the number of video outlets so as to improve the commercial incentives for serving subgroups in the audience and to increase the available distribution paths for children's programming. The recommended mandatory programming requirement could be enforced either through a specific rule or through processing guidelines applied to the renewal of station licenses. The Report focused on the amount of programming available on a per station basis and found that amount inadequate. It reviewed briefly the jurisdictional and constitutional objections to the adoption of mandatory program requirements and found them not to preclude the adoption of requirements and it recommended that such requirements be adopted.[26]

24. Our weighing of what we think are the relevant considerations in this proceeding lead us to believe that the recommended mandatory programming obligations are undesirable and should not be adopted. The other recommendations of the Task Force, relating to public funding for the production and distribution of informational and instructional children's programming and for the creation of additional video outlets and commercial funding mechanisms, we agree with fully. While issues relating to public funding are beyond our jurisdiction, we have moved aggressively to create new video outlets.[27]

25. In reaching our decision in this matter it should be made clear at the outset that we recognize the special character of the child audience, including particularly the younger portion of that audience. Television programming is undoubtedly an influential factor in childhood development, and economic factors relating to the distribution of advertiser supported programming for children are likely to vary somewhat from those associated with the distribution of programming for adults. In these respects we are not in fundamental disagreement with the findings of the Task Force and with the views of most of the commenting parties in this proceeding.

Availability of Children's Programming

26. In several important respects, however, we disagree with the predicate upon which the Task Force based its recommendations and on which many parties base arguments supporting mandatory programming requirements. The first of these disagreements relates to the issue of the actual availability of programming for the child audience. In particular, we find the Task Force conclusion erroneous for its failure to properly consider: (1) The growth in number of commercial stations and their increased receivability; (2) programming on noncommercial stations; (3) cable program services; and (4) child viewing of "family" oriented television. These

[24] Cited in support of this position is *National Association of Independent Television Producers and Distributors v. FCC*, 516 F. 2d 526 (2d Cir. 1975), in which the court upheld the Commission's decision to permit exemptions to the prime time access rule ("PTAR") for licensees choosing to offer network news, public affairs or childrens's programming in the PTAR time slots.

[25] Under the "market" theory, the *Policy Statement* would be applied on a market basis so that programming responsibility could be shared. Therefore, if one station in a market was providing children's programming, there would be no reason for all stations in that market to provide parallel programming.

[26] The Task Force believed that the advertising guidelines in the Policy Statement had been complied with and therefore recommended no changes in this area. Because of this, the Commission specifically stated in the *Notice of Proposed Rule Making* that policies regarding advertising were not in question in this proceeding. Accordingly, we regard requests for changes in these policies to be beyond the scope of this proceeding.

[27] The Task Force specifically urged a relaxation of the subscription television rules. The paucity of options for direct viewer payments for programs, it was suggested, limited audiences in expressing the intensity of their preferences for particular types of programs. This, it was believed, decreased the availability of programming for children. The Commission's *Third Report and Order in Docket 21502*, 47 FR 30069 (1982) eliminated all of the subscription television restrictions with which the Task Force had expressed concern.

failures undermine the conclusions drawn by the *Report*. The second disagreement concerns practical, legal and policy problems with our ability to adopt and enforce programming obligations.

27. With respect to the first of these concerns, the Task Force focused its attention on the amount and scheduling of children's programming by the average commercial station. Based on this focus, it found a need for a more aggressive regulatory stance to replace that previously followed. In our view, the Task Force's focus in this regard was too narrow. We must, of course, exercise our regulatory authority with respect to individual licensees. The objective of the Commission's involvement, however, is to assure that the telecommunications system as a whole is responsive to the needs of the public. It is therefore appropriate to look to that system as a whole in reviewing developments relating to the accessability of programming for the child audience.

28. The data developed by the Task Force reveal a 7.2 percent increase, during the years studied (1973–74 and 1977–78), in the amount of time commercial broadcast stations, on average, devoted to children's programming.[28] Not focused on, however, was the fact that the total number of stations licensed was increasing. During the time since this docket was commenced, the total number of licensed commercial stations increased from 668 (1971) to 844 (1983), an increase of approximately 25 percent.[29] Moreover, the reach of these stations was being constantly increased through more efficient operations (increased power and antenna height), through reductions in the UHF handicap, and through increased cable television carriage. Summary data show the average television household now receives 9.8 signals, an increase of 3 (44 percent) since 1970. Thus, not only was the average output of children's programming per station increasing but the average number of stations accessable to the child viewer was increasing as well.

29. Even this broader focus, which includes the totality of programming from all commercial stations, however, is unduly narrow since it excludes from the product available to the child audience that which by almost any measure must be the most significant programming—that produced and distributed by the public broadcasting system. This system was created precisely for the purpose of supplementing the commercial broadcasting system and in specific recognition of the desirability of providing public support to increasing the availability of programming that might not be fully supported by commercial incentives. The public broadcasting system has recognized this mandate with respect to the broadcasting of children's programming and its successes in this field have been broadly recognized. The Corporation for Public Broadcasting has recently recognized children's programming as the number one priority in its Program Fund guidelines.[30] We do not expect the public broadcasting system to bear the sole responsibility for meeting the needs of the child television audience or its existence to provide an excuse for the failings of the commercial broadcasting system. But we do not believe it appropriate to exclude its output from consideration as a significant factor in measuring the extent to which the needs of this audience are being served. The Commission has reserved channels in its television broadcast table of allotments for the specific use of noncommercial broadcasting stations so that the public would have access to the kinds of informational, instructional, and cultural programming that these stations deliver. Today, almost 300 stations—more than a quarter of all the licensed television stations—are of the noncommercial variety. The Public Broadcasting System, during the 1982–83 season provided stations in the public broadcasting system, reaching over 90 percent of all television households, with some 2,050 hours of children's programming.[31]

30. An additional important component of the national children's television programming market consists of the programming available to the child audience from nonbroadcast sources, including in particular that programming available over the facilities of cable television systems At the time this proceeding was commenced, cable television served a relatively limited segment of the population, and its function was almost entirely the retransmission of over-the-air televison broadcast signals. Cable television now passes some 54 percent of all homes and cannot be avoided in any assessment of the accessability of programming to the child audience. The most popular of the cable television delivered children's programming services, "Kidstime," reaches some 18 million subscribers or about 20 percent of all television households. Millions of households have access to other children's program services by cable as well, including "Nickelodeon," (14 million subscribers) and the recently inaugurated Disney Channel which already reaches over 300,000 subscribers. Some programming on the major pay cable television program services, such as Home Box Office, is also directed to the child audience.[32]

31. In addition to excluding from its principal focus programming available from public television and from non-broadcast sources, the Task Force also focused, in a definitional sense, on only a portion of the totality of programming that is viewed by and is responsive to the needs and interests of the child audience. That is, its concern was principally with that programming defined in the Commission's rules as

[28] Task Force Report, Volume 4, p. 39. This increase, significantly, resulted largely from a 36 percent increase in the children's programming broadcast by independent stations. This is highly supportive of one basic thesis of the Task Force Report; namely, that the growth of alternative video outlets would result in market segmentation and a resultant greater attention to specific subgroups within the audience such as the child audience. There are now independent stations in 86 different markets serving 78 percent of all TV households.

[29] The changes that have taken place in the video marketplace over the course of the last decade are set forth in some detail in the Commission's *Tentative Decision and Request for Further Comment in BC Docket 82-345*, 48 FR 38020 (1983). We recognize, of course, that the Task Force itself was addressing a narrower time period but believe the broad trends involved are more clearly reflected in data covering the longer period.

[30] September 15, 1983, resolution of the Board of Directors of the Corporation for Public Broadcasting.

[31] Status Report of Public Broadcasting 1980, Corporation for Puvlic Broadcasting; Public Television Programming by Category (FY–1982) prepared by Research and Programming Services, Corporation for Public Broadcasting contracted project, 1983. *See also*, Nielsen Television Index, Special Analysis for Corporation for Public Broadcasting, 1983. It is worth noting that when the reservation of channels for noncommercial stations was first proposed, a suggestion was made that, as an alernative, each commercial station should be forced to make a certain amount of time available "for educational purposes in the public interest as a sustaining feature." While refusing to accept the existence of educational stations as an excuse for commercial stations not complying with their obligations to the community, the Commission did reject this alternative proposal. The Commission both questioned the legal basis for such a rule and found it impractical stating: "A proper determination as to the appropriate amount of time to be set aside is subject to so many different and complex factors, difficult to determine in advance, that the possibility of such a rule is most questionable." *Sixth Report and Order in Dockets 8736 et al.*, 41 FCC 148, 163–4 (1952).

[32] Satellite Services Report, National Cable Television Association, December, 1983. A recent description of some of the children's program services offered on cable television systems (as well as of programs available from commercial networks, public television, and from syndication) may be found in Aimee Dorr "A Guide to the Best TV Shows for Children," *TV Guide*, Dec. 17, 1983, p. 4.

children's programming.[33] This definition covers only programs "originally produced and broadcast primarily for a child audience twelve years old and under." Explicitly excluded from coverage are programs that might be appealing to children and significantly viewed by them but which were, when produced, intended for a broader audience as well.[34] This exclusinon of what has been broadly referred to as "family" programming, clearly resulted in an unduly narrowed definition of the programming of interest and value to the child audience. While the necessity of defining the scope of the statistical studies undertaken required some definitional cutoffs, it seems clear that by using limitations that excluded programs such as "The Wonderful World of Disney," [35] that relevant programming of value could not be fully comprehended by the study. The problem, however, is more than just a statistical anomaly. Such a definitional limitation serves to encourage the broadcasting of programming that is likely, given the dynamics of program selection within the household, to have not only a smaller total audience but a smaller child audience. Moreover, it suggests that positive values should be associated with programs directed to the child audience, whatever the social utility of those programs, while programs specifically designed to bridge age levels and be shared by parents and children are of lesser value on the regulatory scale. We believe it is important to take into account, in assessing the state of children's programming, highly rated family shows that draw both larger child audiences and mixed parent/child audiences. These programs, because they encourage interaction, rather than isolation of children and parents, are a valuable part of the overall program mix.

32. In sum, we cannot conclude that statistical studies of the Task Force or of the other commenting parties in themselves make out a case for increased regulatory concern or involvement. Properly viewed, the adequacy of the programming to which children have access must be based on a consideration of the whole of the video distribution system. Viewing that system broadly and on an overall national basis, we find increases in the children's programming available from the average station, dramatic increases in the number of stations in operation, increases in the availability of these stations through cable carriage and improved station facilities, increased availability of noncommercial programming made possible through the growth of the public broadcasting system, and increased viewing options provided to substantial portions of the population by the operation of cable television systems. In short, there is no national failure of access to children's programming that requires an across-the-board, national quota for each and every licensee to meet. We do not mean to suggest that these developments have satisfied all the demands for programming associated with the child audience or that they satisfy all legitimate regulatory concerns. We do not, however, take the existence of an unsatisfied demand in some situations to be evidence of a national market failure in regards to the production and distribution of children's television programming. In any situation where resources are limited and there are alternative demands placed on those resources, even the most perfectly functioning market will leave demands unsatisfied. Here, however, there is ample evidence of the system as a whole moving to respond to the unmet needs of this audience.

Issues of Law and Policy

33. In addition to having these concerns with the factual predicate on which the recommendations for mondatory programming requirements were based, we also believe there are far more significant legal and practical difficulties associated with such requirements than have been acknowledged by their proponents. Parties urging such requirements have generally presented it as content neutral in terms of program quality. The question of program quality, however, is integral to the public interest issues in this proceeding. Much of the discussion associated with this proceeding by the parties and indeed by the Commission itself has addressed the overall quantity and scheduling of programming created for children. Yet, in fact, much of the actual concern has only to do with the availability of "quality" children's programming, programming that through its educational, intellectual, or cultural content is mentally or developmentally uplifting to the child audience. In fact, nothing in the record of this proceeding suggests that regulation would be desirable merely to force the broadcast of programming more likely to attract children into the television viewing audience and away from other pursuits or that would result in existing child viewers devoting a greater amount of time to viewing television. Indeed, much of the discussion of the need for increased regulatory involvement is intertwined with a more general discussion of whether television viewing is not in itself destructive of healthy child development. Much of the discussion of methods for providing the child audience with greater access to programming specifically produced for that audience is closely juxtaposed with extraordinarily harsh criticisms of much of the very programming that has been specifically designed to attract this audience.[36]

34. Any analysis of the service received by the child audience that is entirely content neutral—which equates hours of television viewing with needs satisfaction—must conclude that this audience is well served. The inadequacy of this type of analysis leads us to conclude that the obligation broadcasters have to serve children cannot be rationally viewed as simply emphasizing a need to broadcast programming that appeals to or is

[33] *See Memorandum Opinion and Order in Docket 19142*, 53 FCC 2d 161 (1975). For some purposes other definitions were used that had essentially the same thrust. A separate concern with the definition relates to exclusion of teenagers from the child category. Because of this exclusion, Altman Productions, Inc., claiming that a significant regulatory bias against teenage programming has been created, requests rulemaking to eliminate this bias. Others have raised similar concerns. Commissioner Washburn, for example, in his separate statement at the time the 1979 *Notice* was issued suggested that: "The teenage audience is of equal, if not greater importance than preschoolers and grade schoolers." 75 FCC 2d at 158. We have no doubt that the needs of the teenage audience are significant and that this and many other subgroups within the audience merit consideration. There are questions of degree involved, however, and those factors that warrant some special concern for the child audience, even within the existing definition, appear to decrease with age. Moreover, attempts to define audience segments more particularly for regulatory purposes seem to us likely either to unduly involve this agency in scheduling decisions or to result in such inclusive categorization that the whole effort would be meaningless. Thus, we are not disposed to grant the Altman Productions request.

[34] Task Force Report, Volume IV, p. 13.

[35] See statement of Commissioner Washburn, concurring in part and dissenting in part, to the *Notice of Proposed Rulemaking*, 75 FCC 2d at 158.

[36] The filings of ACT and other parties in the early stages of this proceeding found many programs "fostering stereotypes, prejudices and questionable social standards." Weekend programs were found "more objectionable, violent, stereotyped and ad-ridden than family programs by far." Comment summary, *Policy Statement*, 50 FCC 2d at 28 and 21. See also, for example, Peggy Charren, "Children's TV: Sugar and Vice and Nothing Nice," *Business and Society Review*, No. 22, summer 1977. This article references a Michigan State University study that identifies weekend children's programming as "the most violent and most deceitful time block of programming on television." In children's programs, the article states: "Antisocial behavior patterns are often combined with racial and sexual stereotypes." *See also, Television and Behavior: Ten Years of Scientific Progress and Implications for the Eighties*, National Institute of Mental Health, (1982).

produced for children. Certainly no structural or market failure can be found that warrants any special concern in this regard; children watch enough television, and no regulatory initiative need be introduced to get them to watch more. What is of special concern is that attention be paid to the developmental and emotional needs of children. Thus, we are not persuaded that efforts to adopt specific mandatory program hours obligations can achieve their intended objective in the absence of some control over or attention to the issue of quality. The Task Force itself. Concludes, however, that the "fundamental issue of program quality cannot be addressed." Rather it attempted to use the term "educational/instructive"[37] as a proxy for that type of programming which would be socially beneficial to the child audience. It has argued that such a categorization is no more suspect or objectional than other categorization schemes already in existence and used for other regulatory purposes, such as, "news," "public affairs," "documentary," or "nonentertainment" programs.

35. We believe, however that an honest appraisal of the issue here under consideration suggests that the parallels are far from exact. In the categories now in use there is generally abundant room for argument with respect to programming on the fringes of the definition—for example, whether *Real People* is a documentary or entertainment program. But the basic objective of the category is generally not disputed. The arguments presented relate to the programs on the margin. Here, however, it seems relatively clear that any "quality" program—especially if it had some entertainment value and were capable of attracting a significant child audience—would satisfy the basic objective of a children's program requirement. The issue of definition relates not so much to the fringes of the category but to the basic purpose of the category itself.[38] There are, as has been noted elsewhere, programs that are basically entertainment and that are also intended to be shared with an adult audience that nevertheless "teach millions of children each week fundamental truths about human relations and about the essential character of the American people."[39] Both the Commission and the courts have recognized that "judgments concerning the suitability of particular types of programs for children are highly subjective."[40]

36. Because of concerns with problems of this type, we have believed, with only the rarest of exceptions, that selection of programming is a matter that should be decided by station licensees and by the audience through its viewing pattern voting. Program quota systems have been viewed historically as fundamentally in conflict with the statutory scheme of broadcast regulation. The question of whether certain socially desirable objectives in the broadcasting field might be achieved by such fixed program quotas is one that was presented to the legislature as the methodology of broadcast regulation was initially being considered. And the question of whether such programming requirements would be consistent with the system of broadcast regulation actually adopted has arisen periodically since, with in each instance a negative response. As radio broadcasting legislation was first being looked at, Congress considered and rejected proposals to allocate certain percentages of station time or a certain percentages of stations to particular types of programming. H.R. 7357, submitted prior to passage of the Radio Act of 1927, included a provision requiring stations to comply with programming priorities based on subject matter.[41] As the Supreme Court has noted:

> This provision was eventually deleted since it was considered to border on censorship. Congress subsequently added a section to the Radio Act of 1927 expressly prohibiting censorship and other "interfer[ence] with the right of free speech by means of radio communication."[42]

37. Based on the same type of concern, if not this precise legislative history, calls for programming requirements or quotas of one type or another have been repeatedly rejected. Their rejection at times in the past when only a small percentage of the stations now in operation had been licensed, raises significant questions as to how a change in the basic answer could now be justified. As noted above, the Commission rejected specific educational programming quotas when the television station table of assignments was adopted.

38. None of the Commission's or the courts' seminal statements concerning regulatory involvement in station programming went so far as to apply specific program quotas. Neither the 1929 Federal Radio Commission decision in *Great Lakes Broadcasting Co.*,[43] which discussed the expectation that licensees provide a balanced program schedule designed to serve all substantial groups in their communities, nor the famous 1946 "Blue Book," nor

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[37] The *Policy Statement* focused on the terms "educational or informational" while also speaking in terms of "cultural development" and cultivating the mind. 50 FCC 2d at 5–6. There is no existing definition of "informational" programming in the Commission's rules and the Task Force studies found no programs that it designated "educational", although programs in the "instructional" category were found. Task Force Report, Volume 2, page 22, note 22.

[38] Some evidence that issues relating to definitions and program quality are not simply part of a traditional "parade of horribles" brought out for rhetorical purposes only, may be gleaned from some contemporary experience in Australia. Regulatory authorities there, faced with the same kinds of concerns that are the subject of this docket but unconstrained by restrictions equivalent to the First Amendment and faced with far fewer broadcast outlets, have created a childrens program review committee and are developing standards to directly respond to issues of program quality. The program criteria suggest, for example, that programs must be "easily understood and appreciated by children," "fulfil[ ] some special need of children," and "contribute[ ] to the social, emotional or intellectual development of children." Australian Broadcasting Tribunal, *Notice of Proposed Determinaton of Children's Television Standards*, October 24, 1983. Although the words used in the Task Force Report recommendations and those in the Australian proposal are different, they would seem to be attempting to define the same types of programming. See also statement of Commissioner Washburn, concurring in part and dissenting in part, to *Notice of Proposed Rule Making*, 75 FCC 2d at 158: "The demarcation line between "instructional" and "entertainment" programming, in my judgment, is virtually impossible to draw." Justice Marshall, in his dissenting opinion in *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 615 (1981), in discussing the Commission's involvement with different types of program content, states "it is not immediately apparent, for example, why children's programming falls on the "nonentertainment side of the spectrum. . . ."

[39] Statement of Commissioner Washburn, concurring in part and dissenting in part, the *Notice of Proposed Rulemaking*, 75 FCC 2d at 158. The point here, that the real public interest in children's programming involves attracting the child audience to programming that imparts a public interest or pro social message can be accomplished with adult or family programming as well or better than with specifically child programming, may be illustrated with an example. The Task Force Report states that, in the programming data being reviewed, it found the children's program with the highest child viewing, the *Scooby Doo-Dynomutt Show*, was seen by only half as many children as *Happy Days*, an adult program. Thus, for regulatory purposes licensees would receive no credit for *Happy Days*. Yet, it is reported that when the Fonz, the central *Happy Days* character, obtained a library card, many child viewers did likewise. Similarly, an "instructional" child's program with the ability to garner only a modest audience might have less public value than a hogher audience appeal child's "entertainment" program with a social message embedded in it.

[40] *National Association of Independent Television Program Producers and Directors v. FCC*, 516 F. 2d 539, note 21 (1975). The Court goes on to state that "A precise definition is probably unattainable, and, indeed undesirable. No one can set boundaries to the fantasy of a child's world." p. 539.

[41] H.R. 7357, 68th Cong., 1st Sess., section 1(B) (1924).

[42] (footnote omitted). *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 597 (1981).

[43] 3 F.R.C. Ann. Rep. 32 (1929), *rev'd on other grounds* 37 F. 2d 993, *cert. dismissed*, 281 U.S. 706 (1930).

the 1960 program statement with its fourteen program categories, including the first specific reference to programming for children, found it either desirable from a policy perspective or acceptable from a legal perspective to define by hours, schedule, and type any particular programming that should be broadcast to fulfill the public obligations of licensees.[44] Virtually every decision has focused on the tension between the statutory requirement that stations operate and be regulated in the public interest and the clear intention of the statute that the field of broacasting is to be one of free competition, that licensees are to be accorded maximum editorial discretion, and that the Commission is given no supervisory control over programming and is prohibited from engaging in program censorship.[45] The somewhat nebulous nature of the obligations imposed were found, in each case, necessary to accommodate the conflicting requirements of promoting programming diversity and avoiding unnecessary restrictions on licensee discretion.

39. Numerous judicial opinions have also noted that serious First Amendment concerns are raised by such requirements. The courts have had occasion to speak to the issue several times in recent years. In 1978 the Commission refused to adopt quantitative program standards for television broadcasters involved in comparative renewal hearings. The argument was made that the absence of precise, i.e., quantitative, standards raised First Amendment problems. The Court of Appeals responded, stating:

> As to petitioners' First Amendment claims, their approach would do more to subvert the editorial independence of broadcasters and impose greater restrictions on broadcasting than any duties or guidelines presently imposed by the Commission. The Act provides brodcasters with broad programming discretion and prohibits the Commission from exercising the power of censorship.[46]

40. Decisions refusing to adopt mandatory hour or percentage requirements have recognized not just the Constitutional fragility of such requirements but a practical policy component as well. In recent efforts to reform various policies relating to the regulation of radio broadcasting, the Commission noted that it "has not in the past, and will not in the future[,] focus on the total number of minutes or percentage of broadcast time devoted to issue oriented programming," and that "the number of minutes or percentage of broadcasting time devoted to such programming is largely irrelevant." *Memorandum Opinion and Order in BC Docket 79–219*, 87 FCC 2d 797, 809, 819 (1981). The Court of Appeals noted the logic of stressing the importance of factors besides quantity in its review of our decision, acknowledging that quantity alone may not be a measure of whether particular issues are being addressed in a meaningful fashion.[47]

41. More specifically with respect to the issue of children's programming, the Court of Appeals has acknowledged that rigid scheduling and quantity requirements would "not make sense from a policy standpoint." In a statement with which we agree, the Court stated that it failed to see the logic in policies that imply that a regular schedule of cartoons would satisfy the public interest when a more limited schedule of educational specials would not.[48] This raises again the issue of program quality. If it is assumed that station licensees will provide children's programming only involuntarily, then there is no logical way to disassociate quantity and quality. At a given cost, a specific regulatory requirement to respond to the needs and interests of children could be responded to either by the broadcasting of a limited number of more costly programs (more costly either in terms of production cost or lost audience) or a larger number of less costly programs. Although from the point of view of the station enterprise both approaches are equal in cost, rules that require or reward quantity create a strong bias to follow the "more programs lower cost" approach. Were there only a single broadcast outlet involved in each market, this conceivably might be a sensible course from a regulatory perspective. However, it does not appear to be a public interest maximizing approach where more outlets are involved. Proponents of mandatory requirements urge, however, that with mandatory time requirements at least some programming would be available and, having to provide that programming, stations would then have an incentive to make their best efforts to produce attractive programming. While we agree that stations would attempt to maximize their returns within the constraints imposed, the hypothetical example posed by the Court of Appeals—regularly scheduled cartoons receiving more credit than less, frequently scheduled better quality programs—would still seem to be the likely result.

42. A practical concern of another type has been recognized as well. Rigid obligations relating to specific types of programming run contrary to efforts at specialization. As the Children's Television Task Force has suggested, such specialization as is made possible by the development of more programming outlets provides the surest long run chance of providing better service to all segments of society, including children. No sophisticated survey is required to observe that such specialization is occurring. During weekday mornings, independent (as well as public) stations in many markets compete for the child audience. Networks, affiliated stations concentrated on news and public affairs. On weekends, when network stations target the child audience, the independent (and the public) stations do not. As predicted, market segmentation leads to station specialization better serving the needs of the entire viewing public. Program quotas, in the absence of an extraordinarily complicated allocation merchanism, would work fundamentally against effort to align commercial incentives with quality service to the child audience.[49]

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[44] FCC, "Public Service Responsibility of Broadcast Licensees," (1946); *En Banc Programming Inquiry*, 44 FCC 2303 (1960).

[45] See also, separate statements of Commissioners Ferris, Washburn, Fogarty, and Brown to *Notice of Proposed Rule Making*, 75 FCC 2d 138, 153, 156, 165, 168 (1979).

[46] *National Black Media Coalition v. FCC*, 44 RR 2d 547, 551 (D.C. 1978). See also the statement of the Second Circuit Court of Appeals in *National Association of Independent Television Producers and Distributors v. FCC*, 516 F 2d 526, 536 (2nd Cir. 1975), concerning exceptions to the prime time access rules for network distributed children's programs, that "it may be that *mandatory* programming by the Commission even in categories would raise serious First Amendment questions." This statement was echoed by the District of Columbia Circuit Court of Appeals in its recent decision in the radio deregulation proceeding, *Office of Communications of the United Church of Christ v. FCC*, 707 F. 2d 1413, 1430 (D.C. Cir. 1983). In its "format" regulation decision, *WNCN Listeners Guild v. FCC*, 610 F. 2d 838, 850–51 (D.C. Cir. 1979), the Court stated, "There would no doubt be severe statutory and constitutional difficulties with any system that required intrusive governmental surveillance [or] dictated programming choices. . . ." These decisions harken back to the Supreme Court's opinion in *FCC v. Sanders Brothers*, 309 U.S. 470 (1940) stating that the Communication's Act "does not essay to regulate the business of the licensee. The Commission is given no supervisory control over programs. . . ."

[47] *Office of Communication of the United Church of Christ v. FCC*, 707 F. 2d 1413, 1433 (D.C. Cir. 1983).

[48] *Washington Association for Television and Children v. FCC*, 712 F. 2d 677, 684 (D.C. Cir. 1983).

[49] Commercial broadcasting is guided by both regulatory and commercial requirements. The fundamentally commercial nature of the commercial broadcasting system, however, can only be ignored at great risk. It would be possible, as many have suggested, to correct advertising problems associated with the child audience through commercial time limitations or prohibitions, to correct scheduling problems through time of day requirements, to address age needs through program divisions, to respond to existing or regulation

Continued

Regulations running against the grain of station specialization would reduce market incentives for the production of programming for specialized audiences. They would also place the Commission in a position of having to involve itself with specific choices among preferred types of programming. We do not feel, for instance, that we should declare that children's programming in the 7:00–8:00 a.m. hours is inherently preferable to that time being used for news programs.[50]

43. We thus find ourselves precisely caught between the apparent possibility of accomplishing an extremely important and socially desirable objective and the legislative and Constitutional mandate and the values on which they are based which forbid our direct involvement in program censorship and which require that broadcast station licensees retain broad discretion in the programming they broadcast. Recognizing that a balance must be reached, we believe this balance is best struck through a continued stress on the general licensee obligations emphasized by the Commission in its 1974 Children's Television Policy Statement and through the general requirement that stations provide programming responsive to the needs and interests of the communities they serve.[51] We continue to believe "that the broadcasters' public service obligation includes a responsibility to provide diversified programming designed to meet the varied needs and interests of the child audience."[52] The record reflects that the child audience is a unique one that warrants special programming attention from licensees.

44. We do not believe it desirable, however, to mandate programming quotas or impose more specific program or scheduling requirements nor do we interpret the Policy Statement as imposing such obligations. In 1975, we stated that because "the considerations as to what constitutes a 'reasonable amount' may vary, according to service area demographics, existing children's programming, market size, network affiliation or independent status, prior commitments to locally-produced programs, and the availability of television, etc. we believe it is desirable to avoid rules which are unnecessarily broad and inflexible."[53] We continue to believe that this is true. It mirrors precisely the rationale set forth in the *En Banc Programming Inquiry* in 1960 as to why program quotas in other areas were not being adopted.[54]

45. We are acutely aware of the difficulties inherent in enforcing an unquantified general obligation to the child audience such as that described in the *Policy Statement* and of the charge made in the Task Force Report and by others that such a policy is "unenforceable by either the Commission or the public."[55] Enforcement difficulties are created by a host of factors: (1) By the desirablity of judging licensees on their overall programming record and not on one segment of that record alone; (2) by the desirability of taking into account the availability of programming from other sources; (3) by the need to account for the individual financial positions of newer and smaller market stations; (4) by issues associated with programming quality as opposed to quantity; (5) and by the constraints imposed by the First Amendment and Section 326 of the Communications Act. To the extent those who argue that the obligations imposed are unenforceable are simply stating that the Commission has a heavy burden to meet before it substitutes its judgment for that of a licensee, we believe that is as it should be. That has been the requirement since prior to 1934. Broadcasters, however, should not be misled into believing that no enforceable obligations remain. The bedrock obligation of every broadcaster to be responsive to the needs and interests of its community, including the specialized needs of children in that community, remains. Until such time as the Commission's role in station programming has been totally eliminated, those obligations will have to be enforced by the Commission and the Commission's performance in that regard will be subject to review by the Court of Appeals. This result is, we believe, entirely consistent with what the Supreme Court has described as "the Commission's duty to chart a workable 'middle course' to preserve 'essentially private broadcast journalism' held only broadly accountable to 'public interest standards.'"[56]

46. In summary, we do not wish this decision to be an endorsement of a "raised eyebrow" approach to regulation. No cryptic message will be found between the lines of this decision. Simply put, we find no basis in the record to apply a national mandatory quota for children's programming. But, there is a continuing duty, under the public interest standard, on each licensee to examine the program needs of the child part of the audience and to be ready to demonstrate at renewal time its attention to those needs. This duty is part of the public interest requirement that a licensee consider the needs of all significant elements of its community. A licensee may consider what other children's program service is available in its market in executing its response to those needs. But a licensee who fails to consider those needs, in light of its particular market situation, will find no refuge in the order.

47. *Regulatory Flexibility Analysis:*

I. Need for and Purposes of the Rule

The Commission has decided not to adopt new requirements regarding programming for children. Given the totality of video programming sources and their offerings for children, constitutional concerns regarding interference with the exercise of a licensee's programming discretion, and regulatory anomalies that often result from inflexible standards, the Commission concluded that specific quantification rules are undesirable.

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created failures of commercial incentives through program quotas, and to respond to general concerns over "quality" through cleverly crafted definitions or *ad hoc* reivews. The net result, however, would be a fundamental change in our broadcasting systems from one of licensee editorial discretion to one involving detailed agency oversight.

[50] The statutory and public interest basis for permitting, if not encouraging such segmentation and specialization, was recognized most recently by the District of Columbia Circuit Court of Appeals decision up holding the Commission's radio deregulation proceeding. *Office of Communication of the United Church of Christ v. FCC*, 707, F. 2d 1413 (D.C. Cir. 1983). The District of Columbia Circuit Court of Appeals opinion rejecting the Commission's policy statement in the "format" case had previously recognized in that context that "[n]o public interest issue is raised if . . . there is an adequate substitute in the service area for the format being abondoned. . . ." *WNCN Listeners Guild v. FCC*, 610 F.2d 838, 851 (1979), *reversed on appeal FCC v. WNCN Listeners Guild*, 450 U.S. 532 (1979).

[51] *En Banc Programming Inquiry*, 44 FCC 2303 (1960).

[52] *Report and Policy Statement in Docket 19142*, 50 FCC 2d 1 (1974); See also, *Washington Association for Television and Children*, 712 F.2d 677 (D.C. Cir. 1982).

[53] *Memorandum Opinion and Order*, 55 FCC 2d 691, 693 (1975), cont.

[54] "It is emphasized that these standards or guidelines should in no sense constitute a rigid mold for station performance, nor should they be considered as a Commission formula for broadcast service in the public service. Rather, they should be considered as indicia of the types and areas of service which, on the basis of experience, have usually been accepted by the broadcasters as more or less included in the practical definition of community needs and interest." 44 FCC 2303, 2313 (1960).

[55] Task Force Report, p. 92.

[56] *FCC v. WNCN Listeners Guild*, 450 U.S. 582, note 32, quoting from *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 120 (1973).

II. Summary of Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result.

A. Issues Raised.

Commercial broadcasters, while recognizing their obligation to program for children, argued that establishing quantitative guidelines for children's programs would be arbitrary.

A few broadcasters recommended a clarification of licensee obligations under the *Policy Statement* or a gradual phase-out of the *Policy Statement* commensurate with marketplace developments.

Public interest organizations argued that self-regulation will not result in sufficient children's television and therefore suggested adopting rules requiring a minimum amount of children's programming and/or quantitative renewal processing guidelines for children's programming.

B. Assessment

The record reveals that a variety of existing communications services provide quantity and quality in children's programming. Furthermore, it appears that new services can be expected to provide new outlets in the future which will add to that diversity. In view of the present state of the marketplace, the Commission believes that specific quantification rules are undesirable.

The Commission also concluded that there was no value in substituting our judgment for that of the licensee in deciding what amount or type of programming for the child audience is needed. The licensee is in a better position to determine the interests and needs of the particular children in its audience.

C. Changes Made as a Result of Such Comment

In response to those comments concerned about children's program offerings and our recognition of the important role of television in a child's life, we have continued to recognize the obligation of broadcasters to serve this portion of the audience.

In response to opposition to the adoption of rules or renewal guidelines, we rejected the options proposing mandatory programming rules or renewal processing guidelines.

III. Significant Alternatives Considered and Rejected

The *Notice* proposed rescinding or modifying the *Policy Statement*, adopting mandatory programming rules and children's programming license renewal processing guidelines, and increasing the number of video outlets.

The Commission concluded that the number of video outlets, both advertiser-supported and pay, currently available will provide diversity in children's programs without the necessity of adopting specific quantification rules or renewal guidelines. The Commission also reached this decision because of its constitutional concerns and recognition that regulatory anomalies often result from inflexible standards. Because of Commission actions recently taken that authorize new technological communications services, the Commission found no need to take any action to increase the number of video outlets.

48. Authority for adoption of the action taken herein is contained in Section 303 of the Communications Act of 1934, as amended.

49. It is further ordered, that the petition to amend FCC Form 303 filed January 24, 1979, by Altman Productions, Inc., is dismissed.

50. It is further ordered, that the proceedings concerning this *Report and Order* are terminated.

51. For further information concerning this proceeding, contact Freda Lippert Thyden, Mass Media Bureau, (202) 632-7792 and Brian Fontes, Mass Media Bureau, (202) 632-6302.

Federal Communications Commission. *

William J. Tricarico,

Secretary.

Appendix A—Summary of Task Force's Findings and Conclusions and Summary of Comments Submitted in 1980

I. Introduction

1. On December 19, 1979, the Commission adopted a *Notice of Proposed Rule Making* in the matter of children's television programming practices. The *Notice* was released December 28, 1979, and published on January 9, 1980, 45 FR 1976. The *Notice* sought comments on five broad regulatory options relating to the Commission's continuing oversight of broadcasters' children programming practices. In this context, the Commission also solicited comment on the Children's Television Task Force Report, which found that broadcasters generally had failed to meet their programming obligations to the child audience as established by the Commission's 1974 *Policy Statements*.

2. This document summarizes the comments received in response to the *Notice*. No effort is made to provide a detailed summary of every comment; however, the major themes of the commenters have been addressed. Section II of this document briefly describes the parties commenting in the proceeding and provides a short summary of the informal comments received by the Commission. Section III summarizes the comments that address the Children's Task Force *Report*. The parties' opinions on the five regulatory options proposed in the *Notice* are discussed in Section IV.

II. Response to the Notice

3. One hundred and thirty-six formal comments and 18 formal reply comments representing 185 different parties were filed in the proceeding. A broad range of interests were represented. Among those commenting were five broadcast associations, four broadcast networks, 56 station owners and licensees, three advertising interests, and four program producers and distributors. Non-broadcast related interests were represented by 18 public interest and media groups, nine educational associations, and six religious groups. Over 60 individuals filed formal comments. A complete list of the commenting parties appears at the end of this Appendix.

4. Since the Commission reinstituted the children's proceeding in 1978, over 11,300 informal comments have been received from parents, teachers, professionals, and children across the country. Various neighborhood organizations, social groups, and professional agencies have sent in letters as well. Of the informal comments received, over 10,000 are from children. Most of the children's letters appear to be the result of classroom exercises.

5. The majority of the letters submitted address overall concerns about television and children. Therefore, most of these informal comments do not relate directly to the specific issues raised in the *Notice*. Informal comments filed by adults are generally in the nature of complaints directed at television programming as a whole. These comments include statements of displeasure with commercials and program scheduling and content, as well as requests for specific types of programs. Many state the view that too much violence is presented on television. In reference to children's programs, cartoons receive the most criticism because of the excessive violence said to be depicted in many animated series.

* Commissioner Rivera dissenting and issuing a statement at a later date.

6. A considerable number of adults suggested a reduction in the amount of commercial time per hour of children's programming (*e.g.* 9½ minutes to 6 minutes). Along with these suggestions were a large number of requests for the clustering of commercials on the hour (or half-hour for 30 minute programs), thus eliminating commercial breaks within a programming segment.

7. Other points of complaint that were mentioned often are as follows: (a) Local broadcasters are not meeting the needs of children in current children's programs and scheduling; (b) Commercials are offensive in their content and volume (loudness); and (c) There are too many cartoons and an overabundance of "junk food" and toy commercials on Saturday mornings.

8. Many adults favorably mentioned specific children's and family programs such as: (1) "3–2–1 Contact;" (2) "After School Specials;" (3) "Sesame Street;" (4) "Fat Albert;" (5) "Hot Hero Sandwich;" (6) "Captain Kangaroo;" (7) "Boomer" and "Walt Disney;" (8) "Electric Company" and "Zoom;" (9) "Kids Are People Too;" and (10) "Little House on the Prairie."

9. A small percentage of informal commenters argued that television is just fine the way it is and that even if it were not, the government has no business getting involved in programming decisions. Several parents equated the Commission's proceeding with further governmental intrusion into family and personal affairs.

10. With regard to informal comments filed by children, several common complaints and program favorites were mentioned in a large majority of the letters received. Common points of complaint included too many commercials, too many soap operas, scheduling of children's shows and specials at late hours, and the lack of realism in cartoons.

III. The Task Force Report

11. Parties filing formal comments in this proceeding addressed three major areas related to the Task Force *Report:* (a) The *Report's* interpretation of the 1974 *Policy Statement;* (b) studies contained in the *Report;* and (c) the conclusions drawn by the Task Force. The 1974 *Policy Statement* established guidelines for children's television programs and advertising practices. The Task Force *Report* assessed the broadcast industry's compliance with the guidelines set forth in the 1974 *Policy Statement* and concluded that the broadcast industry has complied with the advertising limitations. The *Report* found that on an aggregate basis broadcast licensees have complied with non-program material guidelines (9½ minutes per hour on weekends and 12 minutes per hour on weekdays). Licensees have also eliminated the advertising practices of host-selling and the use of tie-ins. Additionally, licensees are using separation devices to distinguish programming matter from advertising matter.

12. In the area of children's programming, however, the Task Force *Report* concluded that licensees have not complied with the 1974 *Policy Statement* guidelines relating to overall amount of children's programs, scheduling of such programs, and the need for educational/informational programs and age-specific programs. A summary of the comments relating to each of these programming-related areas is presented below.

A. Overall Amount of Children's Programming

13. The 1974 *Policy Statement* states that broadcasters have a responsibility to serve children. Although the Commission in 1974 did not adopt rules specifying a set number of hours of children's programs to be presented, it did state that stations were expected to make a "meaningful effort" in the amount of time devoted to children's programs. The Task Force *Report* includes a major study conducted by Professor John Abel, Department of Telecommunication, Michigan State University (hereafter the Abel study) examining the overall amount of time commercial broadcasters devoted to children's programs during the 1973–74 broadcast season, the season prior to adoption of the Commission's *Policy Statement,* and the 1977–78 season, the most complete broadcast season at the time the *Report* was written. The decision by the Task Force to make quantitative comparisons between the two broadcast seasons was based on the premise that the "meaningful effort" expected by the 1974 *Policy Statement* would be evidenced by the amount of time devoted to such programming.

14. The Abel study concluded that the 1977–78 broadcast season showed a 7.2% increase in total amount of time devoted to children's programs compared with the 1973–74 season. Closer analysis revealed that syndicated programming, much of which is former network prime time programming, aired on independent stations caused the overall increase. Time devoted to network-originated programming actually decreased in 1977–78 compared with 1973–74, as did locally-produced children's programs. Network-affiliated stations relied more heavily on syndicated programming in 1977–78 than in 1973–74. The amount of time devoted to children's programs on network-affiliated stations remained essentially the same for both broadcast seasons. Because the independent stations whose programming was responsible for the increase between 1973–74 and 1977–78 are likely to be found primarily within the top 50 markets and because many of the syndicated programs being broadcast do not clearly comply with the Commission's definition of "children's programs," the *Report* concluded that on an aggregate basis licensees have not complied with the guidelines requiring "meaningful effort" in overall amount of children's programs.

(1) *Interpretation of the 1974 Policy Statement*

15. Several broadcast industry commenters questioned the Task Force's interpretation of the 1974 *Policy Statement.* Metromedia, Inc., concluded that "[t]he most fundamental mischaracterization in the Task Force *Report* is the claim that the Commission, in 1974, had expressed specific dissatisfaction with the overall prevailing amount of children's programming within the industry and had ordered an increase in that amount." CBS, Inc., and others argued that in 1974 the Commission expressed concern over a few stations that reportedly presented no children's programs at all and that the Commission did not express any judgment on the prevailing overall quantitative level of such programs. In 1974, the Commission did not assess the quantitative level of children's programs and, thus, Metromedia stated, any attempt to assess compliance with the *Policy Statement* by quantitative means is "an attempt to fabricate a pattern of non-compliance."

16. Forward Communications Corporation ("Forward") maintained the 1974 *Policy Statement* "represented a flexible statement of general affirmative duties that were to be implemented on a self-regulatory basis affording due regard to the fundamental principle of licensee discretion." Capital Cities Communications, Inc., also contended that in 1974, the Commission never undertook a study to determine how much children's programming constituted a "meaningful effort" and, therefore, any attempt to impose a quantitative assessment of compliance with the 1974 *Policy Statement* is a misinterpretation of that document.

17. Americdan Broadcasting Companies, Inc.'s ("ABC") criticism focused primarily upon the use of

quantitative rather than qualitative analysis of children's programs by the Task Force. ABC and General Electric Broadcasting contend that the non-specific guidelines of the *Policy Statement* allowed "network stations and program producers to expend considerable energies in improving the quality of programming, rather than concentrating on *quantity*."

18. Citizens groups commenting on this point stated that the Task Force staff interpreted the 1974 *Policy Statement* correctly. Action for Children's Television ("ACT") argued that broadcasters are attempting to minimize the obligations enumerated in the *Policy Statement*. ACT maintained that the Task Force correctly concluded that the commercial television industry as a whole has not fully complied with the guidelines set forth in the *Policy Statement*. ACT disputed claims that the *Policy Statement* did not require a quantitative change in programming practices. Additionally, ACT believed the *Policy Statement* focused particularly on the quantity of available programming designed to educate and inform specific age groups of children.

19. ACT further argued that the *Policy Statement* made clear that the Commission's announced intent to evaluate the improvements in children's programming would take the form of a quantitative examination of the response of individual broadcast licensees to the *Policy Statement* guidelines. ACT referred to paragraph 19 of the *Policy Statement* in maintaining that "while the self-regulatory approach meant that licensee's service would for a time be evaluated on an ad hoc basis, the Commission states that 'the amount of time devoted to a certain category of program service is an important indication.'"

20. Washington Association for Television and Children ("WATCH") [1] stated in reply comments that there are pervasive misinterpretations in the comments of various broadcasters that attempt to distort the content of the *Policy Statement*. WATCH disputed the contention that the *Policy Statement* was only a directive to those broadcasters doing no children's programming to improve their performance.

(2). *The Report's Research*

21. Numerous industry commenters criticized the Abel report. Additionally, NAB, NBC, ABC and CBS conducted their own studies. all parties commenting on Abel's research concluded his study formed the "backbone" of the *Report's* conclusions. Broadcasters claimed the Abel study is seriously deficient and has methodological, conceptual and analytic problems that cast doubt on the validity of its findings and the resulting recommendations. According to industry parties, NBC's analysis of the Abel study shows that "one of the most serious deficiencies involves the selection and design of the sample for analysis." NBC states that through the use of the stratified random sampling method, Abel selected 52 markets from the national total of 209 (13 from stratum one, 13 from stratum two, etc.), making no attempt to relate the number of viewers with the programming available. According to NBC, "Since smaller markets had far fewer programs than larger markets, this error (allowing all markets equal representation) necessarily created a distorted view of the amount of programming most childern can receive."

22. Criticisms also were made of Abel's use of two randomly selected composite weeks, one for the 1973–74 broadcast season and the other from the 1977–78 season, for comparison purposes. NBC claimed that it is inaccurate to project a complete year of programming on the basis of composite weeks. A composite week does not account for seasonal variations and frequent program schedule changes. NBC and NAB objected to the fact that a Saturday appearing in the 1977–78 composite week contained programming pre-empted on the West Coast (Pacific time zone). The composite week sample, according to several industry commenters, also does not allow children's specials to be accurately reflected. ABC argued that the same composite week should have been used for both seasons and also noted that the month of December was not represented in the sample. ABC claimed that December traditionally has contained large amounts of children's programming. According to NBC, a composite week sampling procedure can produce general programming estimates, but these estimates are unreliable if a significant proportion of the shows are non-regularly scheduled. NBC pointed out that although the Commission utilizes information obtained from composite week data as part of the license renewal process, licensees are permitted to provide additional information at the time of renewal.

23. Another criticism of the Abel study relates to Abel's use of *TV Guide*, Arbitron's *Network and Syndicated Program Analysis Books* and other resource material to determine if programs should be classified as "children's programs." ABC noted that the Abel classification system also created a list of "potential children's programs." [2] These "potential children's programs" according to ABC, undoubtedly constitute legitimate children's programming and should have been included in the main analysis. NBC claimed that Abel did not include "World of Disney" as a children's program, while ABC references the Abel study as including "World of Disney" as a "potential children's program"

24. According to NBC, NAB, and ABC, the Abel study also seriously underestimates the total amount of children's programming available by excluding public broadcasting, cable, off-air distant signals and Canadian broadcasting received in the United States. ABC concluded that by including all children's programming available within a market, the amount of time devoted to children's programs in markets reported by Abel would increase by 50%.

25. Comments supporting the methodology of the Abel study include those of Professor Gerald Kline, Director of the School of Journalism and Mass Communication at the University of Minnesota. According to Kline, "The time span, 1973–74 and 1977–78, obviously met the before and after boundary conditions that the FCC could use in determining whether enough time had passed for compliance." Additionally, Kline stated, "In choosing to sample from the populations of programs in 1973–74 and 1977–78 that were broadcast by commercial stations, Professor Abel correctly lays the groundwork for choosing the appropriate sampling frame." Kline stated that if Abel had selected stations based on numbers of children in the

[1] Citizens Communications Center filed initial comments on behalf of WATCH, American Association of University Women, The Baltimore Film Forum, Big Brothers of the National Capital Area, Chesapeake Montessori Society, District of Columbia Media Task Force, Focusing Awareness of Children and Television, Public Action Coalition for Toys, and the American Federation of Teachers, Washington Teachers Union Local 6. Reply comments were filed on behalf of WATCH alone. For the sake of simplicity, both comments will be referred to as the comments of WATCH.

[2] Abel developed a list of potential children's programs based on syndicated program sources' classification of some former network prime time programs, programs disigned primarily for an 18–48 year old audience, as children's programs. The Abel report includes two separate analyses, one consisting of programs designed for children 12 years' of age and younger, and the other an analysis of programs including those that some syndicators classify as children's programs, *e.g., Hogan's Heroes*. The results of the latter analysis parallel those of the former.

markets, as NBC suggests, Abel would have obtained a sample of stations predominantly in large metropolitan areas. An implication of this, according to Kline, would have been to put a premium on service to children in big cities at the expense of children in the rest of the country. Kline justified Abel's analysis according to strata (stratum one, markets 1–52; stratum two, markets 53–104; stratum three, markets 105–156 and stratum four, markets 157–209) on the basis that the broadcast industry itself operates in quartiles when it makes general evaluations of sales and profits as well as costs for buying products and advertising costs.

26. With regard to failure of the Abel study to include cable, Kline mentioned that in many markets cable simply provides for redundant delivery of network offerings. Kline noted that Abel's use of two different randomly selected composite weeks does not allow for comparison of days, or months from Time 1 and Time 2. Parameter estimates at Time 2 are, however, a fair and unbiased estimate of the offerings in the second time period as a whole. Kline also stated that "by not drawing a day in December in either time period, some would argue that Abel's data are flawed—this is not the case!" Random sampling methods provide an unbiased estimate of each separate season. Professor Kline found no problem with Abel's use of *TV Guide* listings to identify available programming. If there are errors in *TV Guide* Kline observes, there is no reason to believe that they would be other than randomly distributed across the whole data base. Thus such errors would not skew the findings. Concerning programming definition and coding of data, Kline concluded that Abel made every effort to meet the requirements for the definition of children's programs as laid down by the Commission. Additionally all of the procedures for coder training and reliability meet the accepted criteria normally used in scientific studies.

27. Professor Joey Reagan, Department of Communications, University of Michigan, concluded that the Abel study used standard sampling procedures. The procedures used by Abel insure that one set of markets would not unduly influence estimates made of another. Reagan also stated that the NBC study attempting to replicate the Abel report is seriously flawed by its lack of an independent random sampling procedure. The NBC sampling techniques, according to Reagan, result in estimates of children's programming higher than is actually the case. Commenting on the reliability of the Abel study, Reagan stated that if one looks at the estimates of commercial children's programming for the composite weeks, the NAB and Abel studies are quite similar in result (11.23 hours vs. 11.30 hours respectively). Professor Jayne Zenaty, Department of Telecommunications, Indiana University, states that "Abel set out to study the compliance of local commercial television stations with the Commission's 1974 *Policy Statement* on children's programming. . . . NAB and NBC set out, on the other hand, to determine the amount of children's programming viewers could actually see, which included public television stations as well as distant television stations." According to Zenaty, an examination of the amount of time devoted to children's programming carried on local commercial TV stations reported by NBC reveals findings quite similar to the Abel study.

(3). *Conclusions of the Task Force*

28. The Abel study indicated that the average commercial television licensee in 1977–78 presented 11.3 hours of children's programming per week, representing a 7.2% increase over the 10.4 hours per week aired in 1973–74. Although Abel reported an increase, the Task Force reported that licensees have not complied with the guideline for overall amount of children's programs for the following reasons: (a) The increase in the average per-station amount of time devoted to children's programs is due to the increased broadcast of syndicated programs carried on independent stations; (b) independent stations exist primarily in large markets; (c) network affiliates' time devoted to children's programs remained essentially the same between the two broadcast seasons; and (d) reliance on syndicated rather than local programming increased at both independent and network-affiliated stations.

29. NBC, CBS and NAB noted that the Abel report shows a significant increase in the amount of time devoted to children's programs in the top 52 markets—accounting for 66.6% of the total 2–11 year old population. In 1977–78, the commercial stations in the top 52 markets aired an averaged of 12.6 hours of children's programming per week compared to 10.8 hours in 1973–74. In the remaining markets, licensees aired essentially the same amount of children's programming in 1977–78 as they did in 1973–74. Thus, CBS stated, the Abel study in and of itself totally refutes the contention that commercial broadcasters are not making a "meaningful effort" in the area of children's programming. NAB, after conducting an extensive study, reported that the average commercial broadcaster devoted 11.23 hours per week to children's programming (Abel reported 11.3 hours per week for the 1977–78 broadcast season). NAB contended that if public broadcasters were included, the average amount of time per week devoted to children's programs would increase to 15.09 hours.[3] According to NAB and the networks, a substantial amount of programming is available to children and the conclusion drawn by the Task Force that broadcasters have not complied with the 1974 *Policy Statement* is erroneous.

30. Forward referenced studies by NBC and NAB said to document the conclusion that the overall amount of time devoted to children's programming is consistent with the "meaningful effort" standard of the *Policy Statement*. Fisher also concluded that the 7.2% increase in programming reported by Abel, despite the decrease in network-originated and local programming, still shows that broadcasters have complied with the Commission's intentions. Comments filed by Chronicle Broadcasting Company and others reported that the number of children's programs has increased significantly since 1973–74 and that the average children's program is 2 minutes longer (36.6 minutes in 1973–74 and 38.6 minutes in 1977–78), further evidence that broadcasters are complying with the *Policy Statement*. Group W and Metromedia reported they have significantly increased the amount of time devoted to children's programming on all their stations since 1973–74.

31. The Abel study concluded that independent stations aired an average of 14.3 hours of children's programming per week in 1977–78 compared with 10.6 hours in 1973–74, representing a 35% increase. Abel reported that the amount of time devoted to children's programs aired on network-affiliated stations remained essentially the same between the two broadcast seasons (10.40 hours in 1973–74 and 10.37 hours in 1977–78). NBC claimed that the Task Force should not have made distinctions between network affiliated stations and independent stations. The aggregate amount of time devoted to children's programming, according to NBC, represents an increase over the 1973–74 season and, thus, compliance with the 1974 *Policy Statement*. INTV concluded

[3] According to comments filed by the Public Broadcasting Service ("PBS"), it defines children's programs as program designed for those 17 years old and younger.

that broadcasters in general and, specifically, independent stations are in compliance with the 1974 *Policy Statement's* reference to amount of overall programming.

32. WATCH argued that networks and their affiliates cannot be allowed to claim a significant increase in quantity based on additional syndicated programming aired by independent broadcasters and programming of public broadcasters when network affiliates' programming has essentially remained at the 1973–74 level. According to ACT, the Task Force *Report* was correct in showing differing trends in service corresponding to a station's status as independent or network-owned or affiliated.

33. The Abel study presented data indicating that network affiliates devoted significantly more time during the 1973–74 composite week (.97 hours) to special children's programs than they did during the 1977–78 composite week (.64 hours). Because independent stations had so few specials appearing in the composite weeks, no analysis of their performance in this area could be done. ABC, NBC and CBS disagreed with Abel's findings relating to the amount of time devoted to special children's programs. ABC reported a 52% increase since 1973–74 in air time devoted to children's specials. ACT contended, however, that "while many of the weekday specials are award winning, they do not constitute programming scheduled on a regular daily or even weekly basis; nor are there enough specials scheduled to constitute a substitute for a commitment to offer regularly scheduled weekday programming designed for the child audience."

B. Educational/Informational Programming

34. The Task Force *Report* contained three studies assessing licensee compliance with the educational/informational guideline of the 1974 *Policy Statement*. The basis upon which the Task Force assessed compliance was the overall amount of time devoted to children's educational/informational programming. The primary study (the Fontes study) used to assess compliance with the "reasonable amount" guideline of the *Policy Statement* examined children's programming aired during the 1973–74 and 1977–78 broadcast seasons. The list of programs provided by the Abel study was given to five individuals judged to be nationally recognized experts on children's television. These experts classified those programs with which they were familiar according to categories of programs contained in the Commission's rules. Majority vote determined the classification made. Network-originated and syndicated programs were classified by the experts. Local programming was not classified by the experts due to their lack of familiarity with these programs. Educational/informational inserts were factored into the analysis. The Fontes study concluded that the amount of time devoted to network-originated and syndicated educational/informational programs remained essentially the same between the two broadcast seasons (2.8 hours in 1973–74; and 2.6 hours in 1977–78).

35. A second study, conducted by Professor Joseph Turow, Department of Communications, Purdue University, examined network-originated children's series from 1948–1978. Professor Turow's study was intended to present a historical profile of network children's programming. Turow developed a list of network-originated programming from Neilson archives and other reference books covering the years 1948–1978. He then analyzed the programs according to entertainment/non-entertainment categories. Dr. Turow concluded that the amount of time devoted to network-originated non-entertainment programming remained essentially at the 1974 level.

36. A third study, conducted by the Task Force, examined the sample of children's programs reported by licensees in renewal applications. This study examined the frequency of educational/informational programs reported by licensees. Because licensees were not asked to submit a list of their children's programs until 1975, comparisons similar to those of Abel and Fontes examining the 1973–74 and 1977–78 broadcast seasons could not be made. Additionally, the Task Force found ambiguities in the classifiction of children's programming by licensees, making the results of the renewal study questionable. The results indicate that 21.5% of the children's programs listed were categorized by the licensees as educational/informational.

37. As a result of the three studies and comments filed in response to the *Second Notice of Inquiry* in this docket, the Task Force concluded that licensees have not complied with the "reasonable effort" guideline relating to educational/informational programming. This conclusion is based upon the amount of time licensees devoted to such programming. Parties filing formal comments question the Task Force's interpretation of the 1974 *Policy Statement*, research conducted by the Task Force, and the conclusions drawn by the Task Force.

(1). *Interpretation of the 1974 Policy Statement*

38. Only a few parties specifically addressed the Task Force's interpretation of the 1974 *Policy Statement* as it relates to educational/informational programming. CBS concluded that by abandoning the "reasonableness" standard in the educational/informational guideline in favor of a quantitative assessment of compliance, the staff fundamentally distorted the meaning of the Commission's 1974 *Policy Statement*. ABC claimed that there was an underlying staff bias that society would better be served by "educational" programming more frequently targeted to subgroups of children. ABC contended that programs such as "Little House on the Prairie," designed primarily to entertain, should be counted as educational under the *Policy Statement's* guidelines. ABC argued that the Task Force did not make the case that educational programs, presumably in a more traditional "chalk and blackboard" framework, are somehow "better" or more beneficial to children than the teaching that occurs when important messages concerning social and interpersonal relationships are woven into an entertainment feature like the "After School Specials." ACT observed that the *Policy Statement* focuses explicitly on the quantity of available programming designed to educate and inform specific age groups of children rather than simply to entertain.

(2). *The Fontes Study*

39. The study by Dr. Brian Fontes, "The Amount of Children's Instructional Programming Aired During the 1973–74 and 1977–78 Television Seasons," drew comments primarily from the networks and NAB. ABC claimed that because the Fontes study relied upon the use of programs derived from the Abel study, the Fontes study contains the design flaws of the Abel report. One of the major criticisms of the Fontes study made by ABC and others regarded the study's exclusion of local programming. ABC noted that although showing a decrease, the Abel study derived 72 program titles that were classified as local childen's programs during the 1973–74 season and 62 titles so classified for the 1977 season. ABC concluded that many of those local programs were undoubtedly instructional. NBC claimed that 40% of the children's educational/informational

programs broadcast on NBC-owned stations were locally produced. CBS and NAB also fault the Fontes study for excluding locally-produced children's programming.

40. The Fontes study also was criticized for allegedly excluding inserts (segments approximately 1–2 minutes) within programs. ABC and NAB, however, note that the *Report* documents that the amount of time devoted to inserts has not undergone a substantial change since 1973–74. However, they argue that the Task Force *Report* is deficient in failing to consider inserts originated by local stations. All three networks criticize the Fontes study for relying upon the judgments of five experts on children's television to classify programs. ABC objects to this methodology because classifications were, as ABC claims, based solely on titles and CBS argues that some programs judged to be educational by educators were classified as predominantly entertainment by the experts. NAB argues that the Fontes study was based upon a narrow interpretation of the language of the 1974 *Policy Statement*. The *Policy Statement*, NAB noted, refers to educational/informational programming while the Fontes study examines only instructional programming. WATCH, in its reply comments, defended the Fontes study as providing a general picture of patterns of the amount of time devoted to educational or instructional programming during the 1973–74 and 1977–78 seasons.

(3). *The Turow Study*

41. The Turow study, "Program Trends in Network Children's Television: 1948–78," resulted in a complete list of network-originated children's programming for the years in question. The Turow report did not examine syndicated or local children's programming. The major criticisms of the Turow report were made by the networks. NBC claimed that numerous omissions and carelessness in the design and execution of the Turow study reduce its credibility. Because the Turow study purports to show general trends in *network* programming, NBC stated, it has no direct relevance to whether or not individual licensees are showing more or less children's programming or as to the availability of children's programming in a market. ABC was dissatisfied with Turow's "restricted" definition of children's programming—only programs designated as "children's by Neilson classifications. ABC argued that many children's programs were omitted by use of this methodology.

42. The main criticism of Turow's study focused upon Turow's classification of certain programs as "entertainment." CBS and ABC objected to Turow's classification of "Captain Kangaroo" as an entertainment program. The CBS "Festival of Lively Arts" also was designated as entertainment. CBS contends that many broadcasts in this series were clearly instructional. WATCH contended, however, that the criticism of the Turow study is inaccurate. Turow found that over a 30 year period (1948–1978) 13% of all network children's programs were educational in nature, with 87% classified as entertainment. WATCH contended that Turow's classification of programs as either entertainment or non-entertainment was both correct and consistent with the Commission definitions of program categories.

(4). *License Renewal Study*

43. A review of license renewal forms was conducted by the Task Force. Due to wide variation in how programs were classified by licensees and the fact that renewal forms did not, at the time of the *Policy Statement*, include a section on children's programming, the Task Force presented the results in the context of Fontes' instructional study and the Turow report. NBC claimed that the Task Force improperly discarded the results of the renewal study. NBC further claimed that the findings of the renewal study disclose that the amount of children's educational/instructional programs reported by licensees exceeded the mandatory requirements that the Commission was urged to adopt in 1974.

(5). *Conclusions of the Task Force Report*

44. The Task Force *Report* concluded that licensees did not comply with the 1974 *Policy Statement's* guideline relating to "reasonable amount" of educational/informational programming. Broadcasters believed the Task Force Report provides no basis for concluding that broadcasters are not presenting "a 'reasonable amount' of instructional programs for all children." CBS referenced the Turow report that shows the proportion of non-entertainment network children's programs rose from 4% in 1968–69 . . . to 10% during the first 2 years of the 1970's and to between 12% and 15% in the six years thereafter. The Fontes study reported that commercial licensees in 1977–78 presented 2.6 hours weekly of instructional children's programming. CBS believed that to characterize such performance as unreasonable would be clearly arbitrary. NAB reported that commercial broadcasters devoted an average of 3.25 hours per week to informational/instructional programming. INTV argued that network-owned stations and affiliates now are airing educational/informational programming on weekends and also have aired educational inserts. Metromedia cited a NAB/NATPE survey showing that 35% of the programs for children broadcast by all stations (including PBS) are instructional, informational and educational in nature and argues that this clearly demonstrates compliance with the Commission's guidelines.

45. Industry commenters such as Group W also argued that the *Report's* focus on quantitative issues improperly fails to take into account improvements made in recent years in the quality of children's programming. Meredith Corporation and CapCities noted behind-the-scenes efforts to improve the pro-social quality of children's programming, citing the use of educators and other consultants who assist in program development. Simiarly, GE contended that the line between instructional and entertainment programming is amorphous, making the staff study of instructional programming non-reflective of the positive social values of entertainment programming.

46. ACT faulted broadcasters' arguments that drop-ins, public service announcements, and short spot messsages constitute a major effort to comply with Commission guidelines. New York Council on Children's Television ("NYCCT") conducted a survey of New York City metropolitan stations during the week of May 3–9, 1980, and found that of 131 shows broadcast by commercial stations only 20 would meet the *Policy Statement* definition of educational and instructional programs. The Minnesota PTA alleged that Minneapolis broadcasters did not clear network specials or regularly scheduled programs such as "Captain Kangaroo." The Minnesota PTA believed that broadcasters in their state have failed to provide educational/informational programming consistent with Commission policy.

C. Age-Specific Programming

47. In the 1974 *Policy Statement*, the Commission said that it believed some effort should be made to serve both pre-school and school age children with age-specific programming. The Task Force did not conduct its own research assessing licensee compliance with the Commission's guideline on age-specific programming, and relied upon a study

submitted to the Commission by Romper Room, Inc., for data on this issue. The Romper Room study surveyed all regularly scheduled programming of commercial stations in the 50 largest television markets for the period between November 2 and November 29, 1978. Noncommercial programming was excluded from the survey. Of the 208 stations in the top 50 markets, 50 were affiliated with ABC, 50 with CBS, 50 with NBC and 58 were independents. In the hours between 6:00 a.m. and 8:00 p.m., the Romper Room survey showed that 32 stations (15.4 percent) broadcast no instructional programming for children of any age, 64 stations (30.8 percent) broadcast no instructional programming for pre-school children, 30 stations (14.4 percent) broadcast one half-hour per week of regularly scheduled instructional programming for children, 109 stations (52.4 percent) did no instructional programming for children during weekdays, and excluding CBS affiliates (which have "Captain Kangaroo" available to them), 86 network affiliates (86 percent of all non-CBS network affiliates surveyed) did no instructional programming for children during weekdays.

48. Additionally, the Task Force commissioned Dr. Ellen Wartella, Professor at the Institute for Communication Research, University of Illinois, to review the research on children's ability to comprehend television programming. Wartella concluded that "the literature on children's comprehension of television content has found age-related changes in children's understanding of plot lines, perceptions of television characters, perceptions of the reality of television and comprehension of the economics of the medium. Children as old as eight and ten years have been shown less proficient than older children in recalling those scenes of a television program adults consider essential to undertanding the plotline. During the elementary school years children have difficulty understanding characters' motivations for actions. Kindergartners through third graders have been found to be less adept at recalling characters' motivations for actions than are older children. There is evidence that by fifth grade children begin to describe motivations for characters' behaviors.

49. Comments filed by Romper Room, Inc., indicating a lack of pre-school age programming in the top 50 markets and Dr. Wartella's review of research relating to children's comprehension of television content served as the basis for the *Report's* conclusions that licensees have not complied with the age-specificity guideline of the 1974 *Policy Statement.*

(1). *Interpretation of the 1974 Policy Statement*

50. Comments regarding age specificity focused upon the *Report's* conclusion of non-compliance with Commission guidelines. Generally, licensees objected to the Task Force's interpretation of the *Policy Statement* in terms of licensees doing more relative to their 1974 performance. While licensees did not specifically address the issue of the Task Force's interpretation of the age-specific guideline, ACT contended the *Policy Statement* focuses explicitly on the quantity of available programming designed for specific age groups of children.

(2). *The Report's Research*

51. Referencing the Wartella paper, ABC questioned the need to develop programming to meet the needs of pre-schoolers. According to ABC, the Wartella paper presents only a textbook theory of child development. ABC states that "children do not develop their cognitive abilities in readily identifiable increments." NBC believed the Task Force assumes that children cannot understand and do not derive enrichment from programs not specifically designed for them. NBC claimed that children understand and benefit from programs designed for a broad age range of child and family viewing.

52. CBS faulted the Task Force for relying upon data generally critical of industry performance. Broadcasters faulted the Commission for not undertaking its own analysis of age-specific programming. INTV claimed that audience research demonstrates that pre-schoolers do not view programs designed for them as often as they view programs designed for the general child and family audience. Leslie Isler, a doctoral candidate at the Harvard Graduate School of Education, argued that while there are clearly distinct cognitive and social differences between pre-school and school-age children, children's comprehension of television does not appear to vary along these lines.

53. Comments of Albert J. Solnit, M.D., Sterling Professor of Pediatrics and Psychiatry, Yale University, included in ACT's reply comments, indicate that research into the development of children suggests that television programming should be respectful of children's needs and that needs vary as the child grows older. Dr. Solnit's comments were echoed by those of Drs. Dorothy and Jerome Singer, also included in ACT's reply comments.

(3). *Conclusions of the Task Force*

54. The Task Force *Report* concluded that licensees have not complied with the 1974 *Policy Statement's* guideline relating to age-specific programming. CBS references the Romper Room study and observes that 69.2% of all stations in the top-50 markets carried at least some instructional programming for pre-school children. According to CBS, this indicates overwhelming compliance with the mandate of the 1974 *Policy Statement* that "some effort" be made in this area. INTV stated that independent stations carry an average of two hours of age-specific programming each week, clearly reflecting a "reasonable effort." According to NAB, 20.3% of all children's programming on commercial stations is pre-school age in nature. NAB also reports that public stations air an average of 12.3 hours of pre-school age programming per week compared with 3.1 hours aired on commercial stations. As a result of its survey, NAB concluded that the "meaningful effort" standard for age-specific programming has been met. WATCH contended that programming for pre-schoolers must be designed to facilitate their level of understanding and development. ACT disputed the claims that research does not support the need for age-specific programming designed for children.

D. Scheduling of Children's Programs

55. At the time of the 1974 *Policy Statement,* the Commission was concerned with the relative absence of children's programming on weekdays. The Commission recognized that while independent stations do provide weekday programming for children, there was an overall imbalance in scheduling. The Commission concluded that "although we are not prepared to adopt a specific scheduling rule, we do expect to see considerable improvement in scheduling practices in the future."

56. The Abel study analyzed the number of programs independent stations and network-affiliated stations devote to children's programming on weekdays and weekends. The study concluded that overall, combining network affiliates and independent stations, the proportion of children's programs scheduled on weekends significantly decreased between 1973–74 and 1977–78 (47.3% of all children's programs were scheduled on weekends in 1977–78 compared to 53.7% in 1973–74). Independent stations in 1973–74 aired 13.4% of their children's programs on Saturday and Sunday compared with

12.0% aired on weekends during 1977–78. Network affiliate stations aired 63.7% of their children's programs on weekends in 1973–74 compared with 60.6% on weekends in 1977–78. Although the analyses revealed that a shift in overall amount of children's programming being aired on weekends has occurred, the Task Force concluded that this shift did not meet the Commission's guidelines of "considerable improvement in scheduling practices in the future."

57. CBS claimed that the Task Force incorrectly concluded that broadcasters have not made "considerable improvements" in scheduling children's programming. CBS argued that the Abel study shows that licensees have significantly decreased the amount of children's programs aired on weekends. INTV reported that 87% of independents' children's programming is aired on weekdays and that children are well served by family programs aired on independent stations. NAB's study concluded that 46% of the commercial stations' children's programming was aired on weekdays and 54% on weekends during 1979. Storer claimed the market is working efficiently through specialization, with network stations broadcasting the majority of their children's programs during weekends while independent stations air the majority of their children's shows during the week. ACT contended that many of the weekday specials are not offered on a regular daily or even weekly basis.

E. Marketplace Analysis

58. The Task Force *Report* concluded that:

> . . . in a free enterprise economy, producers will serve societal goals only if consumers can directly express their preferences through purchases in the marketplace. Since advertisers rather than viewers pay for television programming, broadcasters program to maximize the adult audience rather than to serve the needs of smaller groups, particularly those likely to have little effect on product sales. The limited number of broadcasting outlets in virtually every market places constraints upon the opportunities for program diversity and prevents the development of programming to meet strong preferences of small audiences. While segments of the population are well served by the broadcasting system, the children's market is dramatically underserved. The Task Force believes that there is considerable demand for and benefit to society from age-specific educational programming, but that this demand goes unfulfilled and the benefit goes unrealized due to children's limited appeal to the advertiser and the limited number of broadcast outlets. In short, we believe that what economists call a market failure exists in children's television programming. In the context of this analysis, it is clear that the market incentives of the broadcast industry as it is structured today run counter to the policy guidelines and expectations that the Commission created in its 1974 *Policy Statement.*

The *Report* argues that without some change in the broadcast market, only limited changes can be expected either in the availability or scheduling of non-entertainment and age-specific children's programs or in the overall amount of programming available to children.

59. In response to the Task Force's marketplace analysis, Storer stated that the Commission mistakenly declined in 1974 to look at the availability of children's television market-wide. Additionally, Storer argued that the Task Force ignores a marketplace analysis by excluding children's programs available on public stations, distant signals, cable and pay cable. The conclusions drawn by the Task Force were based in large part on a study of commercial stations in 52 markets. Storer contended that the population of children, ages 2–12, is declining rapidly. Given that fact, economic theories of supply and demand would predict that the number of children's programs would decline proportionately. Citing NBC's comment analyzing the availability of children's programming within markets, Storer reported that the availability of children's programming market-wide has dramatically increased since the 1974 *Policy Statement.* According to Storer, the Task Force's own studies demonstrate that the market is working efficiently through specialization, specifically in the area of scheduling. Network affiliates air the majority of their children's programming on weekends while independent stations air the majority of their children's shows during the week. With regard to diversified program type, Storer believed that marketplace forces are operating to service the optimal and most efficient situation: commercial stations specializing in entertainment programming and public stations specializing instructional/educational programming. Public and commercial broadcasting specialize in the type of programming each is most adept and experienced in supplying.

60. Group W noted recent action by the Commission has facilitated the increase of programming outlets from which to choose. The Commission eliminated the restrictions upon importation of distant broadcast signals by cable television operators, and eliminated the protection afforded by the syndicated exclusivity rule to the local broadcaster's programming. Additionally, the one-to-a-community subscription television rule has been eliminated and the allocations for STV frequencies have been increased. Group W observed that there are currently no restrictions placed on the common carrier retransmission of broadcast signals to points far beyond off-air reception. Regarding future plans, several major communications companies have announced plans to market in-home-use video discs and video cassettes with specialized programs, and direct satellite-to-home broadcast marketing plans are already being formulated. Group W believed the changing policies of the Commission will increase the number of outlets within a market, thus enhancing the likelihood that children's needs will be met.

61. NAB asserted that in the long term the matter of educational children's programming will be resolved by increasing diversity in program sources. The interim measures proposed by the Task Force are based on unsound analyses of the marketplace. To accurately state there is a market failure indicates that some optimal standard of marketplace performance is known, and the Task Force *Report* does not present data describing the standard by which a marketplace failure is judged.

62. CBS contended that the data base used to justify a market failure is unsound. The Task Force argued that the inclusion of children's programs among the offerings of some cable television systems and pay TV services indicates a willingness among parents to purchase additional educational programming for their children. Of the educational program packages presented in the Task Force *Report* only one is a pay cable service. Other educational program packages are offered as part of basic subscription fees. CBS reported that only 10.3% of all potential households purchased the pay children's programming channel. CBS also argued that if the "unsatisfied demand" assumption were true one would expect viewership levels for currently available education programs to be very high. CBS cited data indicating that given a choice between entertainment and educational children's programs, children overwhelmingly choose entertainment programs. This information, argued CBS, does not support the view that the marketplace has failed to provide an amount of such programming reasonably consistent with the public's desires.

63. Quaker Oats stated that their experience as an advertiser to the children's market corroborates the Task Force's finding that the economic

incentives of commercial broadcasting do not encourage the provision of specialized programming for children. Quaker does not see how maintaining or modifying the *Policy Statement* can change this basic economic conclusion. According to Quaker Oats, relying on other sources for children's programs appears to be working; specifically, since the ACT petition in 1971, PBS has successfully developed and maintained a number of innovative and age-specific children's programs. Quaker, however, did not believe that increasing the number of commercially supported video outlets is likely to result in improved television programming for children. Quaker contended that competition for the broadcast audience is by no means synonymous with an increase in the quality or diversity of broadcast programming.

IV. Options Presented in the Notice of Proposed Rule Making

Option One. Rescind the Policy Statement and Rely on Other Program Sources for Children's Programming.

64. The few broadcasters who addressed this option seem to agree that the basis of the option—the conclusion that the commercial television marketplace has failed to provide a sufficient amount of children's programming—is patently incorrect. The broadcasters vigorously argued that the marketplace does work and that on a marketwide basis, children's programming abounds. WGN stated that the availability of programming from other sources does not mean that commercial broadcasters are unaware of or are not fullfilling their obligation to serve the child audience. On the merits of the option, the broadcasters' responses were mixed. ABC, for example, argued that although commercial television should not be viewed in isolation, the 1974 *Policy Statement* should not be rescinded because of the litigation that would result. Other broadcasters favored the option and speak to the responsibilities of other program sources.

65. Meredith Corporation believed that the option provides the possibility of beneficial results to the public with no adverse effect on children's programming. If there is a need for quality children's fare in a community, the broadcaster must respond by making an affirmative effort to satisfy the needs and desires of the viewers. Also, the development of new technologies will force broadcasters to be more competitive just to survive. PBS, while not taking a substantive position on option one, pointed out that rescinding the *Policy Statement* would not eliminate the basic underlying licensee duty to children which is contained in the Commission's 1960 *En Banc Programming Statement*. CPB opposed relying solely on other program sources. CPB argued that such reliance will not ensure high quality programs unless adequate funding is available. According to Quaker, public television has successfully served the unique needs of children; therefore, option one is Quaker's favorite option.

66. Virtually every public interest and consumer group filing comments opposed rescinding the 1974 *Policy Statement*. ACT asserted that the Commission must not abandon its position and that rescinding the *Policy Statement* would impair service to the child audience. The Committee for Children's Television of Metro Detroit stated that even though the *Policy Statement* has had little effect, repeal would be detrimental. Minority Children's Television, a Chicago group, argued that rescinding the *Policy Statement* would lead to the elimination of children's programs. The Rochester Coalition for Children's Television strongly objected to relying solely on program sources other than commercial broadcasting because alternative sources are either unavailable or expensive. According to WATCH, only 80% of the population receives PBS programming, most of which is transmitted on UHF channels. Cable television only reaches approximately 20% of the population. Furthermore, the high cost of subscription television, video discs and video cassettes makes them prohibitively expensive to most Americans.

Option Two. Maintain or Modify the Policy Statement.

67. The majority of the commenting broadcasters who did not favor outright repeal of the *Policy Statement* approve of maintaining a policy statement, although not necessarily in the same form as the existing one. Many broadcasters urged that a revitalized *Policy Statement* is the most viable option before the Commission. It represents a careful and prudent balance of interests which neither does too little nor strays too far. WGN, while favoring repeal, stated that it is not necessarily opposed to maintaining a policy statement as a guide to self regulation. A number of parties supplied a detailed explanation on how they would reformulate the *Policy Statement*. The new policy should reaffirm the principles of the 1974 *Statement*, but policy objectives should be more broadly based utilizing a market by market as opposed to a licensee approach. Also, these parties suggested deleting the special status of educational/informational programming and discarding the subgroupings of the child audience. The choice of children's programming would be the exclusive province of the individual licensee.

68. A separate issue addressed in the discussion of option two concerns the need to modify the television license renewal form in order to obtain more comprehensive and precise information about licensee programming practices for children. The reaction of the broadcast community to more detailed reporting standards was mixed. For example, Meredith Corporation supported detailed reporting standards in order to facilitate the collection of comprehensive data regarding the national status of children's programming. Chronicle opined that new reporting standards would promote better record keeping but would not necessarily insure better programming, whereas, ABC, Forward and General Electric felt that there is no need to seek more detailed information and that such requirements might be merely masked attempts to regulate indirectly that which cannot be regulated directly. PBS argued that more detailed reporting standards approach the area of impermissible intrusions into programming decisions.

69. The National Cable Television Association ("NCTA"), in reply comments, stated that maintenance of the present guidelines would allow the natural development of innovative technological services and encourage existing programmers to continue to improve children's programs. The Producer's Association for Children's Television ("PACT") also argued that maintaining the *Policy Statement* will best insure the continuance of the current development and improvement of children's programming.

70. Most of the commenting public interest groups did not favor relying on the *Policy Statement* alone. ACT charged that there have been no changes in the competitive environment that make it any more likely now than in 1974 that broadcasters will voluntarily comply with a policy statement. WATCH argued that the standards set out in the *Policy Statement* are unenforceable and even operate as a disincentive. Taking the opposite position were the Council on Children, Media and Merchandizing, and the Radio Television Council of Greater Cleveland, which favored relying on the *Policy Statement*. Virtually all of the public interest groups addressing this

option favored adopting improved program reporting requirements.

71. Only a few of the individual commenters discussed option two in any detail. For instance, Janine Bempechat presented a concept involving applying the *Policy Statement* on a market basis such that programming responsibility can be shared. The concept is based on the notion that if one station in the market is providing children's programming, there is no reason why all stations should provide parallel programming.

Option Three. Mandatory Programming Rules.

A. Feasibility and Advisability of Rules

72. Broadcasters filing in this proceeding unanimously disapproved of mandatory programming rules. The most cited argument against requiring a specific amount of programming was that such a requirement will not guarantee high quality programming and may instead discourage the current efforts to produce high quality shows. An almost equal number of broadcasters complained that the rule would disrupt program scheduling to no one's particular benefit. Field Communications, noting that independent stations traditionally "counter program" by placing much of their children's programming on weekdays, averred that mandatory weekday requirements would destroy the competitive incentives for independent stations. Fisher Broadcasting believed that rules would result in the deletion of local news, public affairs, and general family programming and feels that specific requirements geared for children neglect the needs and interests of other groups. A related concern expressed by several parties is that broadcasters, not the Commission, are most suited to determine the correct programming mix for their communities. Another scheduling-related argument against such a rule is that even though a set number of hours of educational programs is available, that does not necessarily mean that children will watch.

73. Another major concern expressed by several commenters involved enforcement of such rules. They feared that regardless of how much discretion the Commission allows in choosing appropriate programming, the Commission staff will be forced into making judgments about educational content and age specificity in addition to the larger issue of whether the shows can be classified as children's programming. Broadcasters also feared that creating mandatory programming requirements for children will lead other identifiable groups to demand similar treatment. They argued that eventually the entire broadcast day would be carved into designated audience segments. Group W also asserted that government has rarely succeeded in altering the personal preferences of its citizens and that government regulation cannot supplant parental guidance.

74. The broadcasters' final major practical argument against mandatory programming requirements concerned the availability of product to meet the requirements. According to the Subscription Television Association, the critical problem in this area is the lack of high quality children's programming available to broadcasters. It was argued that the average local television station cannot produce large quantities of high quality programming because of staff limitations, the high cost of local production, and the economic realities of children's programming. Local productions almost always result in losses and local spot children's advertisers are rare. Advertising problems increase when children are further divided into age-specific subgroups.

75. As to broadcast-related commenting parties, PACT, in particular, foresaw several detrimental byproducts of mandatory programming rules. PACT asserted that it is foolish to assume that broadcasters will maintain their curent children's programming in addition to the mandated educational programming. PACT stated further that rules will hinder the development of marketplace alternatives which the Commission staff hopes to rely on in the future. The scenario envisioned develops as follows: rules will diminish the quality of children's programming because existing resources will be spread over more hours of programming. This decline in quality will devitalize the industry as it focusses on satisfying regulators rather than attracting, entertaining, and educating child viewers. The market will become glutted with low quality products which will tend to dry up or impair the growth of other program sources. This will effectively postpone or preclude a marketplace cure. Television for All Children ("TVAC"), the distributor for Federally-financed ESAA (Emergency School Aid Act) programming, refuted the comments of some broadcasters by stating that there is, in fact, an abundance of quality children's programming available in the marketplace and that commercial broadcasters are increasingly utilizing this ESAA programming.

76. Of the public interest and media groups commenting on option three, the majority favored some type of mandatory programming requirements. Several parties would, however, formulate the rule differently than the *Notice* proposes. ACT would require each licensee to air 7½ hours on weekdays of programming originally designed for children *and* 7½ hours per week of age-specific, educational programming originally designed for children. These two separate requirements are not mutually exclusive; that is, one program could satisfy both requirements. ACT disputed broadcasters' arguments that mandatory rules will cause a decrease in quality. There is programming in existence which needs outlets. Minority Children's Television, Inc., also believed that the rule outlined in the *Notice* does not go far enough. The group would require a minimum of 25 hours of programming per week divided among the following categories: educational shows for ages 2 through 6; educational shows for ages 6–12; educational shows for ages 12–18; and racially, economically, and socially balanced shows for ages 2–18. The preferred option of WATCH would require 5 hours per week for pre-schoolers and 3 hours per week for school-age children, with at least one half hour of school-age programming locally produced. WATCH opposed any standard related to educational content, but believes a policy statement should accompany the rule which would encourage that a substantial portion of the shows should be designed to educate and not merely to entertain. Not all of the citizen's groups favored mandatory standards. For instance, the Committee for Children's Television of Metro Detroit opposed rules because increased quantity will not necessarily translate into increased quality.

77. The vast majority of the professional, religious, and educational associations favored the adoption of option three. The National Association of Pediatric Nurse Associates and Practitioners suggested, however, that 12 to 14 hours per week should be mandated because that approximates 50% of the child's weekly viewing time. The National Education Association reported that its members overwhelmingly support programming requirements. The Minnesota PTA/TV Concern Committee believed that the industry will respond to programming rules with creative and lively programming. Of sixty-five individuals formally commenting in this proceeding, forty-seven favored mandatory programming rules. Shelah Moller, while

acknowledging that there are problems with rules, believed that they represent the only realistic hope for significant improvement. Six individual commenters expressly argued against adoption of rules. The reasons given for opposing the rules were similar to those expressed by broadcast industry commenters—that quantity will not insure quality and that rules represent government paternalism.

78. Of the parties representing broadcast interests, only INTV supported the notion that, if rules are adopted, they should not apply equally to all television broadcasters. INTV suggested that mandatory standards should not apply to independent stations. The other broadcasters commenting on this issue took the view that mandatory standards, if adopted, should be capable of uniform application. CBS and Fisher both contended that different standards for different classes of licensees raises serious equal protection problems. In reply comments, Group W suggested that if rules are established they should apply not only to broadcasters but also to other regulated electronic media as well.

79. Only three non-broadcast parties commented on this issue. WATCH and the National Education Association believed that the mandatory rules should be applied uniformly to all commercial broadcast licensees. WATCH added that waivers of the rule could be obtained on an *ad hoc* basis if proven necessary. A contrary position was advocated by Janine Bempechat, who argued that only VHF network affiliates should come under the rules; independent and UHF stations should be exempt.

C. Criteria for Phase Out of Rules

80. Only one of the broadcast or broadcast related commenters addressed this issue. ABC stated that if, as it believes, the rules would be illegal and not beneficial to children's programming, then a sunset provision would not remedy those faults. But if the Commission goes ahead with rules, ABC believed the requirements should expire as soon as possible. Of the few non-broadcast commenters discussing this issue, some favored retaining rules until competition and additional outlets can generate sufficient programming. Another argued that the rule should be rescinded for any station that complies with it for three years. Several parties, including ACT, disagreed with the notion of an automatic sunset clause *per se*. Minority Children's Television stated that any sunset clause implies that any gains made would be lost when the rules were repealed. However, WATCH supported an automatic five year sunset provision because after that time a true assessment could be made of whether the increase in video outlets and technical improvements have facilitated sufficient programming for children. Regarding the criteria to be used in any non-automatic sunset provision, the National PTA felt that it should be based solely on the specific number of hours broadcast and on quality standards. The Committee for Community Access suggested a sunset provision based on market factors. According to CCA, mandatory programming requirements should not apply in any market containing a non-subscription television station devoted primarily to children's programming or in any market in which 95% of the homes in the market have the opportunity to subscribe to a low cost subscription channel for children.

D. Legal Considerations

81. Nearly all of the legal discussion in the comments concerned the legality and constitutionality of the proposed mandatory programming requirements. Without exception, broadcast interests argued that mandatory rules would violate established Commission policy, the Communications Act, and the First Amendment. Proponents of mandatory rules found no legal impediments to establishing such requirements.

1. *Arguments of parties opposed to mandatory rules*

82. The legal infirmity most frequently cited by broadcast interests is that programming requirements are an impermissible restriction on a licensee's editorial discretion. The First Amendment protects the editorial process as well as prohibiting prior restraints. These protections apply to broadcast journalism, broadcasters argue, citing *Columbia Broadcasting System* v. *Democratic National Committee*, 412 U.S. 94 (1973). Promoting any one type of programming is a value judgment and value judgments are at the heart of the editorial process. Cases which do allow some infringement of broadcaster discretion are distinguished as very narrow holdings which do not affect programming decisions nearly so much as the proposed rules. For example, *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969), (which upheld the Fairness Doctrine, personal attack and political editorial rules), represents the outer limits of government intrusion into programming decisions. Even so, the Fairness Doctrine affords the broadcaster broad discretion in deciding what issues to cover, when to cover them, and how to cover them. *FCC* v. *Pacifica Foundation*, 438 U.S. 726 (1978), does not, insist the broadcasters, establish special constitutional status for children which would support mandatory categories and amounts of programming.

83. The broadcast interests similarly distinguished other cases relied on by proponents of rules. *NAITPD* v. *FCC*, 516 F. 2d 526 (2d Cir. 1975), the case which upheld the children's exemption to the prime time access rule, broadened rather than restricted the types of programs broadcasters could air. The *NAITPD* court clearly distinguished the Commission's authority to interest itself in programming from the power of the Commission to adopt mandatory programming requirements. Likewise, no support for rules can be found in *Action for Children's Television* v. *FCC*, 564 F. 2d 458 (1977). That case upheld the Commission's decision *not* to take any action beyond issuing a policy statement. The language in the *Act* case which is so heavily relied upon by proponents of the rules, which states that the Commission has an affirmative duty to take further action if broadcasters fail to comply with the *Policy Statement*, is only dicta, and refers to the advertising guidelines contained in the *Policy Statement*, not the programming guidelines.

84. The broadcast interests averred that the rules go beyond merely specifying categories; they will inevitably lead to program by program review by the Commission. The guaranteed right of access rejected in *CBS* v. *DNC*, *supra*, was found unacceptable in part because the Commission would have had too great a role in specific programming decisions. The proposed rules suffer from a similar infirmity. Also, in attempting to define the types of programming which would be acceptable under the rules, the definitions must be sufficiently specific to give broadcasters guidance on the types of shows required. However, the more specific the requirement, the more it impinges on licensee discretion.

85. In summarizing the constitutional problems inherent in the mandatory rules, the broadcasters cited the four prong test necessary for approval of any governmental restriction of First Amendment freedoms. Restraints on these freedoms are upheld if the requirements are within the constitutional power of the government; the requirements further a substantial government interest; the substantial government interest is unrelated to the suppression of free expression; and, the incidential restriction of First

Amendment guarantees is no greater than is essential to the furtherance of that interest. *United States* v. *O'Brien*, 391 U.S. 367 (1968). Commenters indicated that at least two of these tests are not met. First, given the lack of a reliable factual record that any problem actually exists, ther is no showing that a substantial government interest is involved. Second the proposed rules are not the least intrusive means available to meet the Commission's goals.

86. In addition to First Amendment problems, the broadcasters asserted that the rules would violate the Communications Act of 1934. Section 326 of the Act represents a specific bar to mandatory programming requirements as it precludes the Commission from censoring broadcast programming. Censorship includes dictating programs as well as prohibiting programs. *Banzhaf* v. *FCC*, 405 F. 2d 1082 (D.C. Cir. 1968). NBC asserted that the failure of the Commission staff to address Section 326 undermines its entire legal analysis. Legislative history of the Act was also cited as evidence that Congress deliberately withheld from the Commission the power to prescribe priorities as to subject matter.

87. Finally, the broadcast-related commenters argued that the proposed rules represent a sharp departure from established Commission policy. The preservation of licensee programming discretion to meet the unique needs of individual communities has long been a cornerstone of Commission broadcast regulation. The programming rules cross the dividing line between the Commission's properly taking an interest in program categories by encouragement and guidance, and improperly dictating what programming should be aired. The Commission would be decreeing what best serves the needs of a community, regardless of how duplicative and otherwise unnecessary the programming is.

2. *Arguments of parties supporting mandatory rules*

88. Proponents of mandatory programming rules argued that First Amendment protections are not absolute. The broadcasters' claims that any interference with licensee discretion represents a constitutional violation were premised on the erroneous assumption that broadcasters have an absolute right of free speech. Some regulation of expression is permissible—even necessary—under the First Amendment to ensure the fulfillment of important governmental interests. Broadcasters can be obligated to air certain programming if it is necessary to serve the public's First Amendment interests, which are paramount. Proponents argued that the language in the *Red Lion* decision is not limited to the Fairness Doctrine. It was further argued that the proposed rules represent a minimal intrusion into licensee's editorial discretion. The rules set out content neutral categories which do not dictate specific program content. The children's program exemption to the prime time access rule exemplifies the fact that the Commission may legitimately perfer certain categories of programming. Indeed, the Commission has long considered licensee programming in categories such as news and public affairs. As to *CBS* v. *DNC*, the situation represents a far greater and fundamentally different intrusion into the editorial process than the programming categories proposed by the Commission. Furthermore, in implementing the rules, it is fair to assume that the Commission will defer to licensee categorization of programming and will not penalize broadcasters who err in good faith.

89. The proponents proffer two futher arguments in support of their position. First, broadcasting is subject to greater regulation than other communications media because it utilizes the public airwaves and because the number of outlets are necessarily limited. Second, the courts have long recognized that children constitute a unique group afforded special legal protections. *See Prince* v. *Massachusetts*, 321 U.S. 158 (1943); *Ginsberg* v. *New York*, 390 U.S. 629 (1968). The recently decided *Pacifica* case was cited as an excellent example of the special constitutional considerations inherent in issues involving the welfare of children.

90. Those parties favoring mandatory requirements stated that ample statutory authority exists for promulgating the proposed rules. Section 303 and 303(r) give the Commission power to establish rules, regulations, and restrictions necessary to carry out the provisions of the Act. Sections 307 and 309(a) mandate that the public interest be considered when granting, renewing, or modifying licenses. Citing *FCC* v. *American Broadcasting Company*, 347 U.S. 284, 290 (1953), the proponents averred that the Commission can regulate by rule what it regulates in evaluating license performance on an individual basis. The Commission has an obligation to assure that broadcasters operate in the public interest. Licensees do have broad discretion regarding specific program content, but it is appropriate for the Commission to determine what types of program service meet the public interest. The record now before the Commission compels a different result than in 1974, and the courts have stated that, given a proper factual record, the Commission may have the power to promulgate regulations. *ACT, supra. at* 480; *Writer's Guild of America, West, Inc.* v. *FCC*, 423 F. Supp. 1064, 1149 (C.D. Ca. 1976), *vacated and remanded sub nom. Tandem Productions* v. *National Broadcasting Co.*, 609 F. 2d 355 (9th Cir. 1979).

91. The supporters of mandatory requirements argued that the proposed regulations do not give the Commission the power of censorship. Section 326 represents Congress' desire to preserve the values of private journalism. It precluded the Commission from scrutinizing programs in advance of broadcast, but it has never been construed to deny the Commission the power to review the content of completed broadcasts in the performance of its regulatory duties.

Option Four. License Renewal Processing Guidelines.

92. As a general proposition, broadcast interests commenting on this option argued that processing guidelines suffer from the same practical and legal infirmities as the proposed mandatory rules. Guidelines have the same effects as rules. The flexibility of guidelines does not diminish their seriousness. NBC stated that the threat of non-renewal would create strict compliance with the guidelines even though a licensee determines that the needs of the community require a different program mix. In addition to the practical considerations, broadcasters found legal impediments to establishing the proposed processing guidelines. They argued that the licensing process cannot be used as a vehicle to impose new rules on licensees. *Writers Guild West* v. *FCC*, 423 F. Supp. at 1150. The courts will look to the effects of Commission requirements, not just their form.

93. Many of the broadcasters commenting on option four maintained that the existing license renewal processing guidelines bear little resemblance in kind and degree to the proposed guidelines and therefore offer no precedential value. The levels for news, public affairs and locally produced programming are set far below the actual programming of the vast majority of licensees. As such, they do not materially affect the editorial judgment of most licensees. The guidelines proposed in this proceeding, however, compelled significant increases in the amount of children's programs aired. Thus, instead of singling

out the occasional abuse of discretion, the proposed guidelines seek a blanket reordering of editorial priorities. Also, the existing guidelines speak in terms of broad, general program categories, spread over a large portion of the broadcast day, with no target audience. The proposed guidelines very specifically set out amounts, content, scheduling, and target audience.

94. The reaction of advertisers and program producers commenting on option four was mixed. Quaker Oats opposed the guidelines and suggests that they would result only in heavy paperwork and administrative costs for broadcasters and the Commission. On the other hand, Romper Room strongly urged that minimum processing guidelines be established. Romper Room believed that without incentives, broadcasters will not meet their obligations to children. Processing guidelines assured a minimal effort in presenting educational programming, yet provided the Commission and licensees with maximum flexibility. In reply comments, the company disputed the notion that guidelines are the same as mandatory rules. Processing guidelines represented a flexible scheme in which a licensee's good faith efforts and mitigating circumstances are weighed.

95. Public interest and media groups also viewed the adequacy of processing guidelines differently. Generally, those groups which oppose mandatory rules had a more favorable reaction to guidelines. The Committee for Community Access took the position that mandatory rules or processing guidelines would be equally effective. CCA analysed radio statistics and found that the vast majority of licensees comply with processing guidelines for nonentertainment programming and commercials. Similar results were predicted if children's programming guidelines are adopted. Although ACT submitted that processing guidelines are an inadequate response to the problem, it believed guidelines may be an attractive interim remedy because they maintain maximum flexibility and provide some incentive for broadcasters to conform. WATCH differed with this view and argued that guidelines represent an inadequate substitute for quantitative, mandatory standards. WATCH's chief concern was that guidelines are applied at the end of a license term. This gives little relief to the child audience that is inadequately served during the license term. Furthermore, the chances of denying a license renewal for failure to meet the guidelines are slim and thus the remedy is seen as illusory.

96. Most of the professional, educational, and religious organizations which stated support for mandatory rules also supported processing guidelines. However, only a few individuals filing formal comments directly addressed the processing guidelines proposal. Janine Bempechat stated that guidelines are only effective to the extent that outside interest groups challenge a license renewal because internal staff review alone rarely leads to any extraordinary action against licensees. Henry R. McCarty felt that "promise vs. performance" should always be reviewed during license renewals. Shelah Moller argued against guidelines because they are cumbersome, time consuming, and operate only after the fact.

Option Five. Increasing the Number of Video Outlets.

97. Most of the broadcasters commenting specifically on this option favored continuing efforts to foster UHF comparability. However, for the most part, broadcast interests opposed initiating significant changes in the communications market structure solely in the context of the children's proceeding. NAB believed that only the marketplace can determine the extent to which video outlets should be increased. ABC claimed that there is no proof that the means considered in option five would produce the desired result of increasing educational programming for children. NBC added that children's programming options are already increasing because of changing technologies and that it is inappropriate for the Commission to artificially distort the marketplace during periods of such rapid development. Chronicle argued that increasing the number of outlets in a market might spread advertising support even more thinly, lowering the resources available to individual stations. This, in turn, could lower the overall quality of local children's television. PBS was the only broadcaster to agree with the Task Force conclusion that the amount and diversity of children's programming is likely to be increased by expanding the number of outlets. PBS also urged that the Commission be alert to opportunities for allocating additional channels to public television. This would foster the Commission's objective of increasing the delivery of children's programming.

98. Quaker Oats favored increasing the number of commercial video outlets because of its healthy effect on competition. Quaker suggested, however, that an increase in competition for the broadcast audience is not synonymous with an increase in the quality or diversity of programming. Quaker opposed increasing the number of noncommercial stations. A proliferation of noncommercial stations will, it argues, reduce the amount of financial support to existing public stations which will reduce public stations' programming capabilities. This may cause a decline rather than an increase in the quality and variety of public television shows for children.

99. No consensus can be drawn from the comments of the public interest and media groups regarding option five. However, the Committee for Community Access found this to be the best long term solution. CCA believes that more stations in existence would have to share a smaller portion of the total audience. Therefore, stations could afford to appeal to small, specialized audiences. ACT believes as a long range strategy the option should be pursued. However, ACT stated there is no proof that it would work and thus it would be irresponsible to rely solely on this option. Even though video outlets increase, commercial broadcasters must still bear some responsibility for children's programming so that all children's needs are considered and served. The Committee for Children's Television of Metro Detroit disapproved of option five because there is no guarantee that increased competition will increase quality. The possibility of relying on alternative forms of communication, stated the New York Council on Children's TV, does not justify a diminution of commercial broadcaster's obligations. According to NYCCT, alternative media will program only recycled product instead of providing new material because they cannot compete with the network programmers dollar for dollar. Furthermore, there is no legal obligation on noncommercial outlets to supply adequate children's programming.

100. The educational associations were, for the most part, sceptical of option five as a realistic solution to the problem. The National Education Association stated that increasing video outlets may only proliferate the current excesses. Some individuals and PTA commenters suggested two key problems with this solution: (a) There is no guarantee that all children, especially the poor, would derive any benefits; and (b) the marketplace is not the best regulator of scarce public resources.

Parties Filing Formal Comments or Reply Comments in 1980

I. Broadcast Interests and Related Industries

A. *Associations*

1. ABC Television Affiliates Association
2. Association of Independent Television Stations
3. Association of Maximum Service Telecasters
4. National Association of Broadcasters
5. Subscription Television Association

B. *Television Networks*

1. American Broadcasting Companies
2. Columbia Broadcasting System
3. National Broadcasting Company
4. Public Broadcasting Service

C. *Licensees*

1. Capital Cities Broadcasting
2. Chronicle Broadcasting Company
3. Field Communications Corporation
4. Fisher Broadcasting
5. Forward Communications Corporation
6. General Electric Broadcasting, Inc.
7. Joint comments filed by Dow, Lohnes and Albertson
a. Channel
b. Cosmos Broadcasting Corp.
c. Cox Broadcasting Corp.
d. Daily Telegraph Printing Company
e. Elba Development Corp.
f. Guy Gannett Broadcasting Service
g. Illiana Telecasting Corp.
h. KOVR–TV, Inc.
i. McClatchy Newspapers
j. Mid-America Television Company
k. Midcontinent Broadcasting Co.
l. Multimedia, Inc.
m. The Outlet Company
n. Palmer Communications, Inc.
o. Portal Communications, Inc.
p. Sangre de Cristo Communications, Inc.
q. Sierra Cascade Communications, Inc.
r. State Telecasting Company, Inc.
s. United Television, Inc.
t. WCSC, Inc.
u. The WHYN Stations Corp.
8. Joint comments filed by Fletcher, Heald & Hildreth
a. Capitol Broadcasting Company, Inc.
b. Coast Television Broadcasting Corp.
c. Griffin Television, Inc.
d. King Broadcasting Company
e. Leake TV, Inc.
f. Pappas Telecasting, Inc.
9. Joint comments filed by McKenna, Wilkinson, Kittner
a. Guaranty Broadcasting Corp.
b. John H. Phipps Broadcasting Stations, Inc.
c. May Broadcasting Company
d. Plains Television Corp.
e. Shamrock Broadcasting Company, Inc.
f. Southern Television Corporation
g. Summit Radio Corp.
h. Weigel Broadcasting Company
i. Winnebago Television Corp.
j. WKRG–TV
10. Meredith Corporation
11. Metromedia
12. Quincey Broadcasting Company
13. Storer Broadcasting Company
14. Westinghouse Broadcasting Company, Inc.
15. WBRE–TV, Inc.
16. WGN Continental; WGN of Colorado; WPIX, Inc.
17. WJAC, Inc.
18. WSJV–TV, Inc.
19. WPTZ–TV, Inc.
20. WUFT–TV (Board of Regents, State of Florida)

D. *Advertisers*

1. American Association of Advertising Agencies
2. Association of National Advertisers
3. Quaker Oats*

E. *Program Producers and Distributors*

1. Altman Productions
2. Romper Room, Inc.
3. Producer's Association for Children's Television
4. Television for All Children

F. *Miscellaneous*

1. Corporation for Public Broadcasting
2. National Cable Television Association (reply only)

II. Public Interest and Media Groups

1. Action for Children's Television
2. American Council for Better Broadcasts*
3. Atlanta Council for Children's Television
4. Children's Rights, Inc.
5. Committee for Children's Television of Metro Detroit
6. Committee for Community Access
7. Council on Children, Media, and Merchandising
8. Joint comments filed by Citizens Communications Center
a. American Association of University Women
b. American Federation of Teachers, Washington Teachers Union, Local 6
c. The Baltimore Film Forum
d. Big Brothers of the National Capital Area
e. Chesapeake Montessori Society
f. District of Columbia Media Task Force
g. Focusing Awareness of Children and Television
h. Public Action Coalition for Toys
i. Washington Association for Television and Children (WATCH)
9. Long Island Coalition for Fair Broadcasting
10. Minority Children's Television Inc.*
11. Montgomery County Hispanic Coalition
12. National Citizen's Committee for Broadcasting
13. New York Council on Children's Television
14. Radio-Television Council of Greater Cleveland
15. Rochester Coalition on Children's Television
16. TV Impact Committee of the Lehigh Valley

III. Organizations

A. *Professional Associations*

1. National Association of Pediatric Nurse Associates and Practitioners
2. American Nurses Association

B. *Educational and PTA Associations*

1. 9th District PTA (Los Angeles, CA)
2. 10th District PTA (Los Angeles, CA)
3. National Education Association
4. National Parent, Teachers Association
5. New Jersey Education Association
6. Reviewing Stand North
7. St. Louis Association for the Education of Young Children
8. Television Concern Committee, Minnesota State PTA
9. West Virginia Education Association

C. *Religious Organizations and Congregations*

1. First Baptist Church, Kingsbury, IN.
2. Hawaii Council of Churches, Broadcast Commission
3. Llanerch Presbyterian Church, Havertown, PA.
4. National Council of Churches of Christ, Communication Commission
5. UNDA-USA
6. United Church of Christ, Office of Communications

D. *State Agencies*

1. Maryland Office for Children and Youth
2. Massachusetts Consumer's Council

E. *Miscellaneous*

1. "Children and Television" class, Mary College
2. Congressional Wives Task Force
3. Junior Saturday Club of Wayne (Wayne, PA)

IV. Individuals

1. John Abel and Rick Ducey (reply only)
2. Donald E. Agostino (reply only)*
3. Mildred Ake*
4. Ronald Alpert
5. Suzanne Anderson
6. T. L. Anderson
7. Nancy E. Baker-Flynn
8. Janine Bempechat
9. Terry T. Clapp
10. John Donovan Coffey*
11. Paul J. Colbert
12. Barbara Fox Conen
13. Hildred H. Conley
14. Katherine A. Cook
15. David H. Evans
16. Mary J. Fears
17. Patricia S. Fuhrer
18. Robin S. Godfrey*
19. Anna Groff*
20. Nancy T. Guiles
21. John M. & Susan S. Harrer
22. Louis Haskin
23. Mike Hauch
24. Marjorie A. Hurley
25. Leslie Isler
26. Dorothy Davies Johnson
27. Jody Katz & Charles Willmott
28. Leta Kempton
29. Dolly H. Kohnen
30. Leona K. & Robert J. Lacey
31. Charlene Lahar*
32. Henry R. McCarty
33. Shelah Moller
34. Daniel Nussbaum
35. Louis J. Oates
36. Harry F. Palmer
37. Joseph J. Palombi
38. Ingrid Pelillo*
39. Elizabeth M. Pellegrino
40. Jacqueline Phelps
41. Frances G. Pratt
42. Doreen Prenkert
43. Hugh Rank
44. Joey Reagan (reply only)
45. Jane M. Rees
46. Deb Ressler
47. Julie E. Rones
48. Judith Rosenman
49. Bonita Schaaf*
50. Kenneth R. Seeley
51. Madeline H. Selick
52. Doris L. Shreve
53. William M. Simpson
54. Albert J. Strauss
55. John V. Surr
56. Eric Michael Tabeling
57. Sr. Rafael Tilton
58. Marguerite S. Tucker*
59. Judy K. Underwood
60. Anna Weisberg
61. Paul Whiting
62. Allan Wolf
63. Ponenail Wright
64. Elenore Yavarone
65. Jayne W. Zenaty (reply only)

*Comments filed after the Commission's filing deadline.

APPENDIX B—

Parties Making Oral Presentation to the Commission at the April 28, 1983, En Banc Meeting

Three panels of participants were heard from. The parties are as follows:

Panel I

National Association of Broadcasters
CBS, Inc.
Action for Children's Television
Robert Keeshan
Romper Room Enterprises
Jerome Singer
Association of National Advertisers

Panel II

American Broadcasting Companies, Inc.
Association of Independent Television Stations, Inc.
Washington Association for Television and Children
Francis M. Palumbo, M.D.
Corporation for Public Broadcasting
National Association of Public Television Stations
Public Broadcasting Service
Susan Greene
Bruce Watkins
National Education Association

Panel III

National Association of Television Program Executives
National Broadcasting Company, Inc.
Radio and Television Commission of the Southern Baptist Convention
National Black Media Coalition
International Reading Association
Citizens Communications Center
National Coalition on Television Violence

APPENDIX C—

Parties Filing Supplemental Comments

(1) Action for Children's Television*
(2) Alpha Kappa Alpha Sorority, Inc.
(3) American Academy of Child Psychiatry*
(4) American Association of Advertising Agencies, Inc.
(5) American Broadcasting Companies, Inc.
(6) Bloomberg, Terry*
(7) Boys Town
(8) Broadcast Commission of the Hawaii Council of Churches*
(9) Brown, Vaugh Lee*
(10) Bush Institute for Child and Family Policy
(11) CBS, Inc.
(12) Chicano Federation of San Diego County, Inc.
(13) Citizens Communications Center*
(14) Coleman, Marilyn, Chairperson, Department of Child and Family Development (University of Missouri—Columbia)
(15) Comma/Oklahoma Conference of Churches
(16) The Committee for Children's Television of Metro Detroit*
(17) Community Nutrition Institute
(18) Davis, Deborah Kay*
(19) Forward Communication Corporation
(20) Gallagher, Joanne W.*
(21) Guaranty Broadcasting Corporation et al.
(22) Kaiser, Lloyd, President WQED, on behalf of National Association of Public Television Stations
(23) Lowery, Kay, Chairman, Family Relationships and Child Development for National Extension Homemakers, Council, Inc.
(24) MacDonald, Bonnie*
(25) McNally, Thomas P.*
(26) Menninger, Roy W.*
(27) Metromedia, Inc.*
(28) National Association of Elementary School Principals
(29) National Broadcasting Company, Inc.*
(30) National Catholic Educational Association*
(31) National Education Association
(32) Parent's Choice*
(33) Public Action Coalition on Toys*
(34) Public Broadcasting Service
(35) Rockefeller, Sharon Percy, Chairman of the Board of the Corporation for Public Broadcasting
(36) Sparkes, Kathleen K.*
(37) Wallaces et al.*
(38) Washington Association for Television and Children
(39) Women for Racial and Economic Equality*

Parties Filing Reply Comments

(1) Action for Children's Television
(2) American Broadcasting Companies, Inc.
(3) Washington Association for Television and Children

[FR Doc. 84-820 Filed 1-12-84 8:45 am]
BILLING CODE 6712-01-M

* Parties marked an asterisk filed comments outside the scheduled comment period. They were also considered.

47 CFR Part 90

[Docket No. 20846; FCC 83-610]

Policies and Regulations To Govern Interconnection of Private Land Mobile Radio Systems With Public Switched Telephone Network

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order suspending compliance date.

SUMMARY: The Commission has adopted an *Order* which suspends the January 1, 1984 compliance date requiring licensees of existing interconnected systems below 800 MHz to conform to the rules contained in the *First Report and Order*, General Mobile Radio-Interconnection, 69 FCC 2d 1831 (1978), pending review of the interconnection rules below 800 MHz. The suspension enables licensees with existing interconnected systems to continue present use.

EFFECTIVE DATE: December 30, 1983.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nia C. Cresham, Private Radio Bureau, Land Mobile & Microwave Division, Rules Branch, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

Order

In the matter of amendment of Part 90 of the Commission's rules to prescribe policies and regulations to govern the interconnection of private land mobile radio systems with the public switched telephone network. Docket No. 20846.

Adopted: December 28, 1983.
Released: December 30, 1983.

By the Commission.

1. On August 23, 1978, the Commission released a *First Report and Order*, Docket No. 20846, 69 FCC 2d 1831 (1978), which established rules to govern the interconnection of private land mobile radio systems with the public switched telephone network (PSTN) in the bands below 800 MHz. This was followed by a *Second Report and Order*, Docket No. 20846, 89 FCC 2d 741 (1982), which adopted new rules and policies to govern the interconnection of private systems and the PSTN in the 800 MHz bands. In general, the new rules at 800 MHz are more liberal than those governing interconnection below 800 MHz.

2. On September 13, 1982, the Communications Act was amended by "The Communications Amendments Act of 1982", Pub. L. 97-259, 96 Stat. 1087, September 13, 1982; see Section 120 (Section 331 of the Communications Act of 1934, as amended, is codified at 47 U.S.C. 332). In our *Memorandum Opinion and Order*, Docket No. 20846, released May 27, 1983, (48 FR 29,512, June 27, 1983), we reviewed and modified our *Second Report and Order* in light of this new legislation. We determined that the new legislation affirmed our conclusion that interconnection of private systems should occur on an unfettered basis, subject to the requirement that licensees and users obtain their own telephone service either individually or collectively on a nonprofit basis and limited by the prohibition against the "resale" of telephone service or facilities. Conference Report No. 97-765, 97th Cong., 2nd Sess., August 18, 1982, at 55.

3. In our *First Report and Order*, we permitted licensees of existing interconnected systems operating below 800 MHz to continue to use them until January 1, 1984. By January 1, 1984, all of these systems were to be brought into compliance with the new rules. This would mean, for example, that in certain radio services in the largest cities in the country, interconnection would have to cease entirely by January 1, 1984.

4. We now intend to review our private interconnection rules below 800 MHz in light of the Communications Amendments Act of 1982 and the Commission's goal to eliminate unnecessary regulations and policies. In determining whether we should suspend indefinitely the January 1, 1984 compliance date for private interconnected systems operating below 800 MHz, we are guided by the factors enunciated in *Virginia Petroleum Jobbers Assoc. v. F.P.C.*, 259 F. 2d 921 (D.C. Cir. 1958) and, more recently, *Ambach v. Bell*, 686 F. 2d 974 (D.C. Cir. 1982). In view of the likelihood that the rules in question may be modified in the near future, we are persuaded that the public interest, convenience and necessity favors interim relief. We are convinced that it would place an unnecessary and unreasonable burden on licensees and users to require them to conform to the rules by January 1, 1984, while these rules are currently under review and may be amended in the near future. Furthermore, many of these systems have been operating for over 5 years and we do not expect their continued operation pending final review of the rules to cause significant harm to other users. Therefore, we will suspend the compliance date of January 1, 1984, until the Commission has reviewed the rules governing interconnection below 800 MHz.

5. Accordingly, it is ordered that the compliance date of January 1, 1984, for the existing interconnected systems operating below 800 MHz, as provided in our *First Report and Order* of this proceeding, is suspended effective December 30, 1983, pursuant to Section 4(i) of the Communications Act of 1934, as amended.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-817 Filed 1-12-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-189]

Organization and Delegation of Powers and Duties; Northeast Rail Service Act of 1981

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment delegates to the Federal Railroad Administrator functions vested in the Secretary by the Northeast Rail Service Act of 1981.

DATE: The effective date of this amendment is December 15, 1983.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, (202) 426-4723.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

The Northeast Rail Service Act of 1981 (Pub. L. 97-35; August 13, 1981) authorizes the Secretary of Transportation to take various actions relating to rail matters, most particularly regarding the return of Conrail to the private sector. The purpose of this amendment is to delegate that authority to the Federal Railroad Administrator. This amendment includes, and therefore supplants, an earlier delegation to the Administrator of the authority vested in the Secretary to engage the services of an investment banking or similar firm to arrange for the sale of the interest of the United States in the common stock of Conrail.

List of Subjects in 49 CFR Part 1

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

PART 1—[AMENDED]

In consideration of the foregoing, § 1.49 of Part 1 of Title 49, Code of Federal Regulations, is amended by revising paragraph (y) to read as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

The Federal Railroad Administrator is delegated authority to—

* * * * *

(y) Carry out the functions vested in the Secretary by the Northeast Rail Service Act of 1981 (Pub. L. 97–35).

Authority: 49 U.S.C. 322.

Issued in Washington, D.C., on January 6, 1984.

Elizabeth Hanford Dole,
Secretary of Transportation.

[FR Doc. 84–894 Filed 1–12–84; 8:45 am]
BILLING CODE 4910–62–M

Proposed Rules

Federal Register
Vol. 49, No. 9
Friday, January 13, 1984

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 Grain Inspection Service

7 CFR Part 810

Proposed Amendment to the U.S. Standards for Wheat

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed and is proposing to revise the regulations under the United States Grain Standards Act, as amended, concerning the U.S. Standards for Wheat as follows:

1. The procedure for rounding dockage would be revised. When the actual dockage is from zero to 0.25 percent, no dockage figure would be shown on the certificate, 0.26 to 0.75 percent would be certificated as 0.5 percent, 0.76 to 1.25 percent would be certificated as 1.0 percent, and so forth.

2. The special grade "Light garlicky" would be deleted and the special grade "Garlicky" would be redefined as wheat containing more than 2 green bulblets or an equivalent quantity of dry or partly dry bulblets in 1,000 grams. The work portion would be reduced to 250 grams for counts in excess of 10 green garlic bulblets.

3. The allowable limit for castor beans in the numerical grades would be reduced from 2 to 1.

4. When Hard Red Spring wheat or White Club wheat predominates in Mixed wheat, the test weight requirements applicable for those two kinds of wheat would apply.

5. An extreme amount of smut would not render wheat Sample grade. The special grades, "Light smutty" and "Smutty", would continue to be shown on official certificates.

6. The components of the subclass Western White wheat would be listed in the order of predominance on the official certificate.

7. The factors wheat of other classes, contrasting classes, and subclasses would be analyzed on a work portion of wheat free from dockage and shrunken and broken kernels.

8. An additional class of wheat, designated Red wheat, would be established. This class would accommodate Red wheat which appears on the basis of visual physical characteristics, to contain more than 10.0 percent of other classes of Red wheat. Except for wheat of other classes, the grade factors for all other classes and subclasses would apply, with the additional factor, protein content. The minimum protein content for grades U.S. Nos. 1, 2, 3, 4, and 5 would be 13.5, 11.0, 10.0, 9.0, and 9.0 percent, respectively on a 14 percent moisture basis. The wheat of other classes factor limits will not be applicable to Red wheat.

DATE: Comments must be submitted on or before March 13, 1984.

ADDRESSES: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250; telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Secretary's Memorandum 1512–1. The action has been classified as nonmajor, because the proposed rule does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, because most users of wheat inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Effective Date

Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b) the Act) and § 800.4 (7 CFR 800.4) of the regulations, no standards established or amendments or revocation of standards under the Act are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator the public health, interest, or safety requires that they become effective sooner.

Review of Standards

The review of the U.S. Standards for Wheat (7 CFR 810.301–810.309) included a determination of the continued need for the standards, a review of changes in marketing factors and functions affecting the standards, and a review of changes in technology and economic condition in the area affected by the standards and their application through the incorporation of grading factors or tests which better indicate grain quality. The objective was to assure that the standards continued to serve the needs of the market to the greatest possible extent. FGIS has determined that, in general, the wheat standards are serving their intended purpose and should remain in effect; however, FGIS proposes to make certain changes, as discussed below.

Following discussions with industry and other interested parties regarding FGIS' intention to review the wheat standards, 144 comments were received. Based on these comments and FGIS' continuing examination of the wheat standards, FGIS identified several issues for extensive evaluation. A notice, published in the March 22, 1983, **Federal Register** (48 FR 11953) requested public comment on these and other issues which FGIS should consider in its review. Subsequent to publication of the notice, 106 comments were received from all segments of the industry including foreign entities.

In the March 22, 1983, notice FGIS identified certain issues which form the basis for the proposed changes to the standards as follows:

(a) Dockage

Dockage consists primarily of dust, chaff, small weed seeds, very small pieces of broken wheat, and coarse grains larger than wheat. Dockage usually is removed in the grain cleaning

process, and may be utilized as a byproduct in animal feeds.

Under the current method dockage is certificated by rounding down to the nearest 0.5 percent (7 CFR 810.305). For example, 0.0 to 0.49 percent is shown as no dockage, 0.50 to 0.99 percent is shown as 0.5 percent dockage, and 1.0 to 1.49 percent is shown as 1.0 percent dockage. To more closely reflect the actual dockage content, two alternative procedures were reviewed by FGIS. One was certification of dockage in increments of 0.1 percent. Because of equipment limitations and sample variation, reporting dockage in increments of 0.1 percent lacks reproducibility.

The other alternative involved rounding in increments of 0.5 percent. Zero to 0.25 percent would show no dockage, 0.26 to 0.75 would be 0.5 percent, 0.76 to 1.25 would be 1.0 percent dockage, and so forth. Stating dockage in the above manner is more accurate than the current procedure because the stated percentage of dockage could differ from the actual dockage by no more than 0.25 percent. This change favors neither buyer nor seller.

The minority of commenters opposed a change in the method of rounding dockage, and stated that: (1) Producers and handlers would lose money, (2) the foreign buyer would benefit, and there is a lack of official complaints, (3) the current standards have served the industry well for many years and as a result importers have come to know the quality of wheat they will receive, (4) misunderstanding would add confusion to the marketing, (5) the loading of wheat at zero dockage would practically be eliminated, (6) at today's high speed method of loading, cleaning at the export elevator is not practicable, (7) the cost of investment in cleaning equipment would be prohibitive for many elevators, (8) there would be no resulting decrease in the percentage of dockage in U.S. wheat, nor would there be an increase in sales by changing rounding rules for dockage, (9) importers can contract for and receive any quality of what that they desire, (10) most importing countries buy the cheapest wheat available and do not pay premiums to get specific qualities desired, (11) dockage should be combined with foreign material and shrunken and broken kernels, and (12) consideration should be given to changing dockage to a "Besatz" system where undesirable matter is categorized as useful or useless matter.

A majority of the commenters supported a change in dockage procedures, and stated that: (1) A more representative and accurate method of stating the dockage is needed, (2) many foreign buyers are not satisfied with current procedures and complain that U.S. wheats consistently contain about 0.3 to 0.5 percent more dockage than stated on the certificate, (3) foreign buyers object because the current procedure consistently understates the actual dockage and impacts on imports levies, (4) European buyers regularly pay significant premiums to purchase Canadian wheat, which they claim is "cleaner" than U.S. shipments, (5) South American buyers have recently switched from the U.S. to other sources, based partly on the issue of dockage in U.S. wheat, and (6) less tolerance at the lower end of the dockage scale would assist those buyers who want cleaner grain and are willing to pay for it.

FGIS has determined that current dockage procedures need to be improved in order to maintain and increase exports of U.S. wheat. Dusty wheat is the most frequent and consistent informal complaint of foreign buyers. While dockage has feed value in the U.S., the same utility does not exist in foreign countries. Moreover, the buyer pays freight costs and, when applicable, an import levy on the total weight of the cargo.

Currently when wheat contains between 0.26 and 0.49 percent actual dockage, no dockage figure is shown on the certificate; the proposed dockage rounding procedure would certify this amount as 0.5 percent. An FGIS analysis indicated that the price impact would be less than one-tenth of a cent per bushel upon prices received by producers. The study evaluated data from representative market samples of all classes of wheat for a 5-year period. Reported dockage levels tended to be higher under this alternative method. However, if the trade were to adjust its price for the lesser amount of dockage actually contained in the wheat, then any possible producer loss is nullified.

In view of the above, it is proposed that the current procedure for rounding dockage in section 810.305 be revised. When the actual dockage is from zero to 0.25 percent, no dockage figure would be shown on the certificate; 0.26 to 0.75 percent would be certificated as 0.5 percent; 0.76 to 1.25 percent would be certificated as 1.0 percent, and so forth.

(b) Garlicky Wheat

Wheat containing two but not more than six green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in a 1,000-gram portion currently is graded "Light garlicky" (7 CFR 810.308(b)). Wheat that contains more than six green garlic bulblets or an equivalent quantity of dry or partly dry bulblets currently is graded "Garlicky" (7 CFR 810.308(c)).

The issue was whether FGIS should delete "Light garlicky" and define "Garlicky" as wheat containing "more than 2 green bulblets or an equivalent quantity of dry or partly dry bulblets in 1,000 grams." Bulblet count would only be shown upon request. The size of the work portion would be reduced to 250-gram for counts in excess of 10 green garlic bulblets. Portion sizes are a procedural matter for inspection and will be defined in the Grain Inspection Handbook.

Millers have indicated that small quantities of garlic do not significantly affect grinding equipment or flour production. Also a reduction in the size of the work portion, when more than 10 green bulblets are present, is warranted to reduce the time required to analyze 1,000 grams of wheat while maintaining reasonable accuracy.

A majority of the commenters supported the change. Several commenters recommended that the number of garlic bulblets found in the sample be shown in all instances; but the current system has a provision for obtaining counts on the certificates upon request and FGIS contends this is working satisfactorily. One commenter stated that a 250-gram portion of wheat was insufficient to accurately determine a garlic count. While a larger portion size might provide a higher degree of accuracy, sufficient accuracy will be maintained on a 250-gram portion while saving inspection time needed to perform the counting. Another commenter stated that a better method is needed for scoring small broken pieces of garlic. While it is recognized as a problem, at this time FGIS is not aware of a better method. In view of the above, in § 810.308 it is proposed that: (1) The special grade "Light garlicky" be deleted; (2) the limit for special grade "Garlicky" be redefined as "more than 2 green bulblets or an equivalent quantity of dry or partly dry bulblets in 1,000 grams"; and (3) the determination of garlic be based on a 250-gram work portion when more than 10 green garlic bulblets are present which will appear in the Grain Inspection Handbook.

Also in § 810.309 it is proposed to delete the special grade designation of "Light garlicky".

(c) Castor Beans

The numerical grade limit of 2 castor bean seeds is too lenient. Castor bean seeds are rarely found in any grain (7 CFR 810.306 at (3), but the large size of the seed and the toxicity of the ricin found within, make it prudent to permit

the presence of only the minimum number of seeds in wheat. The majority of the commenters supported tightening the limit for castor bean seeds.

Accordingly, in § 810.306 it is proposed that the limit for castor bean seeds in the numerical grades be reduced from 2 to 1, i.e., when a 1,000 gram sample contains more than 1 castor bean the wheat will be graded "U.S. Sample grade."

(d) Test Weight Requirements for Mixed Wheat

A change is needed to clarify the test weight requirements when Hard Red Spring wheat or White Club wheat predominate in the mixture (7 CFR 810.306(b)) because the test weight requirements for Hard Red Spring wheat and White Club wheat in the various grades differ. The intent of the standards is to apply the test weight requirements of the predominating class. However the grade chart is not definitive on this point, and differences in interpretation have resulted. The issue presented was whether to modify the chart to indicate the predominating class.

Although a few commenters stated the changes were not needed, a majority of commenters supported the proposal.

Accordingly, in § 810.306 it is proposed to modify the grade chart. When Hard Red Spring wheat or White Club wheat predominate in a sample of Mixed wheat, the test weight requirements for those wheat classes would apply.

(e) Smutty Wheat

Currently, when smut is evident in a sample, the special grades "Light smutty" and "Smutty" are applied (7 CFR 810.308 (d) and (e)). Also, when the sample contains a quantity of smut so great that one or more grade requirements cannot be determined accurately, a Sample grade designation is applied (7 CFR 810.306 at (2)). Inspection data show that wheat rarely contains so much smut that grade requirements cannot be determined accurately. The special grades appear to adequately inform the user of the condition of the wheat and make the requirement regarding extreme quantities of smut as Sample grade unnecessary.

The issue presented was whether to delete the presence of an extreme amount of smut as a factor rendering wheat Sample grade.

The majority of commenters supported the change.

Accordingly, in § 810.306 it is proposed that the presence of an extreme amount of smut would not render the wheat U.S. Sample grade.

(f) Certification of Western White Wheat

In Western White wheat, the percentage of White Club wheat is currently stated first in the "Remarks" section of the official certificate, followed by the percentage of other white wheat (7 CFR 810.307(a)(5)). Certification procedures for mixtures of grains or classes are to list the components of the mixture in the order of predominance. In most samples of Western White wheat, White Club wheat comprises a small or minimal proportion of the mixture, with other white wheat predominating.

Therefore, the issue presented was whether to list the components of the subclass Western White wheat in the order of predominance on the official certificate as is done in mixed grains.

The majority supported listing the components of Western White wheat in the order of predominance.

Accordingly, in § 810.307 it is proposed that the components of Western White wheat be listed in the order of predominance on the official certificate.

(g) Basis of Determination

The analysis for wheat of other classes, contrasting classes, and subclasses currently is performed on wheat after the removal of dockage (7 CFR 810.303(c)). In contrast heat-damaged kernels, damaged kernels (total), and foreign material analyses are performed on wheat after the removal of dockage and shrunken and broken kernels (7 CFR 810.302(g).

Shrunken and broken kernels are pieces of wheat and other material that pass through a 0.064x⅜ inch oblong-hole sieve. These shrunken and broken kernels are difficult to analyze for several of the grading factors such as, wheat of other classes, contrasting classes, and subclasses. Increased inspection accuracy and a reduction in inspection time would result if the analyses were performed after the removal of the shrunken and broken kernels. Therefore, the issue presented was whether to analyze the factors of wheat of other classes, contrasting classes, and subclasses on a work portion of wheat free from dockage *and* shrunken and broken kernels.

The majority supported the change.

Accordingly, in § 810.303 it is proposed that the analysis for the factors wheat of other classes, contrasting classes, and subclasses be performed on a work portion of wheat free from dockage and shrunken and broken kernels.

(h) Contrasting Classes

There are three classes of red wheat grown in the United States. Two of these classes, Hard Red Spring and Hard Red Winter Wheat, are produced for their protein quantity and quality characteristics and are considered bread wheats.

The class Soft Red Winter wheat is bred to contain a lower percentage of protein with different quality characteristics and is used for cakes, cookies, crackers, pretzels, doughnuts, and the like. Because the two types (hard and soft) of wheat have been developed for particular needs, and possess different chemcial and physical characteristics, mixing the two types may adversely affect milling and flour performance.

Currently, U.S. No. 2 Dark Northern Spring wheat or U.S. No. 2 Hard Red Winter wheat may contain a maximum of 5.0 percent of Soft Red Winter wheat. The issue was whether the maximum other class limits should be lowered to 2.0 percent.

The majority of the commenters opposed a change to consider soft and hard types as contrasting classes, and stated that: (1) Analysis is difficult and subjective, (2) the proposed change was impractical and unnecessary, (3) buyers could get any level of quality desired by paying the proper premium, (4) current standards are understood by the industry and present few problems, (5) changing to more restrictive limits would cause an increase in grading errors resulting in more appeals at increased cost and render some producers' wheat unmarketable, (6) millers accept hard wheat containing 5 percent of soft wheat, (7) producers and handlers may be penalized in areas where both soft and hard types are produced and may become mixed, and (8) some new varieties of winter wheat are crosses of soft and hard types; consequently, typical kernel appearance has become diffused for these wheats.

The minority of the commenters supported a change, and stated that: (1) Mixtures are not desired because of the difference in milling and baking qualities of soft and hard wheats, (2) tempering characteristics and mixing times are different, (3) intentional admixing is a practice that becomes increasingly attractive when the price differential between the two types becomes great and that any cash benefits that accrue are not passed back to the producer or the importer, (4) reducing the amount of contrasting

classes would discourage blending, (5) blending capabilities in some countries are restrictive; therefore, poorer quality wheat could not be blended with their domestic wheats to improve quality, and (6) reducing the amount of contrasting classes would insure more uniform quality and improve our competitive position in world trade.

After reviewing these comments, FGIS has decided not to make a proposal concerning contrasting classes at this time but will continue to study the issue.

Red Wheat

In addition to those proposals related to the issues mentioned in the March 22, 1983, notice, FGIS proposes to establish an additional class of wheat designated as Red wheat. Originally, classes and subclasses were incorporated into the standards to facilitate marketing by aiding the buyer in the selection of the proper wheat for the product to be made. Each class had certain unique visual and physical characteristics. Recently plant breeders have developed red wheat which exhibit nonuniform physical appearance atypical of existing classes. To enable the grain market to ascertain use and value, it is proposed to establish an additional class of wheat, designated as Red wheat. Such a class would include blends of those red wheat varieties which are particularly difficult to identify and which appear as mixtures consisting of two or more of the following classes, Hard Red Winter, Soft Red Winter, or Hard Red Spring wheat. The minor component should represent a minimum of ten percent. For this new class of Red wheat, the grade factors for all other classes and subclasses would apply, except for wheat of other classes, with the additional factor, protein content. The minimum protein content for the grades 1, 2, 3, 4, and 5 would be 13.5, 11.0, 10.0, 9.0, and 9.0 percent, respectively, on a 14 percent moisture basis. The addition of protein content would assist in identifying the potential end use. For the class Red wheat, the factor limits for wheat of other classes shall not apply.

Accordingly, in §§ 810.301, 810.302, 810.306, and 810.307 FGIS proposes to establish an additional class of wheat designated as Red wheat. Due to the proposed establishment of the class Red wheat, a necessary amendment to the definition of Mixed wheat in § 810.301 is also proposed. Also, the resultant renumbering of footnotes in § 810.306 is proposed.

Other Comments

In addition to comments directly related to the issue presented in March 22, 1983, notice, interested persons provided additional comments regarding classing, inspection procedures, certification, infestation, grading factors, and dockage. They are as follows:

1. Classing:

a. Grade wheat by class instead of subclass.

b. No change should be made regarding the classing of Southwest-grown wheat.

c. Review classing of Southwest-grown red wheat.

d. Change the classing system to use protein for categorizing wheat as Hard, Semi-hard, and Soft.

e. Combine the classes of Hard Red Spring wheat and Hard Red Winter wheat and designate as Hard Red wheat.

f. Loosen the requirements for the factor wheat of other classes.

g. Retain the subclasses in the class Hard Red Spring wheat.

h. Reinstate dark, hard, and vitreous kernel determinations for Hard red Winter wheat.

i. Retain the method of starting hard and vitreous kernels of Durum wheat.

j. Delete the Durum wheat subclasses and substitute a hard and vitreous kernel.

FGIS has decided not to propose at this time any wheat classing revisions based on these comments; however, FGIS will continue to study these comments as part of its constant effort to improve the classing of wheat. No action will be taken until further study can be completed.

2. Inspection procedures:

Suggestions were made to:

a. Use a No. 4 sieve in the Carter dockage tester to perform the shrunken and broken kernels test on the entire sample.

b. Delete the No. 8 sieve when determining dockage if excessive wild buckwheat is present.

The use of a No. 4 sieve in the top carriage of the Carter dockage has been studied and shown to save inspection time. However, this change is not being proposed because the results are not consistent with the currently used mechanical shaker. Also, some factors are currently determined prior to the removal of shrunken and broken kernels. If the proposal to analyze wheat of other classes, contrasting classes, and subclasses on a sample after the removal of dockage and shrunken and broken kernels is adopted, the suggestion may warrant further study.

The use of the No. 8 sieve is a special procedure for determining dockage when an excessive amount of wild buckwheat is found in a sample. At the present, FGIS does not consider this procedure to be reliable. If the procedure can be modified to be more reliable in the future, FGIS will reexamine this question.

3. Certification:

Suggestions were made to:

a. Delete the subclassing of Durum wheat and show the percentage of hard and vitreous kernels in Durum wheat on the certificate.

b. Include protein and falling number values on the certificate.

Subclassing in Durum wheat provides a means of separating the wheat into 3 groups according to the percentage of hard and vitreous kernels. Subclassing serves a useful purpose in assuring the buyer a minimum percentage of hard and vitreous kernels. If the subclasses were deleted and the percentage of hard and vitreous kernels was required to be shown on the certificate, inspection time and cost would be increased substantially.

A requirement to show protein and falling number values on all certificates would increase inspection costs unnecessarily. For example, protein seldom is requested on Soft Red Winter wheat. Also, falling number results would be meaningful only if sprouted wheat were a problem. These tests should be performed only in instances when they are meaningful to the applicant. Currently, both tests are available, and performed on a request basis.

4. Infestation:

Suggestions were made to:

a. State on certificates the number of live and dead insects and not differentiate between weevils and other insects.

b. Record on certificates the presence of all insects.

c. Provide a more accurate evaluation of infestation.

d. Designate a single live insect as making a sample weevily.

Infestation has been a controversial issue for many years. The detection of live or dead insects is difficult because some insects are internal feeders and cannot be detected readily. Obtaining a representative sample to determine the degree of infestation is difficult.

A proposal addressing infestation was not included because (1) further study is needed regarding suitable methods to detect hidden, live or dead infestation, and (2) a visual count of live insects is available. FGIS will continue to cooperate with on-going research efforts and the industry to make improvements in this area.

5. Grading factors:

Suggestions were made to:

a. Include gluten requirements in the standards.

b. Raise test weight requirements for all classes of wheat.

c. Identify scabby wheat separately in the standards.

d. Redesignate and set limits for heat damage as heat damage 0.2 percent and heavy heat damage, badly burned, 0.02 percent.

e. Tighten ergot limit.

f. Tighten grade limits in Durum wheat because presently the limits are so wide that there is inconsistent quality in the same grade.

A suggestion has been made to include gluten requirements in the standards. Gluten tests currently are not available under the U.S. Grain Standards Act because the test rarely is requested and is very time consuming.

One commenter suggested raising the test weight requirements for wheat. Additional support and study would be required before such a change could be implemented.

The identification of scab-infected wheat as a separate factor was suggested. Upon request, the amount of scab-damaged wheat present in a sample can be shown on the inspection certificate.

It was suggested that the factor heat damage be further divided into two factors—heat damage and heavy heat damage (badly burned) with a limit of .02 percent for the latter. Prior to May 1977, the heat-damage limits for grades U.S. No. 1 and U.S. No. 2 were 0.1 percent and 0.2 percent, respectively. Because of sampling and grading variability, 0.2 percent was subsequently established as the grade limit for heat-damaged kernels in both grades U.S. No. 1 and U.S. No. 2. A limit of 0.02 percent may be too restrictive for practical application under the current sampling and inspection procedures. Further evaluation is necessay.

Tightening the limit for ergot was suggested. A change in the limit for ergot in wheat was considered in the previous revision of the wheat standards. The comments received at that time opposed the change; therefore, the current limit was retained and FGIS is not proposing any changes at this time.

A commenter stated that the grade factor limits in Durum wheat were too wide, causing shipment within the same grade to be inconsistent in quality. Grades accommodate variations in the crop. Differences in environment and variety may account for the differences. The suggested change would not assure consistency because the "lowest" factor determines the grade.

Many of the comments appear to have merit and will be studied and evaluated for impact, procedures, and instrumentation needs. Due consideration will be given to methods that can be developed and shown to be workable within the current grain marketing system.

Some comments and suggestions did not directly relate to the wheat standards and therefore will not be addressed in this docket. They will be addressed when the appropriate standards are reviewed.

List of Subjects in 7 CFR Part 810

Export and grain.

PART 810—[AMENDED]

1. Section 810.301 is amended by revising the introductory text, by revising existing paragraph (g) and redesignating it as paragraph (h) and by adding a new paragraph (g) to read as follows:

§ 810.301 Definition of wheat.

The grain of common wheat *(Triticum aestivum L.)*, club wheat (*T. pactum Host*), and Durum wheat (*T. durum Desf.*) which, before the removal of the dockage, consists of 50 percent or more of one or more of these wheats and not more than 10 percent of other grains for which standards have been established under the United States Grain Standards Act and which, after the removal of the dockage, contains 50 percent or more of whole kernels of one or more of these wheats. Wheat shall be divided into the following eight classes: Hard Red Spring wheat, Durum wheat, Hard Red Winter wheat, Soft Red Winter wheat, White wheat, Unclassed wheat, Red wheat, and Mixed wheat.

* * * * *

(g) *Red wheat.* Any mixture of the classes Hard Red Winter, Hard Red Spring, or Soft Red Winter wheat which consists of less than 90 percent of one of these classes and more than 10 percent of one or more of the remaining Red wheat classes.

(h) *Mixed wheat.* Any mixture of wheat which consists of less than 90 percent of one class and more than 10 percent of one other class, or a combination of classes which meets the definition of wheat, and which does not meet the requirements of the class Red wheat.

* * * * *

2. Section 810.302 is amended by revising paragraph (a) to read as follows:

§ 810.302 Definition of other terms.

* * * * *

(a) Contrasting classes shall be:

(1) Durum wheat, White wheat, and Unclassed wheat in the classes Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, and Red wheat.

(2) Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, White wheat, and Unclassed wheat in the class Durum wheat.

(3) Hard Red Spring wheat, Durum wheat, Hard Red Winter wheat, Soft Red Winter wheat, and Unclassed wheat in the class White wheat.

* * * * *

3. Section 810.303 is amended by revising paragraph (c).

§ 810.303 Basis of determination.

* * * * *

(c) *All other determinations.* All other determinations shall be upon the basis of the grain when free from dockage except the determination of heat-damaged kernels, damaged kernels (total), foreign material, other classes, contrasting classes, and subclasses shall be upon the basis of the grain when free from dockage and shrunken and broken kernels; and the determination of odor shall be upon either the basis of the sample as a whole or the grain when free from dockage.

* * * * *

4. Section 810.305 is amended by revising paragraph (b) to read as follows:

§ 810.305 Percentages.

* * * * *

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining the identity of wheat, the class, the subclass, and the percentage of dockage and/or ergot. The percentage when determining the identity of wheat, the class, and the subclass shall be stated to the nearest whole percent. The percentage of dockage when equal to one-half percent or more shall be stated in terms of half percent, whole percent, or whole and half percent, as the case may be, as shown in the following examples: Dockage ranging from 0.0 to 0.25 would show no dockage figure. Dockage ranging from 0.26 to 0.75 percent shall be expressed as 0.5 percent, from 0.76 to 1.25 percent as 1.0 percent, from 1.26 to 1.75 percent as 1.5 percent, and so forth. The percentage of ergot shall be stated to the nearest hundredth percent.

5. Section 810.306 is amended by revising paragraph (a) to read as follows:

Grades, Grade Requirements, and Grade Designations

§ 810.306 Grades and grade requirements.

WHEAT

[(a) Grades and grade requirements for all classes of wheat, except Mixed wheat. (See also § 810.308).]

Grade	Minimum limits of—			Maximum limits of—						
	Test weight per bushel		Protein						Wheat of other classes [5]	
	Hard Red Spring wheat or White Club wheat (pounds) [1]	All other classes and subclasses (pounds)	Red wheat only [2] (percent)	Heat Damaged kernels (percent)	Damaged kernels (total) [3] (percent)	Foreign material (percent)	Shrunken and broken kernels (percent)	Defects (total) [4] (percent)	Contrasting classes (percent)	Wheat of other classes [6 7] (percent)
U.S. No. 1	58.0	60.0	13.5	0.2	2.0	0.5	3.0	3.0	1.0	3.0
U.S. No. 2	57.0	58.0	11.0	0.2	4.0	1.0	5.0	5.0	2.0	5.0
U.S. No. 3	55.0	56.0	10.0	0.5	7.0	2.0	8.0	8.0	3.0	10.0
U.S. No. 4	53.0	54.0	9.0	1.0	10.0	3.0	12.0	12.0	10.0	10.0
U.S. No. 5	50.0	51.0	9.0	3.0	15.0	5.0	20.0	20.0	10.0	10.0
U.S. Sample grade:										

U.S. Sample grade shall be wheat which:

(1) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or

(2) Contains 8 or more stones, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria spp.*), 2 or more castor beans (*Ricinus communis*), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), or 2 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth per 1,000 grams of wheat; or

(3) Has a musty, sour, or commercially objectionable foreign odor (*except smut or garlic odor*); or

(4) Is heating or otherwise of distinctly low quality.

[1] These requirements also apply when Hard Red Spring wheat or White Club wheat predominate in a sample of Mixed wheat.
[2] On a 14 percent moisture basis.
[3] Includes heat-damaged kernels.
[4] Defects (total) include damaged kernels (total), foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for defects
[5] Unclassed Wheat of any grade may contain not more than 10 percent of wheat of other classes.
[6] Includes contracting classes.
[7] These requirements do not apply to the class Red wheat.

* * * * *

6. Section 810.307 is amended by revising paragraph (a) to read as follows:

§ 810.307 Grade designations.

(a) *Grade designations for wheat.* (See also § 810.308). The grade designations for wheat shall include in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade"; (3) the subclass, or in the case of Hard Red Winter wheat, Mixed wheat, Soft Red Winter wheat, Unclassed wheat, and Red wheat, the class; (4) each applicable special grade (see also section 810.309); and (5) when applicable, the word "dockage" together with the percentage thereof. In the case of Western White wheat, there shall be included under "Remarks" on the inspection certificate, in the order of predominance, the name and percentage of White Club wheat and other white wheat in the mixture. In the case of Unclassed wheat, there shall be included under "Remarks" on the inspection certificate the color or other characteristics which describe the wheat, together with the percentage. In the case of Red wheat, there shall be included under "Remarks" on the inspection certificate, the percentage of protein. In the case of Mixed wheat, there shall be included under "Remarks" on the inspection certificate, in order of predominance, the name and percentage of the classes that comprise the mixture.

* * * * *

7. Section 810.308 is amended by revising paragraph (b), removing paragraph (c), redesignating paragraphs (d) through (g) as paragraphs (c) through (f) as follows:

Special Grades, Special Grade Requirements and Special Grade Designations

§ 810.308 Special grades and special grade requirements.

* * * * *

(b) *Garlicky wheat.* Wheat which contains in a 1,000-gram portion more than two green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(c) *Light Smutty wheat.* * * *

(d) *Smutty wheat.* * * *

(e) *Weevily wheat.* * * *

(f) *Treated wheat.* * * *

8. Section 810.309 is amended by revising paragraph (a) to read as follows:

§ 810.309 Special grade designation.

* * * * *

(a) The grade designation for ergoty, garlicky, light smutty, smutty, and weevily wheat shall include in the order listed, following the applicable class or subclass, the word(s) "Ergoty": "Garlicky": "Light Smutty", "Smutty": and "Weevily": as warranted, and all other information prescribed in section 810.307.

* * * * *

(Secs. 5 and 18, Pub. L. 94–582, 90 Stat. 2869 and 2884 (7 U.S.C. 76 and 87(e)).

Dated: December 22, 1983.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84–809 Filed 1–12–84; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–13705; File No. S7–1–84]

Payment of Administrative Fees to the Depositor or Principal Underwriter of a Unit Investment Trust

AGENCY: Securites and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for comment a rule under the Investment Company Act of 1940 that would permit the trustee of a unit investment trust to be reimbursed from trust assets for fees paid to the trust's depositor for certain

bookkeeping and other administrative services. The rule also would provide the exemptive relief to an insurance company separate account and related persons that offer or sell variable annuity contracts necessary to permit deduction of such fees from the account's assets. The proposal would codify the "at cost" standard that the Commission has applied to individual requests for approval of such fees and would eliminate the need for these actions. The Commission is also proposing related technical amendments to one of the general rules under the Act.

DATE: Comments must be received on or before February 25, 1984.

ADDRESS: Comments should be sent in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-1-84. All comments will be available for public inspection in 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 Robert E. Plaze, Attorney (202-272-2622), Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is publishing for public comment proposed rule 26a-1 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) ("Act"), which would allow as an expense to the trustee or custodian (collectively, "trustee") of a unit investment trust ("trust") any fee paid to the depositor of or principal underwriter for such trust and related persons (collectively, "depositor") for bookkeeping or other administrative services of a character normally performed by the trustee itself ("administrative fees"), provided that such fee is an amount not greater than the estimated cost of the services provided. The proposed rule also would provide exemptive relief to insurance company separate accounts and related persons that offer or sell variable annuity contracts (collectively, "separate accounts") [1] from the provisions of sections 26(a) and 27(c)(2) of the Act (15 U.S.C. 80a-26(a) and 80a-27(c)(2) to the extent necessary to permit the deduction of administrative fees from a separate account's assets. The proposal would codify the "at cost" standard that the Commission has applied in individual cases, particularly exemptive applications filed by separate accounts. In addition, the Commission is proposing several related technical amendments to rule 0-1(e) (17 CFR 270.0-1(e)) of its General Rules and Regulations under the Act.

[1] The term "separate account" is defined in section 2(a)(37) of the Act (15 U.S.C. 80a-2(a)(37)). A substantially identical definition of "separate account," as that term is used in various rules under the act, is contained in rule 0-1(e)(1) under the Act (17 CFR 270.0-1(e)(1)). The term "variable annuity contract" is defined in rule 0-(e)(1) under the Act (17 CFR 270.0-(e)(1). *See* Investment Company Act Rel. No. 13406 (July 28, 1983) (48 FRE 36097, Aug. 9, 1983).

Discussion

Section 26(a) of the Act contains various requirements for trusts.[2] Section 26(a)(2) provides, among other things, that no trust depositor shall sell any security issued by the trust unless the trust indenture provides that no payments to the depositor shall be allowed the trustee as an expense. The purpose of this provision is to prohibit the depositor from "reaping hidden profits" through purported administrative fees.[3] Section 26(a)(2)(C) does permit, however, the depositor to receive administrative fees which do not exceed such reasonable amount as prescribed by the Commission.[4]

The Commission has interpreted section 26 to permit a payment from trust assets to the depositor for administrative fees provided that the fee is an amount not greater than the estimated cost of the services provided, *i.e.*, the services must be provided "at cost."[5] Although this issue has arisen most frequently in applications filed by separate accounts seeking the exemptions needed to permit deduction of annual contract maintenance fees, transfer fees, and other types of administrative fees,[6] it also has arisen in applications and no-action letters involving administrative fees imposed by trusts that are not separate accounts. In all of these contexts, the "at cost" standard has been applied. In light of this experience, the Commission is proposing to codify such relief in rule 26a-1.

Proposed Rule and Rule Amendments

1. Proposed Rule 26a-1

Paragraph (a) of proposed rule 26a-1 provides generally that for purposes of section 26(a)(2)(C), payment of a fee to the depositor for administrative services shall be allowed the trustee as an expense provided that such fee is not greater than the estimated cost of the services provided. Paragraph (b) of the proposed rule provides any separate account, and any depositor of such account, with the exemptive relief from the provisions of sections 26(a) and 27(c)(2) necessary to permit the deduction of any fee that would be allowed a trustee as an expense as provided in paragraph (a) of the rule.

2. Proposed Technical Amendments to Rule 0-1(e)

Rule 0-1 of the General Rules and Regulations under the Act defines various terms used in those rules. Rule 0-1(e) defines the term "separate

[2] Section 26(a) provides, in relevant part, that:

No principal underwriter for or depositor of a registered unit investment trust shall sell, except by surrender to the trustee for redemption, any security of which such trust is the issuer (other than short-term paper), unless the trust indenture, agreement of custodianship, or other instrument pursuant to which such security is issued—

(2) provides, in substance, * * * (C) that no payment to the depositor of or a principal underwriter for such trust, or to any affiliated person or agent of such depositor or underwriter, shall be allowed the trustee or custodian as an expense (except that provision may be made for the payment to any such person of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services, of a character normally performed by the trustee or custodian itself); * * *.

[3] *Id.; H.R. Rep. No.* 2639, 76th Cong., 3d Sess. 22 (1940). *See also S. Rep. No.* 1775, 76th Cong., 3d Sess. 8, 18 (1940).

[4] *See Securities and Exchange Commission* v. *Variable Annuity Life Ins. Co.*, 39 SEC 680, 702-703 (1960).

[5] This "at cost' standard is founded on the policies underlying section 26(a)(2)(C) of the Act, which is intended generally to preserve trust assets and prevent securityholders from being subjected to purported "administrative" fees which, instead of compensating the depositor for administrative services actually rendered, in fact provide additional remuneration to the depositor. *See generally H.R. Rep. No.* 2639, 76th Cong., 3d Sess. 22 (1940).

The Commission has applied the "at cost" standard in this context as follows: If the separate account reserves the right to increase the fee in question, the fee must be set at a level not greater than the cost of the service to be provided that year; if the fee is guaranteed not to increase (*i.e.*, where applicable state law or the terms of a variable annuity contract itself limits the account's ability to raise the level of administrative fees over the life of the contract), the fee may be set at a level not greater than the average expected cost of the services to be provided during the period of the guarantee.

[6] A separate account may be registered under the Act as a unit investment trust ("trust account") or as an open-end management investment company ("management account"). By virtue of section 27(c)(2) of the Act, the requirements of section 26(a), in addition to being directly applicable to trust accounts, are made applicable to any registered investment company—including management as well as trust accounts—offering periodic payment plan certificates. A variable annuity contract which is permitted to be paid for with more than one purchase payment, including a reinvestment of dividends or an accumulation of capital gains attributable to the contract, is a periodic payment plan certificate. *See, e.g., Prudential Ins. Co. of Am.*, 41 SEC 335, 348, *aff'd sub. nom. Prudential Ins. Co. of Am.* v. *Securities and Exchange Commission*, 326 F. 2d 383 (3d Cir.), *cert. denied*, 377 U.S. 953 (1964).

account"; and sets forth the conditions for availability of exemptive relief for separate accounts pursuant to the general rules. The Commission is proposing to amend rule 0–1(e) to include rule 26a–1 as one of the rules listed therein.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule 26a–1 and Proposed Amendments to Rule 0–1(e)

It is proposed that Part 270 of Chapter II of Title 17 of the Code of Federal Regulations be amended as follows:

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

1. By revising paragraphs (e) introductory text and (e)(2) of § 270.0–1 to read as follows:

§ 270.0–1 Definition of terms used in this part.

* * * * *

(e) Definition of separate account and conditions for availability of exemption under §§ 270.6c–6, 270.6c–7, 270.6c–8, 270.11a–2, 270.14a–2, 270.15a–3, 270.16a–1, 270.22d–3, 270.22e–1, 270.26a–1, 270.26a–2, 270.27a–2, 270.27a–3, 270.27c–1, and 270.32a–2 of this chapter.

(1) * * *

(2) As conditions to the availability of exemptive Rules 6c–6, 6c–7, 6c–8, 11a–2, 14a–2, 15a–3, 16a–1, 22d–3, 22e–1, 26a–1, 26a–2, 27a–1, 27a–2, 27a–3, 27c–1, and 32a–2, the separate account shall be legally segregated, the assets of the separate acount shall, at the time during the year that adjustments in the reserves are made, have a value at least equal to the reserves and other contract liabilities with respect to such account, and at all other times, shall have a value approximately equal to or in excess of such reserves and liabilities; and that portion of such assets having a value equal to, or approximately equal to, such reserves and contract liabilities shall not be chargeable with liabilities arising out of any other business which the insurance company may conduct.

2. By adding new § 270.26a–1 to read as follows:

§ 270.26a–1 Payment of administrative fees to the depositor or principal underwriter of a unit investment trust; exemptive relief for separate accounts.

(a) For purposes of section 26(a)(2)(C) of the Act, payment of a fee to the depositor of or a principal underwriter for a registered unit investment trust, or to any affiliated person or agent of such depositor or underwriter (collectively, "depositor"), for bookkeeping or other administrative services provided to the trust shall be allowed the custodian or trustee ("trustee") as an expense, *Provided*, That such fee is an amount not greater than the expenses actually paid by such depositor directly attributable to the services provided and increased by the services provided, without profit, as determined in accordance with generally accepted accounting principles consistently applied.

(b) A registered separate account, and any depositor of or principal underwriter for such account, shall be exempt from the provisions of sections 26(a) and 27(c)(2) of the Act (15 U.S.C. 80a–26(a) and 80a–27(c)(2)) with respect to any variable annuity contract participating in such account to the extent necessary to permit the deduction of any fee that would be allowed a trustee as an expense as provided in paragraph (a) above.

Regulatory Filexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that the rule proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Paperwork Reduction Act

The proposed rule is not subject to the Act because it does not impose an information collection requirement.

Statutory Authority: Proposed rule 26a–1 is issued pursuant to the provisions of sections 6(c), 26(a), and 38(a) of the Act (15 U.S.C. 80a–6(c), 80a–26(a), and 80a–37(a)). The proposed amendments to rule 0–1(e) (17 CFR 270.0–1(e)) are issued pursuant to the provisions of section 38(a) of the Act (15 U.S.C. 80a–37(a)).

By the Commission.

George A. Fitzsimmons,

Secretary.

January 9, 1984.

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 26a–1 under the Investment Company Act of 1940, if adopted, will not have a significant economic impact on a substantial number of small entities. The reason for this certification in the case of traditional unit investment trusts is that it appears that there are few, if any, such trusts that would find it necessary to utilize the proposed rule since most such trusts do not engage in the types of activities addressed by the rule. Moreover, the reduction, if any, in costs to such trusts resulting from the proposed rule's elimination of their need to obtain approval of certain fees for administrative services will not have a significant economic impact on any such trusts.

The reason for the certification in the case of insurance company separate accounts is that there are few, if any, such separate accounts, when considered in conjunction with their sponsoring insurance companies, that qualify as "small entities" as that term has been defined in the Commission's rules. Moreover, the reduction, if any, in costs to such separate accounts resulting from the proposed rule's elimination of their need to file certain applications will not have a significant economic impact on any such separate accounts.

Dated: January 6, 1984.

John S. R. Shad,

Chairman.

[FR Doc. 84–950 Filed 1–12–84; 8:45 pm]

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17 CFR Part 270

[Release No. IC–13706; File No. S7–2–84]

Exemptive Relief for Separate Accounts Relating to Custodianship of and Deduction of Certain Fees and Charges From the Account's Assets

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for comment an exemptive rule under the Investment Company Act for registered insurance company separate accounts with respect to variable annuity contracts participating in such separate accounts. The proposed rule would codify the standards that the Commission has developed in processing individual applications filed by separate accounts seeking the exemptive relief necessary to permit them to engage in certain custodianship activities and to make certain routine deductions from account assets. If adopted, the proposed rule would eliminate the need for separate accounts to obtain individual exemptive orders in connection with these matters. The Commission is also proposing related technical amendments to one of the general rules under the Act.

DATE: Comments must be received on or before February 25, 1984.

ADDRESS: Comments should be sent in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange

Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters should refer to File No. S7–2–84. All comments received will be available for public inspection in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lemke, Special Counsel (202–272–2061), or Robert E. Plaze, Attorney (202–272–2622), Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is publishing for comment proposed rule 26a–2 under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) ("Act"), which would provide registered insurance company separate accounts (sometimes referred to as "separate accounts", "accounts" or "applicants") [1] that offer or sell variable annuity contracts [2] exemptive relief from various provisions of the Act. The exemptive relief also would be available for any depositor of, or underwriter for, such accounts ("other persons," and, together with separate account, sometimes referred to as "applicants"). Proposed rule 26a–2 would codify the standards that the Commission has developed with respect to applications filed by separate accounts and other persons seeking the exemptive relief from the provisions of sections 26(a) and 27(c)(2) of the Act (15 U.S.C. 80a–26(a) and 80a–27(c)(2)) necessary to permit an account's sponsoring insurance company, rather than a bank trustee or custodian ("custodian"), to serve as custodian for the assets of the account. The proposed rule also would provide the relief necessary to permit an account to hold certain property in uncertificated form, to deposit certain securities in securities depositories or utilize the federal book-entry system, and to make certain routine deduction from account assets. In addition, the Commission is proposing several related technical amendments to rule 0–1(e) (17 CFR 270.0–1(e)) of its General Rules and Regulations under the Act. The proposals are part of the Commission's effort to codify the standards that it has developed reviewing applications filed by separate accounts for so-called "start-up" exemptive relief [3] and for other relief under the Act.[4]

[1] The term "separate account" is defined in section 2(a)(37) of the Act (15 U.S.C. 80a–2(a) (37)). A substantially identical definition of "separate account," as that term is used in various rules under the Act, is contained in rule 0–1(e) (1) under the Act (17 CFR 270.1(e)(1)). The term "insurance company" is defined in section 2(a)(17) of the Act (15 U.S.C. 80a–2(a) (17)). A separate account may be registered under the Act either as a unit investment trust ("trust account") or as an open-end management company ("management account").

[2] As defined by Rule 0–1(e) under the Act (17 CFR 270.0–1(e)), the term "variable annuity contract" includes any accumulation or annuity contract, any portion thereof, or any unit of interest or participation therein pursuant to which the value of the contract, either prior or subsequent to annuitization, or both, varies according to the investment experience of the separate account. *See* Investment Company Act Rel. No. 13406 (July 28, 1983) (48 FR 36097, Aug. 9, 1983).

[3] For a variety of reasons, separate accounts must obtain so-called "start-up" relief room various provisions of the Act prior to offering their variable annuity contracts to the public.

[4] *See, e.g.*, Investment Company Act Rel., No. 13407 (July 28, 1983) (48 FR 36243, Aug. 10, 1983) (rule 11a–2); Investment Company Act Rel. No. 13406 (July 28, 1983) (48 FR 36097, Aug. 9, 1983) (rule 6c–8); Investment Company Act Rel. No. 12745 (Oct. 18, 1982) (47 FR 47860, Oct. 28, 1982) (proposed rule 6c–7 and proposed amended rule 14a–2).

Discussion

1. Custodianship Relief

Section 26(a) of the Act prescribes various requirements for trust accounts concerning, among other things, the custodianship of trust assets.[5] The section's legislative history indicates that its purpose is to prevent the "orphanage" of the account's assets by insuring that "a proper trustee has custody of the securities * * * [of the account."[6] By virtue of section 27(c)(2) of the Act, several requirements of section 26(a) are applicable to management accounts and other persons that issue periodic payment plan certificates.[7]

Sections 26(a)(1) and 26(a)(2)(D) which require the designation of one or more custodians, each of which is a bank with a minimum net worth, and require that such custodians have possession of and hold in trust all assets of the trust are incompatible with the insurance laws of some states, which require that the insurance company own and hold the assets of the separate account and prohibit the insurance company from holding those assets in trust.[8] In addition, section 26(a)(2)(D), because it requires that the custodian have "possession" of the account's assets, may prohibit a management account from engaging in various custodianship activities otherwise permitted by section 17(f) of the Act (15 U.S.C. 80a–17(f)) of the rules thereunder (e.g., the deposit of its securities in a clearing agency which acts as a securities depository or in the federal bood entry system) and may prohibit a trust account from holding the shares of its underlying portfolio companies in uncertificated form.

Applicants seeking exemptions to engage in these activities generally demonstrate that the requested relief is consistent with the standards set forth in section 6(c) of the Act (15 U.S.C. 80a–6(c)), and the Commission has routinely granted the requested relief. Specifically, the Commission has approved applications for exemptions

[5] Section 26(a) provides, in relevant part, that:

No principal underwriter for or depositor of a registered unit investment trust shall sell, except by surrender to the trustee for redemption, any security of which such trust is the issuer (other than short-term paper), unless the trust indenture, agreement of custodianship, or other instrument pursuant to which such security is issued—

(1) Designates one or more trustees or custodians, each of which is a bank, * * *; [and]

(2) Provides, in substance, * * * (C) that no payment to the depositor of or a principal underwriter for such trust, or to any affiliated person or agent of such depositor or underwriter, shall be allowed the trustee or custodian as an expense (except that provision may be made for the payment to any such person of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services, of a character normally performed by the trustee or custodian itself); and (D) that the trustee or custodian shall have possession of all securities and other property in which the funds of the trust are invested, all funds held for such investment, all equalization, redemption, and other special funds of the trust, and all income upon, accretions to, and proceeds of such property and funds, and shall segregate and hold the same in trust * * *.

[6] *Hearings on H.R. 10065 Before A Subcomm. of the House Comm. on Interstate and Foreign Commerce*, 76th Cong., 3d Sess. 130 (1940) (statement of David Schenker). *See H.R. Rep. No.* 2639, 76th Cong., 3d Sess. 22 (1940) (hereinafter cited as "House Report"); *S. Rep. No.* 1775, 76th Cong., 3d Sess. 8, 18 (1940), (hereinafter cited as "Senate Report"); *Securities and Exchange Commission* v. *Variable Annuity Life Ins. Co.*, 39 SEC 680, 702 (1960).

[7] Section 27(c)(2) provides that:

It shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, unless—

(2) The proceeds of all payments on such certificate (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having the qualifications prescribed in paragraph (1) of section 26(a) for the trustee of unit investment trusts, and are held by such trustee or custodian under an indenture or agreement containing, in substance, the provisions required by paragraphs (2) and (3) of section 26(a) for the trust indentures of unit investment trusts.

A "periodic payment plan certificate" is defined in section 2(a)(27) of the Act (15 U.S.C. 80a-2(a)(27)), in part, as any certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments. A variable annuity contract which is permitted to be paid for with more than one purchase payment, including a reinvestment of dividends or an accumulation of capital gains, is a periodic payment plan certificate. *See, e.g., Prudential Ins. Co. of Am.*, 41 SEC 335, 348, *aff'd sub. nom. Prudential Ins. Co. of Am.* v. *Securities and Exchange Commission*, 326 F.2d 383 (3d Cir.), *cert. denied*, 377 U.S. 953 (1964).

[8] *See, e.g.*, 27 N.Y. Ins. Law Section 227(j) (Mckinney 1983–1984 Pocket Part).

from sections 26(a) (1) and 26(a)(2) (D) (and section 27(c)(2)) to permit a separate account's sponsoring insurance company to hold the account's assets and to hold those assets in a safekeeping and not in trust because the Commission believes that state insurance laws governing the safekeeping of insurance company assets generally are adequate to ensure the preservation of a separate account's assets. Similarly, the Commission has issued orders granting exemptive relief from section 26(a)(2) (D) (and section 27(c)(2)) to permit management accounts to engage in custodianship practices otherwise permitted by section 17(f) or the rules thereunder because the protections provided therein are sufficient. Finally, the Commission has issued orders granting exemptive relief from section 26(a)(2) (D) (and section 27(c)(2)) to permit trust accounts to hold the shares of their underlying portfolio companies in uncertificated form because this procedure also does not raise the types of problems with which Congress was concerned in enacting section 26(a). Moreover, the issuance of certificated shares in this instance would result in unnecessary costs.

2. Relief for Deduction of Certain Routine Fees and Charges

In addition to prescribing custodianship requirements for separate accounts, section 26(a)(2)(C), in effect, precludes the custodian of a separate account from making deductions from account assets for certain fees and charges such as premium taxes[9] and, if the account is a management account, the investment advisory fee.[10] The Commission has issued exemptive orders permitting an account's trustee or custodian to make these two types of routine deductions. In the case of premium taxes, there is little potential for abuses of the type intended to be deterred by the relevant provisions; with respect to advisory fees, relief has been routinely granted because section 15 and 36 of the Act (15 U.S.C. 80a–15 and 80a–35) reflect the Congressional determination that the appropriate level of such fees is, in the first instance, primarily a matter for parties other than the Commission.

In light of the experience discussed above, the Commission is proposing to codify in rule 26a–2 the relief for deduction of certain routine fees and charges and custodianship relief it routinely grants.

Proposed Rule and Rule Amendments

1. Proposed Rule 26a–2

Paragraph (a) of proposed rule 26a–2 exempts any registered separate account offering variable annuity contracts, and any depositor of or principal underwriter for such account, from the provisions of sections 26(a) and 27(c)(2) of the Act to the extent necessary to permit the separate account's sponsoring insurance company to hold the assets of the separate account rather than to have those assets held by a bank trustee or custodian as required by section 26(a)(1).[11] In addition, paragraph (a) provides relief to permit the sponsoring insurance company to hold such assets not pursuant to a trust indenture of other such instrument as required by section 26(a)(2)(D).

Paragraph (b) of the proposed rule provides relief to permit any trust account to hold the securities of its underlying portfolio companies in uncertificated form. Paragraph (c) provides relief to permit any management account to hold its assets in any manner permitted by section 17(f) of the Act or the rules thereunder.

Finally, paragraph (d) of the proposed rule provides exemptive relief to permit the separate account to deduct from its assets an amount for premium taxes imposed by a State or other governmental entity and to deduct from its assets, if it is a managed account, an investment advisory fee. With regard to the latter fee, it must be emphasized that the proposed rule's exemptive relief would not constitute Commission approval as to the appropriateness of the level of the fee. Rather, as is the case in exemptive orders now, the rule would provide relief only to permit a deduction from an account's assets that is not otherwise permitted by section 26(a)(2).

2. Proposed Technical Amendments to Rule 0–1(e)

Rule 0–1 of the General Rules and Regulations under the Act defines various terms used in those rules. Rule 0–1(e) defines the term "separate account" and sets forth the conditions for availablity of exemptive relief for separate accounts pursuant to those rules. The Commission is proposing to amend rule 0–1(e) to include rule 26a–2 as one of the rules liste therein.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule 26a–2 and Proposed Amendments to Rule 0–1(e)

It is proposed that Part 270 of Chapter II of Title 17 of the Code of Federal Regulations be amended as follows:

1. By revising paragraphs (e) introductory text and (e)(2) of § 270.0–1 to read as follows:

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

§ 270.0–1 Definition of terms used in this part.

* * * * *

(e) Definition of separate account and conditions for availability of exemption under §§ 270.6c–6, 270.6c–7, 270.6c–8, 270.11a–2, 270.14a–2, 270.15a–3, 270.16a–1, 270.22d–3, 270.22e–1, 270.26a–1, 270.26a–2, 270.27a–2, 270.27a–3, 270.27c–1, and 270.32a–2 of this chapter.

(1) * * *

(2) As conditions to the availability of exemptive Rules 6c–6, 6c–7, 6c–8, 11a–2, 14a–2, 15a–3, 16a–1, 22d–3, 22e–1, 26a–1, 26a–2, 27a–1, 27a–2, 27a–3, 27c–1, and 32a–2, the separate account shall be legally segregated, the assets of the separate account shall, at the time during the year that adjustments in the reserves are made, have a value at least equal to the reserves and other contract liabilities with respect to such account, and at all other times, shall have a value approximately equal to or in excess of such reserves and liabilities; and that portion of such assets having a value equal to, or approximately equal to, such reserves and contract liabilities shall not be chargeable with liabilities arising out of any other business which the insurance company may conduct.

2. By adding new § 270.26a–2 to read as follows:

[9] Various states and municipalities impose a premium tax upon purchase payments made under a variable annuity contract, and separate accounts make deduction against contract value in an amount equal to this tax levy. Premium taxes currently imposed range from .5% to approximately 2.5% and usually are deducted at the time purchase payments are made, at redemption or annuitization, or whenever the tax is incurred.

[10] Section 26(a)(2) provides generally, as relevant here, that no principal underwriter for or depositor of a separate account shall sell any security issued by the account unless it provides that no payments to the sponsoring insurance company (*i.e.*, the depositor) shall be allowed as an expense of the account. The legislative history of this provision indicates that this provision is intended to prohibit, "[e]xcept under special circumstances, the depositor or underwriter * * * [of the account] from deriving any fees from the trust other than the original sales load for distributing the shares [of the account]." *House Report, supra* note 6, at 22; *Senate Report, supra* note 6, at 18.

[11] As used in the proposed rule, the phrase "assets of the separate account" is intended to encompass each type of property listed in section 26(a)(2)(D), *i.e.*, "all securities and other property in which the funds of the separate account are invested, all funds held for such investment, all equalization, redemption, and other special funds of the separate account, and all income upon, accretions to, and proceeds of such property and funds * * *."

§ 270.26a-2 Exemptions from certain provisions of sections 26 and 27 for registered separate accounts and others regarding custodianship of and deduction of certain fees and charges from the assets of such accounts.

A registered separate account, and any depositor of or principal underwriter for such account, shall be exempt from the provisions of sections 26(a) and 27(c)(2) of the Act (15 U.S.C. 80a–26(a) and 80a–27(c)(2)) with respect to any variable annuity contract participating in such account to the extent necessary:

(a) To permit the insurance company that sponsors such account to hold the assets of the separate account and to hold such assets not pursuant to a trust indenture or other such instrument;

(b) To permit any separate account registerd under the Act as a unit investment trust to hold the securities of any underlying portfolio companies in uncertificated form;

(c) To permit any separate account registered under the Act as a management investment company to hold its assets in any manner permitted by section 17(f) of the Act (15 U.S.C. 80a–17(f)) or any rules thereunder; and

(d) To permit the deduction from the assets of the separate account of amounts for premium taxes imposed by any State or other governmental entity and, if the separate account is registered under the Act as an open-end management investment company, an investment advisory fee.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that the rule proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release.

Paperwork Reduction Act

The proposed rule is not subject to the Act because it does not impose an information collection requirement.

Statutory Authority: Proposed rule 26a–2 is issued pursuant to the provisions of sections 6(c) and 38(a) of the Act (15 U.S.C. 80a–6(c) and 80a–37(a), respectively). The proposed amendments to rule 0–1(e) (17 CFR 270.0–1(e)) are issued pursuant to the provisions of section 38(a) of the Act (15 U.S.C. 80a–37(a)).

By the Commission.

Dated: January 9, 1984.

George A. Fitzsimmons,

Secretary.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed rule 26a–2 under the Investment Company Act of 1940, if adopted, will not have a significant economic impact on a substantial number of small entities. The reason for the certification is that there are few, if any, registered insurance company separate accounts, when considered in conjunction with their sponsoring insurance companies, that qualify as "small entities" as that term has been defined in the Commission's rules. Moreover, the reduction in costs to such separate accounts, if any, resulting from the proposed rule's elimination of their need to file certain exemptive applications will not have a significant economic impact on any such separate accounts.

Dated: January 6, 1984.

John S. R. Shad,

Chairman.

[FR Doc. 84–949 Filed 1–12–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Ch. I

Proposed Notice of Rulemaking Relating to Entry Type Codes and Entry Numbers

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: Customs has undertaken numerous initiatives relating to the development of a comprehensive integrated automated commercial system. To ensure entry processing efficiency for both Customs and entry preparers, changes in the assignment and format of: (1) Entry type codes; and (2) entry numbers are desirable. The purpose of this notice is to inform the public of these two intended changes, and invite interested parties to comment thereon.

Customs anticipates that the procedure relating to entry type codes will be instituted on a voluntary basis in the near future, and that both procedures will be implemented fully during calendar year 1984. After considering the comments received in response to this notice, Customs will publish a final document in the **Federal Register** informing the public of its conclusions.

DATE: Comments must be received on or before March 13, 1984.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Richard J. Bonner, Duty Assessment Division (202–566–5492), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Customs has undertaken numerous initiatives relating to the development of a comprehensive integrated Automated Commercial System (ACS). When fully developed, this system will provide an efficient means for accomplishing the current and future entry processing needs of Customs, other government agencies, and the international trade community. Currently, many formal entries received by Customs are prepared on computers. More international trade businesses are planning to use computers as part of automating the preparation of import documentation.

To ensure entry processing efficiency for both Customs and entry preparers, changes in the assignment and format of: (1) Entry type codes, and (2) entry numbers are desirable.

This document informs the public of these two intended changes and invites interested parties to comment thereon. After considering the comments received in response to this notice, Customs will publish a final document informing the public of its conclusions.

Entry Type Code

Current Procedure

The currently used entry type codes, numbered one through seven, follow:

Entry type	Entry type code
Consumption Dutiable	1
Vessel Repair	2
Appraisement	3
Warehouse	4
Drawback	5
Bonded A/C Fuel	6
Consumption Free	7

These entry type codes have emerged over many years and served to identify only a few of the many entry types. They are more related to categories that

are of statistical interest than as to types which distinguish Customs' processing requirements. Many entry types such as informals, quota, and temporary importation bond cannot be specifically identified with this entry type code procedure.

New Procedure

There is a need to adopt a simple, flexible entry type code structure which will allow Customs to identify entry transactions by their processing requirements.

The following table of two-digit entry type codes uniquely identifies all current entry types and provides adequate room for additional types in the future. The first digit of the code identifies the general category of entry (i.e., consumption = 0, informal = 1, warehouse = 2, etc.). The second digit further defines the specific processing type within the entry category (i.e., consumption quota = 02, informal free and dutiable = 11, etc.).

Where a transaction requires the use of more than one entry type code, the special entry processing type code 99 should be used (e.g., where both quota and countervailing duty apply to the same transaction, use entry type code 99).

Customs Entry Type Codes

Entry type	Entry type code
Consumption Entries:	
Free and Dutiable	01
Quota	02
Countervailing Duty/Antidumping Duty	03
Appraisement	04
Vessel Repair	05
Foreign Trade Zone (Consumption)	06
Informal Entries:	
Free and Dutiable	11
Quota	12
Warehouse Entries:	
Warehouse	21
Re-warehouse	22
Temporary Importation Bond (TIB)	23
Trade Fair	24
Permanent Exhibition	25
Foreign Trade Zone (Admission)	26
Warehouse Withdrawal:	
For Consumption	31
Quota	32
Aircraft and Vessel Supply	33
Countervailing Duty/Antidumping Duty	34
For Transportation	35
For Exportation	36
For Transportation and Exportation	37
Drawback Entries:	
Manufacturer	41
Same Condition	42
Rejected Importation	43
Government Entries:	
Defense Contract Importation (DCASR)	51
Dutiable	52
Free	53
Transportation Entries:	
Immediate Transportation	61
Transportation and Exportation	62
Immediate Exportation	63
Transit	64
Special Processing Entries:	
Special Entry Processing	99

Once effective, all entry preparers must show the applicable two-digit code on the appropriate Customs entry forms including the entry summary document, Customs Form 7501. Customs expects to implement parts of the new automated commercial processing system in the near future, and, therefore, requests the voluntary compliance of entry preparers in using the new codes as soon as possible after that time. This procedure will be implemented fully during calendar year 1984.

Entry Number

Current Procedure

Customs entries are identified by a nine-digit number in the following format:

FY–NNNNNN–C

FY represents the current fiscal year, NNNNNN is a sequential number, and C is a check digit computed from the first eight digits.

For each fiscal year, Customs issues blocks of entry numbers to brokers and importers for each district and port. Issuing and controlling these numbers have become an administrative burden to Customs and the importing community. The issuance process at the beginning of each fiscal year is particularly time consuming and costly.

New Procedure

For the past year, Customs has been working with the trade community to develop a new entry numbering concept which is simple, flexible, and easy to manage. Customs is now completing the administrative details for this concept which should be implemented during calendar year 1984. At that time, Customs will amend its regulations by removing section 142.3a, Customs Regulations (19 CFR 142.3a), relating to the procedure for assigning entry numbers.

The new number, including hyphens, will be shown on all required entry documentation, including the entry summary document, Customs Form 7501, as follows:

XXX–NNNN–NNNC

XXX represents an entry filer code, NNNN–NNN is a unique number which will be assigned by the entry preparer, and C is a check digit computed from the first ten characters.

Entry Filer Code (XXX)

The entry filer code will be the only portion of the entry number that will be assigned and controlled by Customs. All brokers, importers, and others who prepare entry documentation on a regular basis will be assigned a unique three character (alphabetic, numeric, or alpha-numeric) code. The entry preparer will use this code nationwide as the beginning three characters of the number for all Customs entries, regardless of where the entries are filed. The entry filer code will replace the three digit importer/broker numbers currently assigned by Customs districts.

Entry Preparer Assigned Number (NNNN–NNN)

For each entry, the entry preparer will assign a unique number. This number may be assigned in any manner convenient provided the same number is not assigned to more than one transaction. This number will not be associated with a fiscal year of a Customs district/port. The numbers need not be assigned or used in sequence.

As each entry is received, Customs will record the unique number assigned to the transaction, and will not allow the use of the same number on any subsequent transaction. A duplicate number will result in Customs rejecting the transaction.

Check Digit (C)

The entry preparer will compute the check digit using a formula provided by Customs. These specific details will be made available when the entry filer codes are issued. Customs will assist entry preparers that do not have automation capability to secure the services of a company to handle their entry numbers.

Comments

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

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), it is hereby certified that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

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

Authority: This document is issued under the authority of R.S. 251, as amended (19 U.S.C. 66), sections 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624).

Drafting Information

The principal author of this document was Charles D. Ressin, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices particpated in its development.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: December 14, 1983.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-956 Filed 1-12-84; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[LR-184-80]

Installment Obligations Received From Liquidating Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations relating to reporting on the installment method gain attributable to the receipt of certain installment obligations by a shareholder from a liquidating corporation. Changes to the applicable tax law were made by the Installment Sales Revision Act of 1980. These regulations would affect all taxpayers who receive installment obligations as liquidating distributions and would provide them with the guidance to comply with the law.

DATES: Written comments or requests for a public hearing must be delivered or mailed by March 16, 1984. The regulations provided by this document are proposed to apply to installment obligations distributed by a liquidating corporation after March 31, 1980.

ADDRESS: Send comments and a request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-184-80), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Lou Ann Craner or Cynthia Grigsby of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224. (Attention: CC:LR:T) (202-566-3935).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed rules for reporting installment obligations received by a shareholder from a liquidating corporation under section 453(h) of the Internal Revenue Code, as amended by the Installment Sales Revision Act of 1980, 94 Stat. 2247. This document does not contain regulations relating to the general rules for reporting installment sales and the rules relating to contingent payment installment sales. Temporary regulations relating to those rules were published in the **Federal Register**, February 4, 1981. This document does not contain regulations relating to installment obligations received in certain exchanges in which gain or loss is generally not recognized, nor regulations relating to installment sales between related parties, nor regulations relating to private annuity transactions. Proposed regulations relating to those subjects will be contained in later documents, as will proposed regulations relating to installment sales under sections 453A, 453B, 691, 1038 and 1239. These regulations are issued under the authority contained in sections 453(j) and 7805 of the Code (94 Stat. 2247, 68A Stat. 917; 26 U.S.C. 453(j), 7805).

Under prior law, a shareholder who realized gain on receipt of installment obligations from a liquidating corporation was not permitted to report such gain on the installment method. Instead all the gain had to be recognized in the taxable year in which the obligations were received.

The Installment Sales Revision Act of 1980 provides that, unless a taxpayer elects otherwise, gain attributable to the receipt of an installment obligation in certain liquidations is to be reported on the installment method. To the greatest extent practicable, this regulation conforms the treatment of a shareholder receiveing installment obligations from a liquidating corportion to the treatment of a shareholder selling the stock of the corporation in an installment sale.

The new rules under section 453(h) apply generally to obligations acquired by the distributing corporation in a sale of property during a complete liquidation to which section 337 applies and timely distributed to shareholders whose tax treatment is governed by section 331(a). However, obligations acquired in a sale or exchange of inventory property which was not sold or exchanged in bulk do not qualify. If a corporation has more than one trade or business, an installment obligation received in a bulk sale of the inventory of any one trade or business will qualify for installment method reporting whether or not the inventory of any other trade or business is sold in bulk.

Installment obligations received by shareholders of a corporation in a liquidation under sections other than section 331(a), *e.g.* in a partial liquidation that is not a step in a complete liquidation, do not qualify for installment method reporting under this provision.

The scope of the nonrecognition treatment provided under section 337(a) is limited. By statutory definition, nonrecognition treatment is denied to nonbulk sales of inventory, installment obligations received in respect of such sales of inventory, and installment obligations received in respect of sales and exchanges which took place before adoption of the plan of complete liquidation. Nonrecognition treatment is also denied to the extent of recapturable depreciation in the asset sold. In the liquidation of a collapsible corporation, nonrecognition treatment is not available for sales of depreciable property to a more than 20% (actual or constructive) shareholder, even when nonrecognition treatment is otherwise available under section 341(e)(4). In liquidations to which (prior to TEFRA) section 337(c)(2)(B) applied, nonrecognition treatment was limited to the appreciation in the value of the subsidiary's assets prior to the parent's acquisition of the stock of the subsidiary.

The regulations provide special rules for determining the method of reporting installment obligations distributed to shareholders in those liquidations in which the nonrecognition treatment provided in section 337(a) is limited. Installment obligations (or any portion thereof) received in respect of a nonbulk sale of inventory are not reported on the installment method, but any other installment obligations (or portions thereof) distributed in the liquidation are reported on the installment method. Thus, even though the liquidating corporation may recognize gain or loss on certain sales under exceptions to section 337(a) (*e.g.*, sections 341(e)(4), 1245 or 1250) any installment obligation distributed to a qualifying shareholder is reportable on the installment method.

The regulations also provide a special rule for installment obligations received in liquidations to which section 337(c)(2) (formerly section 337(c)(2)(A)) applies. Section 337(a) does not apply to such liquidations but section 337(d) provides a special adjustment which provides

minority shareholders with what amounts to a credit for the tax on the gain recognized by the liquidating corporation. Here, as in liquidations to which "old" section 337(c)(2)(B) applied, minority shareholders report on the installment method (unless the shareholder elects not so to report) installment obligations received as liquidation distributions without regard to any gain recognized by the corporation.

Generally, a shareholder who receives liquidating distributions in more than one taxable year recovers basis completely before recognizing any gain. This general rule is inconsistent with installment method reporting which requires that basis be ratably apportioned. Therefore, if a taxpayer receives distributions in more than one year, basis must be reallocated in the subsequent year among all the assets distributed in all years. If the reallocation in the later year indicates that the taxpayer did not recognize the appropriate amount of gain in the earlier year, the taxpayer must file an amended return for the first year. If the taxpayer has made a tax-free transfer to a corporation or partnership of an installment obligation which has an initial basis different from the basis it would have after all liquidating distributions are made, these regulations require that the person who has acquired the installment obligation appropriately readjust basis and file an amended return when necessary.

Section 1.453–2, which relates to special rules applicable to dealers in personal property, will be redesignated upon adoption of this document as a Treasury decision. Regulations relating to special rules applicable to dealers in personal property will be published in the future under section 453A. Until those regulations are issued, the material presently contained in § 1.453–2 will remain in effect for dealers in personal property except to the extent that material conflicts with section 453A.

Special Analyses

The Commissioner of Internal Revenue had determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. This document is a notice of proposed rulemaking that solicits public comment and the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do apply because the rules proposed are legislative. Accordingly, a Regulatory Flexibility Analysis is required.

Initial Regulatory Flexibility Analysis

These proposed regulations are necessary to implement the provisions of section 453(h) of the Internal Revenue Code as amended by the Installment Sales Revision Act of 1980.

The objective of these regulations is to provide taxpayers with the guidance necessary to comply with the provisions of section 453(h) as amended by the Installment Sales Revision Act of 1980, relating to the treatment of installment obligations received by a shareholder from a liquidating corporation. These regulations are promulgated under sections 453(j) and 7805 of the Internal Revenue Code of 1954.

These proposed regulations, if adopted, will affect small businesses but not other small entities, such as local governments or tax-exempt organizations, which do not pay taxes.

These proposed regulations, if adopted, will affect any corporation that is a small business if upon liquidation of the corporation a qualifying installment obligation is distributed to shareholders. It is anticipated that a significant number of small businesses will be affected. These regulations do not impose substantial reporting requirements beyond those already imposed by the tax laws generally nor record keeping requirements beyond those necessary to account for any complete liquidation. The professional competence necessary to comply with these regulations in no greater than that already necessary to arrange the complete liquidation of a corporation.

These regulations do not overlap with, conflict with or duplicate any existing federal regulations.

None of the significant alternatives considered in drafting these regulations would have significantly altered the economic impact of these regulations on small entities.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of this regulation is Phoebe A. Mix of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR 1.441–1—1.483–2

Income taxes, Accounting, Deferred compensation plans, Installment sales.

Proposed Amendments to the Regulation

PART 1—[AMENDED]

Accordingly, it is proposed to amend 26 CFR Part 1 by revising § 1.453–2 to read as follows:

§ 1.453–2 Installment obligations received from a liquidating corporation.

(a) *In general.*—(1) *Generally.* Except as provided in proposed § 1.453–3(i) (relating to installment sales of depreciable property to certain closely related persons), a qualifying shareholder who receives a qualifying installment obligation (as defined in paragraph (c) of this section) in connection with a liquidation to which section 337 applies (as defined in paragraph (d) of this section) will treat payments received in respect of the obligation, rather than the obligation, as payment for the shareholder's stock. The shareholder will report the payments received on the installment method unless the shareholder elects otherwise in accordance with the rules set forth in § 1.453–1A(e) of these regulations.

(2) *Liquidating distributions treated as selling price.* All amounts distributed or treated as distributed to the qualifying shareholder incident to the liquidation including, in addition to qualifying installment obligations, cash, other property, and obligations that are not qualifying installment obligations, will be considered as having been received by the shareholder as the selling price (as defined in § 1.453–1A(b)(2)(ii)) for the shareholder's stock in the liquidating corporation. For the proper method of reporting liquidating distributions received in more than one taxable year of a shareholder, see paragraph (e) of this section. An election not to report on the installment method an installment obligation received as a liquidating distribution will apply to all distributions received in the liquidation.

(3) *Assumption of corporate liability by shareholders*—(i) *In general.* If in the course of the liquidation a shareholder assumes or takes subject to secured or unsecured indebtedness, the amount of

the indebtedness is added to the shareholder's basis in the stock of the liquidating corporation. Such additions to basis will not affect the taxpayer's holding period in the stock. Liabilities assumed by or taken subject to by the shareholder do not reduce the amounts received in computing the selling price.

(ii) *Example.* The following example illustrates the provision of paragraph (a)(3):

Example (i). A owns all of the stock of T corporation at a basis of $100,000. T, which is not a collapsible corporation, owns Blackacre, unimproved real property, at a basis of $700,000. Blackacre is subject to a mortgage ("underlying mortgage") of $1,100,000. A is not personally and primarily liable on the underlying mortgage and the T shares held by A are not encumbered by the underlying mortgage. The other assets of T consist of cash of $400,000 and accounts receivable having a total face amount (and value) of $600,000. The unsecured liabilities of T total $900,000. On February 1, 1983, T adopts a plan of complete liquidation comporting with section 337, and promptly sells Blackacre to unrelated B corporation for a mortgage note (bearing adequate stated interest) in the face amount of $4 million (the B note). Under the agreement between T and B corporations, T (or its successor) is to continue to service (make principal and interest payments on) the underlying mortgage. Immediately thereafter, T completes its liquidation by distributing to Mr. A its cash of $400,000, accounts receivable of $600,000, and the $4 million B note. A assumes T's $900,000 of unsecured liabilities and receives the distributed property subject to the obligation to continue to service the $1,100,000 underlying mortgage. In 1983 A receives no payments from B corporation on the B note.

(ii) Provided A does not elect out of installment treatment, the transaction will be reported by A on the installment method. Selling price is $5 million (cash of $400,000, accounts receivable of $600,000, and B note of $4 million). Total contract price also is $5 million. A's basis in the T shares, initially $100,000, is increased by the $900,000 of unsecured T liabilities assumed by Mr. A and by the obligation (to which A takes subject) to service the $1,100,000 underlying mortgage, to an aggregate basis of $2,100,000. Accordingly, gross profit is $2,900,000 (selling price $5 million less aggregate basis of $2,100,000). Gross profit ratio is 58% (gross profit $2,900,000 divided by total contract price of $5 million). 1983 payments to A are $1 million ($400,000 cash plus $600,000 receivables) and A will recognize gain in 1983 of $580,000 ($1 million times 58%).

(iii) In 1984 A receives payment from B corporation on the B note of $1 million (exclusive of interest). A's gain recognized in 1984 is $580,000 ($1 million times 58%).

(b) *Qualifying shareholder.* The term "qualifying shareholder" means a shareholder to which, with respect to the liquidating distribution, section 331 applies. Thus, a creditor who receives a distribution from a liquidating corporation in exchange for the creditor's claim is not a qualifying shareholder whether or not the liquidation is described in section 337(g).

(c) *Qualifying installment obligation*—(1) *In general.* Except as provided in paragraph (c)(4) of this section (relating to certain inventory sales), the term "qualifying installment obligation" means an installment obligation (as defined in § 1.453.1A(c)(2)(i)) acquired in a sale or exchange of corporate assets by the liquidating corporation during the 12-month period set forth in section 337(a). In the case of a liquidation described in section 337(g), the period described in section 337(g)(2) shall be treated as the 12-month period set forth in section 337(a).

(2) *Corporate assets* Except as provided in paragraph (c)(4) of this section (relating to certain sales of inventory), the nature of the assets sold by the tax consequences to the selling corporation do not determine whether an installment obligation is a qualifying installment obligation. Thus, for example, the fact that the fair market value of an asset is less than the adjusted basis of that asset in the hands of the corporation, or that the sale of an asset will subject the corporation to depreciation recapture (*e.g.*, sections 1245 and 1250), or that the assets of a trade or business sold by the corporation for an installment obligation include section 179 property, accounts receivable, installment obligations, or cash will not disqualify installment obligations received in exchange for those assets as qualifying installment obligations. However, a debt obligation received by the corporation in exchange for cash, as an investment functionally unrelated to a sale or exchange of noncash assets by the corporation, will not be treated as a qualifying installment obligation.

(3) *Installment obligations distributed in liquidations to which section 337(c)(3) applies*—(i) *In general.* In the case of a liquidation to which section 337(c)(3) (relating to certain liquidating subsidiary corporations) applies, a qualifying installment obligation acquired in respect of a sale or exchange by the liquidating subsidiary corporation will be treated as a qualifying installment obligation if distributed to a qualifying shareholder of a distributee corporation (as defined in section 337(c)(3)(B)).

(ii) *Examples.* The provisions of paragraph (c) (3) of this section are illustrated by the following examples:

Example (1). A, an individual, owns all of the stock of T corporation. T has an operating division and three wholly-owned subsidiaries, X, Y, and Z. Neither T nor any of its subsidiaries is a collapsible corporation (as defined in section 341(b)). On February 1, 1981, T, Y, and Z all adopt plans of complete liquidation. The following sales promptly are made to unrelated purchasers: T sells its operating division to B for cash and an installment obligation. T sells the stock of X to C for an installment obligation. Y sells all of its assets to D for an installment obligation. Z sells all of its assets to E for cash. In June 1981, Y and Z completely liquidate, distributing their respective assets (installment obligations and cash) to T. In July 1981, T completely liquidates, distributing to A cash and the installment obligations respectively issued by B, C, and D. The liquidation of T is a liquidation to which section 337 applies and the liquidations of Y and Z are liquidations to which section 337(c)(3) applies. A is a qualifying shareholder and the installment obligations issued by B, C, and D are qualifying installment obligations. Unless A elects otherwise, A reports the transaction on the installment method as if the cash and installment obligations had been received in an installment sale of the stock of T corporation.

Example (2). A, a cash method individual taxpayer, owns all of the stock of P corporation. P owns 20% of the stock of S corporation. The balance of the S stock is owned by unrelated individuals. On February 1, 1981, P adopts a plan of complete liquidation and sells all of its property, other than its S stock, to B, an unrelated purchaser for cash and an installment obligation. On March 1, 1981, S adopts a plan of complete liquidation, then sells all of its property to unrelated C for cash and installment obligations, and immediately distributes the cash and installment obligations to its shareholders in completion of the liquidation. Promptly thereafter, P liquidates, distributing to A cash, the B installment obligation, and a C installment obligation that P received in the liquidation of S. In the hands of A, the B installment obligation is a qualifying installment obligation. In hands of P, the C installment obligation was a qualifying installment obligation. However, in the hands of A, the C installment obligation will not be treated as a qualifying installment obligation because P only owns a 20% stock interest in S. Because P does not own at least 80% of the stock of S, the liquidation of S is not a case to which section 337(c)(3) applies. Thus, in the hands of A, the C obligation is consider to be a third party note (not a purchaser's evidence of indebtedness) and therefore is treated as a payment to A in the year of distribution. Accordingly, in 1981 A will report as payment the cash and the fair market value of the C obligation distributed to A in the liquidation of P.

(4) *Installment obligations attributable to certain sales of inventory*—(i) *In general.* An installment obligation acquired by a corporation, in a liquidation to which section 337 applies, in respect of a sale or exchange of a broken lot of inventory (within the

meaning of paragraph (c)(4)(ii)(B) of this section) is not a qualifying installment obligation. In the event that the installment obligation is received in respect of a broken lot of inventory and other assets, only the portion of the installment obligation received in respect of the broken lot of inventory is not a qualifying installment obligation. The portion of the installment obligation attributable to other assets is a qualifying installment obligation. See paragraph (c)(4)(iii) of this section for rules for determining what portion of an installment obligation is nonqualifying.

(ii) *Definitions.* For purposes of this section, the following definitions shall apply:

(A) *Inventory property.* The term "inventory property" means property described in section 337(b)(1)(A).

(B) *Broken lot of inventory.* The term "broken lot of inventory" means inventory property sold or exchanged in a manner which does not meet the description contained in section 37(b)(2).

(iii) *Rules for determining nonqualifying installment obligation.* If a broken lot of inventory is sold to a purchaser together with other corporate assets and the consideration received includes cash (or other property) the assumption of (or taking subject to) corporate liabilities, or both, as well as an installment obligation, the following rules will apply solely for the purpose of determining the portion of the installment obligation (if any) that is attributable to the broken lot of inventory. First, the buyer's assumption of unsecured liabilities and the buyer's assumption of or taking subject to liabilities encumbering the broken lot of inventory are deemed consideration received for the broken lot of inventory, up to the fair market value thereof (liabilities encumbering only assets other than the broken lot of inventory are not deemed to be consideration received for the broken lot of inventory). Second, the sum of any cash and the fair market value of other property (other than the installment obligation) received is deemed consideration for the broken lot of inventory up to the amount (if any) by which the fair market value of the broken lot of inventory exceeds the previously described liabilities. Accordingly, an installment obligation will be deemed to have been received in respect of a broken lot of inventory only to the extent that the fair market value of the broken lot of inventory exceeds the sum of the cash and fair market value of other property received, and the unsecured liabilities and secured liabilities encumbering the broken lot of inventory assumed or taken subject to by the purchaser.

(iv) *Examples.* The provisions of this paragraph are illustrated by the following examples:

Example (1). (i) P corporation has three operating divisions, X, Y, and Z, each engaged in a separate trade or business, and a minor amount of investment assets. P is not a collapsible corporation (as defined in section 341(b)). On July 1, 1981, P adopts a plan of complete liquidation comporting with section 337. The following sales are promptly made to purchasers unrelated to P: P sells all of the assets of the X division (including all of the inventory property) to B for cash of $30,000 plus an amount to be retained by P to meet certain liabilities, and installment obligations totalling $200,000. P sells substantially all of the inventory property of the Y division (worth $100,000) to C for an installment obligation, and sells all of the other assets of the Y division (excluding cash but including installment receivables previously acquired in the ordinary conduct of the business of the Y division) to D for a $170,000 installment obligation. P sells ⅓ of the inventory property of the Z division to E for $100,000 cash, ⅓ of the inventory property of the Z division to F for a $100,000 installment obligation, and all of the other assets of the Z division (including ⅓ of the inventory property worth $100,000) to G for $60,000 cash, a $240,000 installment obligation, and the assumption by G of the liabilities of the Z division. P promptly completes its liquidation, distributing the cash and installment obligations to A, an individual cash method taxpayer who is its sole shareholder. In the hands of A, the installment obligations issued by B, C, and D are qualifying installment obligations. The installment obligation issued by F is not a qualifying installment obligation. A portion of the installment obligation issued by G is a qualifying installment obligation and a portion is not a qualifying installment obligation, determined as follows: G purchased part of the inventory property and all of the other assets of the Z division by paying cash ($60,000), issuing an installment obligation ($240,000), and assuming the liabilities of the Z division. Liabilities encumbering assets other than inventory property are ignored in the calculation. Assume the unsecured liabilities and any liabilities encumbering the inventory property aggregated $30,000 and thus that the total purchase price paid by G was $330,000 (exclusive of any liabilities encumbering solely noninventory property). Of this aggregate amount, $100,000 was paid for inventory property of the Z division. The payment made by G by assumption of liabilities ($30,000) and in cash ($60,000) will be attributed first to the inventory property. Therefore, only $10,000 of the $240,000 installment obligation will be attributed to inventory property. Accordingly, in the hands of A $10,000 of the installment obligation issued by G is not a qualifying installment obligation and the balance of $230,000 is a qualifying installment obligation.

(ii) In the 1981 liquidation of P, A receives a liquidating distribution as follows (assume all installment obligations bear stated interest equal to or above the section 483 test rate and that all nonqualifying installment obligations have a fair market value equal to their face amount):

Item	Qualifying installment obligations	Cash and other property
Cash		$190,000
B note	$200,000	
C note	100,000	
D note	170,000	
F note		100,000
G note [1]	230,000	10,000
Total	700,000	300,000

[1] Face amount $240,000.

Assume that A's basis in the stock of P was $100,000. Under the installment method, A's selling price and contract price are both $1 million, gross profit is $900,000, and the gross profit ratio is 9/10. Accordingly, in 1981 A must report gain of $270,000 (90% of $300,000 payment in cash and other property). A will hold the installment obligations that are entirely qualifying installment obligations at a basis equal to 10% of the face amount. A will hold the F note, a nonqualifying installment obligation, at a basis equal to its $100,000 value when received by A. A will hold the G note, a mixed obligation, at a basis of $33,000 (10% of the $230,000 qualifying installment obligation portion of the note, plus $10,000 nonqualifying portion of the note).

Example (2). The facts are the same as in example (1), except that in acquiring assets of the Z division (⅓ of the inventory property and all of the other assets of the Z division), G issues two installment obligations (bearing adequate stated interest). One is a $230,000 installment obligation and the other is a $10,000 installment obligation worth its face amount. The agreement between P and G states that the $10,000 installment obligation is issued as consideration for inventory property acquired by G from P. In example (1), in which G issued a single $240,000 installment obligation, it was determined that only $230,000 of this installement obligation would constitute a qualifying installment obligation. However, when separate installment obligations are issued and one such obligation is designated as consideration for inventory property acquired, that designation ordinarily will be given effect by the Internal Revenue Service for the purpose of attributing consideration paid (in excess of the sum of liabilities assumed, cash paid, and other property received) for inventory property first to the designated installment obligation. Accordingly, on the facts stated, the entire $10,000 installment obligation is not a qualifying installment obligation and the entire $230,000 installment obligation is a qualifying installment obligation. Thus A will hold the $10,000 G note, a nonqualifying installment obligation, with a basis equal to its $10,000 value when received by A. A will hold the $230,000 G note, a qualifying installment obligation, with a basis of $23,000 (10% of $230,000).

(d) *Liquidation to which section 337 applies—(1) in general.* The term "a liquidation to which section 337 applies" means a complete liquidation to which section 337(a) applies, after taking into account section 337 (c), (e) and (g), but without regard to section 337 (b) and (f). The liquidation of a collapsible corporation (as defined in section 341(b)) is not a liquidation to which section 337 applies, within the meaning of this paragraph, unless section 337(a) applies by reason of section 341(e)(4). Except as provided in the preceding sentence and paragraph (c)(4) of this section (relating to certain sales of inventory), any installment obligation received in respect of a sale by the corporation during a liquidation described in section 337(a) will be a qualifying installment obligation. Thus, even though the liquidating corporation may recognize gain or loss on certain sales under certain exceptions to section 337(a) (*e.g.* sections 337(c)(2)(B), 341(e)(4), 1245 or 1250), the entire obligation distributed to a qualifying shareholder is reportable on the installment method.

(2) *Special rule for liquidations to which section 337(c)(2) applies.* With respect to a shareholder (other than a corporation which meets the 80% stock ownership requirement specified in section 332(b)(1)) who is a qualifying shareholder, for purposes of this section, a liquidation to which section 337(c)(2) applies is a liquidation to which section 337 applies. An amount equal to the increase described in section 337(d)(1) is deemed to be a cash distribution in liquidation to the shareholder in the first taxable year in which the shareholder actually receives a distribution in liquidation from the corporation.

(e) *Liquidating distributions received in more than one taxable year*—(1) *In general.* If the taxpayer is a shareholder who receives, in a liquidation to which section 337 applies, distributions in more than one taxable year of the taxpayer, then, on completion of the liquidation, basis in the taxpayer's shares previously allocated to property (including qualifying installment obligations) received in an earlier taxable year shall be appropriately reallocated among all property (including qualifying installment obligations) received as a distribution in the liquidation in any taxable year of the taxpayer unless the taxpayer elected out of installment method reporting. If by reason of this basis reallocation it is determined that the taxpayer, or any substituted person (as defined in paragraph (e)(2) of this section), has not fully recognized gain in an earlier taxable year, whichever party did not fully recognize gain shall file an amended return for that earlier year which properly reflects the gain attributable to the distribution received in the earlier year.

(2) *Substituted person.* The term "substituted person" means a person to whom the taxpayer has transferred (directly or indirectly) an installment obligation received by the taxpayer as a liquidating distribution, if, for the purpose of determining gain or loss from a sale or exchange, the substituted person's basis in such installment obligation is determined in whole or in part by reference to the basis of such installment obligation in the hands of the taxpayer. In addition, if during the 12 month period set forth in section 337(a) a shareholder dies, and a liquidating distribution was received by the decedent and a liquidating distribution is thereafter received by the shareholder's estate or other successor to the shares, for purposes of this paragraph the estate or other successor to the share shall be treated as the taxpayer and the decedent (and any person who is a substituted person with respect to the decedent) shall be treated as a substituted person with respect to the estate or other successor to the shares.

(3) *Examples.* The following examples illustrate the provisions of this paragraph. Assume in each example that the taxpayer receiving the liquidating distribution is a calendar year taxpayer.

Example (1). A, an individual, owns all of the stock of T corporation with a basis of $100,000. A's taxable year is the calendar year. T is not a collapsible corporation (as defined in section 341(b)). On February 1, 1980, T adopts a plan of complete liquidation and sells all of its assets to a single purchaser in a single transaction. In January 1981, T distributes $200,000 cash and a $300,000 qualifying installment obligation to A, thereby completing its liquidation to which section 337 applies. The January 1981 distribution is the only liquidating distribution made by T. For purposes of reporting the liquidating distributions, the selling price is $500,000 ($200,000 cash + $300,000 qualifying obligation), the gross profit is $400,000 ($500,000 − $100,000 basis), and the gross profit ratio is 4/5 ($400,000/$500,000). If before the close of 1981 A receives a $50,000 payment on the installment obligation, $40,000 (4/5 of $50,000) will be reportable under the installment method as gain. In total, A will report gain in 1981 of $200,000, $160,000 (4/5 of $200,000) attributable to the $200,000 cash received in the liquidation and $40,000 (4/5 of $50,000) attributable to $50,000 payment on the installment obligation.

Example (2). The facts are the same as in example (1) except that T distributes $200,000 cash in December 1980, and the $300,000 qualifying installment obligation in January 1981. For purposes of reporting the 1980 distribution, 1981 distributions initially are disregarded. Therefore, in 1980 A recovers A's entire $100,000 basis against the $200,000 cash distribution, and will recognize $100,000 as gain. When A receives the $300,000 installment obligation in 1981, A is required to reallocate A's $100,000 basis in the T shares among all property received in both taxable years. The reallocation will produce the results shown in example (1): a selling price of $500,000, a gross profit of $400,000 and a gross profit ratio of 4/5. If A has filed a tax return for 1980 reporting only $100,000 gain in that year, A is required to file an amended return reporting an additional $60,000 of recognized gain in 1980 [($200,000 × 4/5) − $100,000].

Example (3). The facts are the same as in example (1), except that T distributes the $300,000 qualifying installment obligation to A in June 1980, and distributes the $200,000 cash to A in January 1981. Assume further that in November 1980, A receives a payment of $60,000 on the installment obligation (in addition to the receipt of substantial interest). Because the 1981 distributions initially are disregarded for purposes of reporting in 1980, in 1980 A would allocate the entire $100,000 basis in the T shares to the $300,000 installment obligation. The gross profit ratio thus would be 2/3 [($300,000 − $100,000) + $300,000]. A would treat $40,000 (2/3 × $60,000) of the 1980 installment obligation payment as recognized gain in 1980. Upon completion of the liquidation in 1981, A is required to reallocate basis to conform with the results in example (1). The recomputed selling price is $500,000, the recomputed gross profit is $400,000 and the recomputed gross profit ratio is 4/5. Therefore, A should have reported $48,000 (4/5 of $60,000) of the $60,000 payment received in 1980 as gain. Since A reported only $40,000 as gain in that year, if A has filed a return for 1980 A must file an amended return reporting the additional gain of $8,000 ($48,000 − $40,000). Of the $200,000 cash distribution received by A in 1981, $40,000 is return of basis and $160,000 ($200,000 × 4/5) is gain.

Example (4). The facts are the same as in example (3), except that in 1980, before receiving any payment on the installment obligation, A transfers the installment obligation to P partnership in exchange for a parternship in exhange for a partnership interest in P. Under sections 721 and 453B, gain is not recognized on the transfer and P holds the installment obligation at the same basis the obligation had in the hands of A. P is therefore a substituted person with respect to A. Accordingly, the basis recomputed rule applies to P and its partners. If P has filed a return for its taxable year in which it reported $40,000 gain with respect to the $60,000 payment on the installment obligation, it must file an amended return reporting an additional $8,000 ($48,000 − $40,000) of gain recognized on that payment. Further, each partner of P who has filed a return for the partner's taxable year in which or with which P's taxable year ends, must file an amended return reporting the partner's distributive share of the additional gain.

Example (5). The facts are the same as in example (3) except that, in addition, A dies December 1, 1980, and the installment obligation passes by bequest to A's child, D, who receives a $60,000 payment in respect of the obligation in December as well as the cash distribution in January 1981. Because an installment obligation is a right to receive income in respect of a decedent, D reports the installment obligation as A would have. Therefore in 1980, D would recognize gain of $40,000 (2/3 × $60,000) in 1980. Upon completion of the liquidation in 1981, if D has filed a return reporting only $40,000 gain, an amended return must be filed reporting an additional gain of $8,000 ($48,000 − $40,000). In addition, if A had filed a return reporting only $40,000 gain an amended return must be filed reporting an additional $8,000 ($48,000 − $40,000. In addition, of the $200,000 cash distribution received by D in 1981 $40,000 will be return of basis and $160,000 [$200,000 × 4/5 will be gain.

Example (6). The facts are the same as in example (2), except that on December 31, 1980, after receiving the $200,000 cash distribution but before receiving the $300,000 qualifying installment obligation distribution, A donates all the T shares to Z corporation, a section 501(c)(3) organization. A midstream carryover basis transfer of shares in a corporation engaged in a section 337 liquidation is an invalid assignment of income. Accordingly, A will be required to reallocate basis and report gain in the manner described in example (2).

Example (7). B owns all of the stock of X corporation with an adjusted basis of $100,000. X is not a collapsible corporation (as defined in section 341(b)). X conducts two separate businesses, the J division worth $100,000 and the K division worth $900,000. On December 1, 1980 X adopts a plan of complete liquidation. On December 15, 1980 X sells the J division to M and receives in exchange a $100,000 qualifying installment obligation which X immediately transfers to B as a first liquidating distribution. On January 15, 1981, X merges with and into unrelated N corporation. Under the plan of merger, N is the surviving corporation, all of the assets of the K division are acquired by N, and N assumes or takes subject to all of the liabilities of the K division, the shares of X are cancelled, and in exchange B receives directly from N a $900,000 installment obligation issued by N. The transaction is a liquidation to which section 337 applies since X, within the 12-month period beginning on December 1, 1980 (the date on which X adopted a plan of complete liquidation), has distributed all of its assets (consisting of the $100,000 M note and the $900,000 N note). Accordingly, B is a qualifying shareholder and both the M note and the N note are qualifying installment obligations in the hands of B. Since B received no payment in 1980, no amended return is required to be filed by B. However, B must allocate B's total $100,000 basis $10,000 to the M note and $90,000 to the N note.

(f) *Coordination with other provisions—(1) In general.* Except as specifically provided in section 453(h)(1)(C) and proposed § 453–3 (i) relating to installment sales of depreciable property to certain closely related persons), whenever it shall be relevant to any determination under any provision of the Internal Revenue Code, a qualifying installment obligation distributed to a qualifying shareholder in a liquidation to which section 337 applies (as defined in paragraph (d) of this section) shall be treated as if the obligation had been received by the shareholder in an installment sale of shares directly to the person issuing the installment obligation.

(2) *Examples.* The following examples illustrate the provision of this paragraph (in each case, it is assumed that the liquidating corporation is not a collapsible corporation (as defined in section 341 (b)):

Example (1). A owns all of the stock of T corporation. Substantially all of the assets of T are inventory property. T adopts a plan of complete liquidation, promptly sells all of its assets to B corporation in exchange for a $1 million qualifying installment obligation, and distributes the qualifying installment obligation to A in completion of its liquidation. The installment obligation bears stated interest at less than the test rate prescribed in section 483 and the regulations thereunder. In the hands of T section 483 would have no application to the installment obligation since it was issued in exchange for T's inventory. See section 483(f)(3). However, since in the hands of A the installment obligation will be treated as if received by A on a sale of A's T shares directly to B, section 483 will apply to the installment obligation in A's hands.

Example (2). C owns all of the stock of Y corporation. A substantial part of the assets of Y consists of stocks and securities traded on an established securities market. Y adopts a plan of complete liquidation, sells all of its stock and securities holdings to B corporation (which is closely held) in exchange for a $1 million installment obligation (bearing adequate stated interest), sells all of its other assets to another purchaser for cash, and distributes the cash and qualifying installment obligation to C in completion of its liquidation to which section 337 applies. In the hands of Y, the B installment obligation may carry original issue discount (as defined in section 1232(b)(1)) since the obligation was issued for stock and securities traded on an established securities market. However, in the hands of C the installment obligation is not an original issue discount obligation since it is treated as having been received by C in a direct sale to B corporation of the shares of Y and neither the Y shares nor the B installment obligation is traded on an established securities market.

Example (3). The shares of Q corporation are traded on an established securities market. D owns more than 5% of the shares of Q. The assets of Q consist of normal business properties. Q adopts a plan of complete liquidation and sells all of its assets to L corporation in exchange for cash and qualifying installment obligations that are not readily tradable. Q corporation promptly distributes solely cash to the shareholders of Q holding 5% or less of the outstanding shares of Q, and distributes cash and the L qualifying installment obligations to the shareholders who won more than 5% of the outstanding shares of Q, including D, thereby completing its liquidation to which section 337 applies. In the hands of Q, the L installment obligations would not be original issue discount obligations since they were not part of an issue a portion of which is traded on an established securities market nor issued to Q for stock or securities traded on an established securities market. However, in the hands of D, the L installment obligation may qualify as an original issue discount obligation since the shares of Q were traded on an established securities market and D is treated as having received the L installment obligation in a direct sale of Q shares to L.

(g) *Effective dates—(1) In general.* The provisions of this section (§ 1.453–2) shall apply to distributions of qualifying installment obligations made after March 31, 1980. The date of the distribution of the installment notes, not the date the corporation adopts the plan of complete liquidation, is controlling.

(2) *Examples.* The effective date provisions of section 453(h) are illustrated by the following examples:

Example (1). On December 1, 1979 X corporation adopts a plan of complete liquidation and promptly sells all of its assets to unrelated Z for $400,000 cash and a $600,000 long-term installment note bearing adequate stated interest. On June 1, 1980 X distributes the cash and the note to A, its sole shareholder, completing the liquidation to which section 337 applies. Assume X is not a collapsible corporation. A may elect to report the instaliment note on the installment method and report gain when payments are received. A must elect installment method reporting because prior to October 20, 1980 installment method reporting was available only to taxpayers who affirmatively elected it. Had X distributed the installment note after October 19, 1980, A would have been required to report the note on the installment method unless A had elected otherwise.

Example (2). The facts are the same as in example (1), except that the long-term installment note does not call for fixed payments aggregating $600,000 (plus interest). Instead, the note calls for annual payments equal to a stated percentage of the income of X for a specified number of years, and $600,000 is the stated maximum amount (exclusive of interest) payable on the note. A may not elect to report the note on the installment method because contingent installment obligations were not eligible for installment method reporting prior to October 20, 1980. Had X distributed the contingent installment obligation after October 19, 1980, however, A would be required to report the

note on the installment method unless A had elected otherwise.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

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26 CFR Part 51

[LR-66-80]

Allocation of the 1,000 Barrel Amount Within a Related Group Under The Crude Oil Windfall Profit Tax Act of 1980

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the allocation within a related group of the 1,000 barrel amount for independent producers subject to a reduced rate of windfall profit tax on domestic crude oil. The applicable law was added to the Internal Revenue Code by the Crude Oil Windfall Profit Tax Act of 1980. The regulations would provide the public with guidance needed to comply with the Act.

DATES: These proposed regulations would apply and be effective with respect to all crude oil removed (or deemed removed) from the premises after February 29, 1980. Written comments and requests for a public hearing must be delivered or mailed by March 13, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-66-80), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (202-566-3297) (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the proposed Excise Tax Regulations under the Crude Oil Windfall Profit Tax Act of 1980 (26 CFR Part 51) under section 4992 (e) of the Internal Revenue Code of 1954. The proposed regulations are required to implement section 4992(e) as added by section 101 (a)(1) of the Crude Oil Windfall Profit Tax Act of 1980, and are to be issued under the authority contained in sections 4992(e), 4997(b), and 7805 of the Internal Revenue Code of 1954 (94 Stat. 236, 26 U.S.C. 4992(e); 94 Stat. 249, 26 U.S.C. 4997(b); 68A Stat. 917, 26 U.S.C. 7805).

In General

The windfall profit tax is a temporary excise tax imposed upon the windfall profit from domestically produced taxable crude oil removed from the premises during each taxable period (generally a calendar quarter). Generally, the rate of tax on tier 1 and teir 2 oil is 70 percent and 60 percent, respectively. However, certain tier 1 and tier 2 oil produced by independent producers is subject to a 50 percent and 30 percent rate of tax, respectively. This oil subject to the reduced rate of tax is "independent producer oil."

"Independent producer oil" is that portion of an independent producer's qualified production for the quarter that does not exceed such person's independent producer amount for the quarter. A person's independent producer amount for any quarter is the product of 1,000 barrels multiplied by the number of days in the quarter. However, this 1,000 barrel amount must be allocated among independent producers who are members of the same related group at any time during the calendar quarter. If an independent producer is a member of the same related group for only a portion of the quarter, the 1,000 barrel amount is subject to allocation for those days on which the independent producer is a member of that related group. The Service considered a rule that would allocate on a quarterly basis among those who were group members at any time during a quarter. That is, a group member's independent producer amount for a quarter would be a share of one independent producer amount for the quarter (1,000 barrels times the number of days in the quarter), regardless of on how many days during the quarter the independent producer was a group member. The share would be proportionate to that independent producer's production for that quarter. This rule would have the effect of depriving an independent producer of the full 1,000 barrel per day amount even on those days when the independent producer was not a member of the related group. Such a rule is supportable under the language of section 4992(e)(1). Nevertheless, this rule was rejected in favor of the rule that only reduced the independent producer amount for those days on which the independent producer was a member of a related group.

Members of a Related Group

An independent producer is treated as a member of a related group if the independent producer is a member of: (i) A family; (ii) a controlled group of corporations: (iii) a group of entities under common control; or (iv) if 50 percent or more of the beneficial interest in one or more of the corporations, trusts, or estates is owned by one or more members of the same family, all these entities and the family. A group of entities under common control means any group of entities that is either a parent-subsidiary group under common control, a brother-sister group under common control, or a combined group under common control. For purposes of determining whether 50 percent or more of the beneficial interest in one or more corporations, trusts, or estates is owned by one or more members of the same family, an interest owned by or for a corporation, partnership, trust or estate is considered as owned directly by the entity and proportionately by its stockholders, partners, or beneficiaries, as the case may be.

If, under these rules, an independent producer is a member of more than one related group for any concurrent period during the calendar quarter, the allocation of the 1,000 barrel amount to the independent producer is made by reference to that related group that results in the smallest allocation for that independent producer. Once an independent producer's allocation has been made by reference to that related group that results in the smallest allocation, the independent producer still is treated as a member of the other related group or groups for allocation purposes.

Special Analyses

The Commissioner of Internal Revenue had determined that the proposed rule is not subject to review under Executive Order 12291 or the Treasury—OMB implementation of that Order, dated April 29, 1983. Accordingly, a Regulatory Impact Analyses is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to

the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Beverly A. Baughman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of style and substance.

List of Subjects in 26 CFR Part 51

Excise tax, Petroleum, Crude Oil Windfall Profit Tax of 1980.

Proposed Amendments to the Regulations

PART 51—[AMENDED]

Accordingly, it is proposed to amend 26 CFR Part 51 as follows:

§ 51.4992-1 [Amended]

Paragraph 1. Paragraph (e) is removed from § 51.4992-1.

Par. 2. A new § 51.4992-2 is added in the appropriate place to read as follows:

§ 51.4992-2 Allocation within related group of 1,000 barrel amount.

(a) *General rule*—(1) *In general.* The 1,000 barrel amount described in section 4992(c)(1)(A) must be allocated among independent producers who are members of the same related group at any time during the calendar quarter. For the definition of the term "related group", see paragraph (b) of this section.

(2) *Method of allocation*—(i) *Members of the same related group for the entire quarter.* If an independent producer is a member of the same related group (one whose members do not vary) for the entire quarter, the independent producer's allocable share of the 1,000 barrel amount shall be equal to that amount which bears the same ratio to 1,000 barrels as that independent producer's qualified production of crude oil (as defined in section 4992(d)) for the quarter bears to the total qualified production of crude oil for the quarter of all the independent producers of that related group.

(ii) *Members of the same related group for part of the quarter*—(A) If an independent producer is a member of the same related group for less than the entire quarter, the 1,000 barrel amount prescribed in paragraph (a)(1) of this section shall be allocated for those days during the quarter on which the independent producer is a member of the related group. For each day that an independent producer is a member of the related group, the independent producer's allocable share of the 1,000 barrel amount shall be equal to that amount which bears the same ratio to 1,000 barrels as that independent producer's qualified production of crude oil (as defined on section 4992(d)) for that day bears to the total qualified production of crude oil for that day of all the independent producers of that related group. This calculation must be performed for each day that an independent producer is a member of a related group, unless the independent producer is a member of that related group for the entire quarter (see paragraph (a)(2)(i) of this section).

(B) On those days during the quarter that the independent producer described in paragraph (a)(2)(ii)(A) of the section is not a member of a related group, the independent producer is not required to allocate the 1,000 barrel amount pursuant to paragraph (a)(1) of this section.

(C) The independent producer amount for an independent producer described in paragraph (a)(2)(ii)(A) of this section for the quarter shall be equal to the sum of—

(*1*) The independent producer's daily amounts computed under paragraph (a)(2)(ii)(A) of this section, and

(*2*) The product of 1,000 barrels multiplied by the number of days in the quarter that the independent producer is not a member of any related group. The 1,000 barrel amount prescribed in paragraph (a)(1) of this section is first allocated under this section before any further allocation is made under section 4992(c)(2) between tiers 1 and 2 and within any tier.

(3) *Examples.* The allocation described in paragraph (a)(1) of this section may be illustrated by the following examples:

Example (1). On April 1, 1980, A, B, and C, all independent producers, were members of the same related group. A and B continued to be members of the related group during the entire second quarter of 1980 (April through June), but C was a member of the related group only for the month of April. C did not become a member of any other related group during the quarter. C continued the production of oil. For the period from April 1, 1980 through April 30, 1980, A, B, and C each day had qualified production of 500 barrels, 400 barrels and 300 barrels, respectfully. For the period from May 1, 1980 through June 30, 1980, A, B, and C each day had qualified production of 1,000 barrels, 800 barrels, and 600 barrels, respectively. Because A, B, and C were all members of the same related group during part of the second quarter, the 1,000 barrel amount must be allocated among A, B, and C. However, only C's production during the time period that C was a member of the related group is counted for determining the allocation. Thus, for the period from April 1, 1980 through April 30, 1980, A's 1,000 barrel amount is reduced to 417 barrels, B's 1,000 barrel amount is reduced to 333 barrels, and C's 1,000 barrel amount is reduced to 250 barrels, determined as follows:

$$\text{Member A} \quad 1{,}000 \times \frac{500}{1{,}200} = 417 \text{ barrels}$$

$$\text{Member B} \quad 1{,}000 \times \frac{400}{1{,}200} = 333 \text{ barrels}$$

$$\text{Member C} \quad 1{,}000 \times \frac{300}{1{,}200} = 250 \text{ barrels}$$

For the period from May 1, 1980 through June 30, 1980, A's 1,000 barrel amount is reduced to 556 barrels, and B's 1,000 barrel amount is reduced to 444 barrels determined as follows: (C's production is not counted because C was not a member of the related group during the period).

$$\text{Member A} \quad 1{,}000 \times \frac{1{,}000}{1{,}800} = 556 \text{ barrels}$$

$$\text{Member B} \quad 1{,}000 \times \frac{800}{1{,}800} = 444 \text{ barrels}$$

Member C..... = 1,000 barrels (C is entitled to the entire 1,000 barrel amount for that part of the second quarter (May 1, 1980 through June 30, 1980) during which C is not a member of any related group).

Accordingly, for the second quarter of 1980, the independent producer amount for the members are as follows:

Member A.....	12,510	barrels (417×30 days)
	33,916	barrels (556×61 days)
	46,426	barrels
Member B.....	10,000	barrels (333.33×30 days)
	27,084	barrels (444×61 days)
	37,084	barrels
Member C.....	7,500	barrels (250×30 days)
	61,000	barrels (1,000×61 days)
	68,500	barrels

Example (2). Assume the facts are the same as in example (1) except that B is not an independent producer and, therefore, does not have any qualified production. Thus, B is not entitled to any independent producer amount. The 1,000 barrel amount for A and C is not reduced by allocating a part of it to B.

(b) *Related group.* For purposes of this section, a related group is any one of the following groups:

(1) Members of the same family;

(2) A controlled group of corporations;

(3) A group of entities under common control; or

(4) If 50 percent or more of the beneficial interest in one or more corporations, trusts, or estates is owned by one or more members of the same family, all these entities and the family.

(5) The provision of this paragraph (b)(4) may be illustrated by the following example:

Example. A, an independent producer, is unmarried and has no minor children. A owns 50 percent in value of the stock in each of nine corporations. These corporations are not members of a controlled group of corporations or members of a group of entities under common control. A and the nine corporations are treated as members of the same related group described in paragraph (b)(4) of this section because A owns 50 percent of the beneficial interest in each of these nine corporations.

(c) *Definitions.* For purposes of this section, the following terms have the following meanings:

(1) *Family.* The term "family" means an individual and the spouse and all minor children of the individual. For example, two minor children who are independent producers would be treated as members of the same family even though neither parent was an independent producer or neither parent had qualified production of oil during the calendar quarter. For this purpose, the status of a child as a minor shall be determined under state law.

(2) *Controlled group of corporations.* The term "controlled group of corporations" has the meaning given to this term by section 1563 (a) (including other provisions of section 1563 and the regulations thereunder necessary in the application of section 1563 (a)), except that section 1563 (b) (2) shall not apply and except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563 (a).

(3) *Group of entities under common control.* The term "group of entities under common control" means any group of entities that is either a "parent-subsidiary group under common control" as defined in paragraph (c) (3) (i) of this section, a "brother-sister group under common control" as defined in paragraph (c) (3) (ii) of this section, or a "combined group under common control" as defined in paragraph (c)(3)(iii) of this section. For purposes of this paragraph (c) (3), the term "organization" means a corporation, estate, or trust. If, for a calendar quarter, an organization is a member of more than one group of entities under common control, see paragraph (e) of this section for the rule that the organization's allocation is determined by reference to that group which result in the smallest allocation for that organization. For purposes of paragraph (c) (3) of this section, the following terms have the following meanings:

(i) *Parent-subsidiary group under common control.* The term "parent-subsidiary group under common control" means one or more chains of organizations that are connected through ownership of a controlling interest with a common parent organization if—

(A) A controlling interest in each of the organizations, except the common parent organization, is owned singly or in combination by one or more of the other organizations in the chain or chains; and

(B) The common parent organization owns a controlling interest in at least one of the other organizations, excluding, in computing this controlling interest, an interest owned directly in the organization by the other organizations.

(ii) *Brother-sister group under common control.* The term "brother-sister group under common control" means two or more organizations if the same five or fewer persons who are individuals, estates, or trusts own, singly or in combination, a controlling interest in each organization taking into account the ownership of each person only to the extent that the person's ownership is identical with respect to each organization.

(iii) *Combined group under common control.* The term "combined group under common control" means a group of three or more organizations if each organization is a member of either a parent-subsidiary group under common control, or a brother-sister group under common control, and at least one organization is the common parent organization of the parent-subsidiary group under common control and also is a member of the brother-sister group under common control.

(iv) *Controlling interest.* The term "controlling interest" means:

(A) In the case of an organization which is a corporation, ownership of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of the shares of all classes of stock of the corporation, and

(B) In the case of an organization which is an estate or trust, ownership of an actuarial interest (determined under paragraph (c)(3)(v) of this section) of more than 50 percent of the estate or trust.

The principles of the rules contained in § 1.1563–2 shall apply for purposes of determining whether certain interests in an estate or trust or stock in a corporation are included in determining control, and the principles of the rules contained in § 1.1563–3 shall apply for purposes of determining the ownership of stock in a corporation or the ownership of an interest in an estate or trust.

(v) *Actuarial interest.* For purposes of this paragraph (c), the actuarial interest of each beneficiary of an estate or trust is determined by assuming the maximum exercise of discretion by the fiduciary in favor of the beneficiary. The factors and methods prescribed in § 20.2031–10 for use in ascertaining the value of an interest in property for estate tax purposes shall be used to determine a beneficiary's actuarial interest.

(4) *Fifty percent or more of the beneficial interest.* The term "50 percent or more of the beneficial interest" means—

(i) With respect to any corporation, 50 percent or more in value of the outstanding stock (excluding Treasury stock) of such corporation, and

(ii) With respect to an estate or trust, an actuarial interest of 50 percent or more of the estate or trust (determined under paragraph (c)(3)(v) of this section).

The determination of the family's beneficial interest in an estate or trust shall be based on all of the property owned by the estate or trust and shall not be based on interests solely relating to oil production owned by the estate or trust.

(d) *Constructive ownership*—(1) *In general.* For purposes of determining, under paragraph (b)(4) of this section, whether 50 percent or more of the beneficial interest in one or more corporations, trusts, or estates is owned by one or more members of the same family, an interest owned by or for a corporation, partnership, trust, or estate is considered as owned directly by the entity and proportionately by its stockholders, partners, or beneficiaries in accordance with the attribution rules described in paragraph (d)(2) of this section.

(2) *Attribution rules*—(i) Corporations. An interest owned, directly or indirectly, by or for a corporation shall be considered as owned by each shareholder in that proportion which the value of the stock which such shareholder so owns bears to the value of all the stock in such corporation.

(ii) *Estates and trusts.* An interest owned, directly or indirectly, by or for

an estate or trust (other than an employees' trust decribed in section 401 (a) which is exempt from tax under section 501(a)) shall be considered as owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries in such estate or trust.

(iii) *Partnership.* An interest owned, directly or indirectly, by or for a partnership shall be considered as owned proportionately by its partners.

(iv) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. B and C are married and have two minor children, D and E. Each person is an independent producer. B is the sole beneficiary of Trust F, an independent producer that is a partner with an 80 percent capital and profits interest in the XYZ partnership. XYZ owns 75 percent in value of the stock of corporation M, an independent producer. F is treated as owning 80 percent of the property owned (or treated as owned) by XYZ. Thus, F is treated as owning 60 percent in value (80 percent of 75 percent) of the stock of M, and B is treated as owning the interest in M that is treated as owned by F. Accordingly, because B is treated as owning 50 percent of more of the beneficial interest in M, B, C, D, E, Trust F, and Corporation M are treated as members of the same related group described in paragraph (b)(4).

(e) *Members of more than one related group*—(1) *In general.* If, under this section, an independent producer is a member of more than one related group concurrently for the entire quarter (or for any concurrent period during the calendar quarter), the determination of the independent producer's allocation of the 1,000 barrel amount under paragraph (a)(1) of this section for that quarter (or concurrent period) shall be made by reference to the allocation of the related group that results in the smallest allocation for that person. However, for purposes of making the allocation under paragraph (a) (1) of this section with respect to any other related group, an independent producer whose allocation is made by reference to the allocation of the related group which results in the smallest allocation for the independent producer nevertheless small be treated as a member of the other related group for purposes of determining the other members' allocable share of the 1,000 barrel amount.

(2) *Examples.* The rules of paragraph (e) may be illustrated by the following examples:

Example (1). Assume the facts are the same as in example (1) of paragraph (a)(3) of this section except that on May 1, 1980, C becomes a member of a related group with D and E, both independent producers, after ceasing to be a member of the related group with A and B. C remains a member with D and E through June 30, 1980. For the period from May 1, 1930 through June 30, 1980, C had qualified production of 600 barrels daily. For the period from May 1, 1980 through June 30, 1980, D and E each had qualified production of 1,200 barrels daily. Because C is not concurrently a member of more than one related group during the calendar quarter (April through June), C's allocation of the 1,000 barrel amount is not made by reference to the allocation of the related group that results in the smallest allocation to C. Instead C's allocation is determined separately for the period from April 1, 1980 through April 30, 1980, when C was a member of a related group with A and B and for the period from May 1, 1980 through June 30, 1980, when C was a member of a related group with D and E. Therefore, for the period from April 1, 1980 through April 30, 1980, C's allocation of the 1,000 barrel amount and C's independent producer amount are the same as in example (1) of paragraph (a)(3) of this section. For the period from May 1, 1980 through June 30, 1980, C's 1,000 barrel amount is reduced to 200 barrels, D's 1,000 barrel amount is reduced to 400 barrels and E's 1,000 barrel amount is reduced to 400 barrels determined as follows:

$$\text{Member C} \quad 1{,}000 \times \frac{600}{3{,}000} = 200 \text{ barrels}$$

$$\text{Member D} \quad 1{,}000 \times \frac{1{,}200}{3{,}000} = 400 \text{ barrels}$$

$$\text{Member E} \quad 1{,}000 \times \frac{1{,}200}{3{,}000} = 400 \text{ barrels}$$

Accordingly, for the period for May 1, 1980 through June 30, 1980, the independent producer amounts for C, D, and E are as follows:

Member C..... 122,000 barrels (200 × 61 days)
Member D..... 244,000 barrels (400 × 61 days)
Member E..... 244,000 barrels (400 × 61 days)

Example (2). From January 1, 1982 through March 31, 1982, F and H, both independent producers, were members of related group FH. For the period from January 1, 1982 through January 30, 1982, H is also a member of a related group with I and J, both independent producers. For the period from January 31, 1982 through March 31, 1982, I and J are members of related group IJ. Each day of the quarter F, H, I, and J produce the following quantities of crude oil:

F = 1,200 barrels
H = 800 barrels
I = 1,600 barrels
J = 1,600 barrels

Because H is a member of more than one related group for a concurrent period (January 1, 1982 through January 30, 1982) during the calendar quarter (January through March), H's allocation for that concurrent period of the 1,000 barrel amount must be made by reference to the allocation of the related group that results in the smallest allocation to H. H's 1,000 barrel amount is reduced to 400 barrels for the period from January 1, 1982, through January 30, 1982, as a member of group FH and to 200 barrels as a member of group HIJ determined as follows:

$$1{,}000 \times \frac{\text{800 (H's daily production)}}{\text{2,000 (F\&H's daily production)}} = 400 \text{ barrels}$$

$$1{,}000 \times \frac{\text{800 (H's daily production)}}{\text{4,000 (H, I\&J's daily production)}} = 200 \text{ barrels}$$

Therefore, H's allocation as a member of a related group with I and J is smaller than H's allocation as a member of a related group with F. Thus, H is treated as a member of a related group with I and J for the period from January 1, 1982 through January 30, 1982. However, the amount of the reduction of F's 1,000 barrel amount for that period still will be determined with regard to H because H still is treated as a member of the related group with F for purposes of determining F's allocation.

Thus, for the period from January 1, 1982 through January 30, 1982, and for the period from January 31, 1982 through March 31, 1982, F's 1,000 barrel amount is reduced to 600 barrels determined as follows:

$$1{,}000 \times \frac{\text{1,200 (F's daily production)}}{\text{2,000 (F\&H's daily production)}} = 600 \text{ barrels}$$

Accordingly, for the first quarter of 1982, the independent producer amount for F is 54,000 barrels determined as follows: 18,000 barrels (600×30 days); 36,000 barrels (600×60 days); total, 54,000 barrels.

For the period from January 31, 1982 through March 31, 1982, H's 1,000 barrel amount is reduced to 400 barrels determined as follows:

$$1{,}000 \times \frac{\text{800 (H's daily production)}}{\text{2,000 (F \& H's daily production)}} = 400 \text{ barrels}$$

Accordingly, for the first quarter of 1982, the independent producer amount for H is 30,000 barrels determined as follows: 6,000 barrels (30 days×200 (H's allocation with reference to related group H, I&J)); 24,000 barrels (60 days×400); total, 30,000 barrels.

For the period from January 1, 1982 through January 30, 1982, I's 1,000 barrel amount is reduced to 400 barrels determined as follows:

$$1{,}000 \times \frac{\text{1,600 (I's daily production)}}{\text{4,000 (H, I and J's daily production)}} = 400 \text{ barrels}$$

For the period from January 31, 1982 through March 30, 1982, I's 1,000 barrel amount is reduced to 500 barrels determined as follows:

$$1{,}000 \times \frac{\text{1,600 (I's daily production)}}{\text{3,200 (I and J's production)}} = 500 \text{ barrels}$$

Accordingly, for the first quarter of 1982, the independent producer amount for I is 42,000 barrels determined as follows: 12,000 barrels (30 days × 400 barrels); 30,000 barrels (60 days × 500 barrels); total, 42,000 barrels.

The reduction of the 1,000 barrel amount and the independent producer amount for the first quarter of 1982 for J is the same as for I.

Example (3). G and H are married and have a minor child J. G, H, and J are independent producers. For the entire second calendar quarter of 1982, G owns 50 percent in value of the stock in corporations N and O, and 45 percent in value of the stock in corporation P. N, O, and P are independent producers. K and L, independent producers, are unmarried and have no minor children. K and L are unrelated to G, H, and J, and unrelated to each other. For the entire second calendar quarter of 1982, K owns 30 percent in value of the stock in N, O, and P. For the entire second calendar quarter of 1982, L owns 20 percent in value of the stock in N and O, and 25 percent in value of the stock in P. Accordingly, corporations N, O, and P qualify as members of a brother-sister controlled group because G, K, and L in combination directly own more than 50 percent of the total value of the stock of each corporation, taking into account the stock ownership of each person only to the extent his stock ownership is identical with respect to each such corporation. However, N and O also qualify concurrently as members of a related group with G, H, and J because G owns 50 percent of the beneficial interest in N and O, and G, H, and J are a family. Assuming that each independent producer produces the same amount of oil per day, N and O must be treated as members of the related group composed of G, H, J, N, and O since this group will result in the smallest allocations of the 1,000 barrel amounts to N and O. However, the amount of the reduction of P's 1,000 barrel amount shall be determined with regard to N and O because N and O still are treated as members of the related group with P for purposes of determining P's allocation. K and L are not treated as members of a related group.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-890 Filed 1-12-84; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 501; Ref: Notice No. 493]

Wine Labeling and Advertising Regulations Under the Federal Alcohol Administration Act (Appellations of Origin and Placement of Name and Address and Net Contents)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 493, an additional 45 days. Notice No. 493, was published in the **Federal Register** on November 16, 1983 (48 FR 52088), proposing the amendment of various regulations governing the labeling and advertising of wine. The comment period is being extended due to a request by the Delegation of the Commission of the European Communities.

DATE: Comments must be received on or before February 27, 1984.

ADDRESS: Comments must be submitted to the Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044-0385 (Notice No. 493).

FOR FURTHER INFORMATION CONTACT: Roger Bowling, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1983, ATF published Notice No. 493, proposing the amendment of various regulations governing the labeling and advertising of wine. Due to a request by the Delegation of the Commission of the European Communities, ATF is extending the comment period an additional 45 days.

Disclosure of Comments

Written comments or suggestions may be inspected by any person at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., during normal business hours.

Drafting Information

The principal author of this document is James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

This notice is issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended; 27 U.S.C. 205.

Approved: January 9, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84-1011 Filed 1-12-84; 8:45 am]

BILLING CODE 4810-31-M

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, Department of the Interior.

ACTION: Proposed rule; change of hearing location and extension of comment period.

SUMMARY: On November 30, 1983, the Office of Surface Mining issued a Proposed rule involving revisions and amendments to 30 CFR Part 870, regarding the Abandoned Mine Land Reclamation Fund, fee collection requirements and coal production reporting procedures (48 FR 54190) November 30, 1983. The location and date of the public hearing is being changed at the request of persons wishing to testify. The comment period is being extended.

DATES: Written comments: accepted until 5:00 p.m., February 3, 1984.

Public hearing: Held on January 26, 1984, at 10:00 a.m. (local).

ADDRESSES: Written comments: Hand deliver to the Office of Surface Mining, U.S. Department of the Interior, Administration Record (AML-27), Room 5315, 1100 L Street, 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 Avenue, NW., Washington, D.C. 20240.

Public hearing: Wise, Virginia, Clinch Valley College, Cantrell Hall, Room 206.

FOR FURTHER INFORMATION CONTACT: Jane Robinson, Abandoned Mine Land Reclamation Division, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone (202) 343-7944.

SUPPLEMENTARY INFORMATION: On or before January 4, 1984, attorneys representing ANR Coal Company, Penn Virginia Resources Corporation, and Lambert Coal Company requested an opportunity to testify at a public hearing. A request was made to hold the hearing in southwestern Virginia in close proximity to those wishing to testify.

Upon consideration, notice is hereby given that the hearing will be held in Wise, Virginia, on January 26, 1984. The comment period is extended to February 3, 1984, to allow interested persons to respond to comments raised at the hearing.

Dated: January 10, 1984.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 84-984 Filed 1-12-84; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50509; TSH-FRL 2422-3]

8-Acetyl-3-Dodecyl-7,7,9,9-Tetramethyl-1,3,8-Triaza-spiro [4,5] Decane-2,4-dione; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2604(a)(2), which would require persons to notify EPA at least 90 days before manufacturing, importing, or processing a substance for a "significant new use." This SNUR applies to a chemical substance that was the subject of premanufacture notice (PMN) P83-370 and a section 5(e) Consent Order issued by EPA. EPA is proposing to define as new uses: any manufacture of the substance within the United States; processing the substance without certain personal protective equipment; or any distribution of the substance without a precautionary label statement specifying proper handling procedures affixed to all containers of the substance. These new uses were not allowed under the Consent 5(e) order. The Agency is concerned that this substance may present an unreasonable risk to human health if these defined new uses occur.

DATE: Written comments should be submitted by March 13, 1984.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460.

Comments should include the docket control number OPTS-50509. Nonconfidential comments and sanitized versions of confidential comments received on this proposal will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, in Rm. E-107, at the address given above.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB control number 2070-0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine if a use of a chemical substance is a significant new use. EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject to the same statutory requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which is interpreted at 40 CFR Part 720 (see May 13, 1983, 48 FR 21722). In particular, these include the information submission requirements of section 5(d)(1), and section 5(b), certain exemptions authorized by section 5(h), and the regulatory authorities of section 5(e) and section 5(f) of TSCA. If EPA does not take regulatory action under sections 5, 6, or 7 to control a substance on which it has received a SNUR notice, section 5(g) requires the Agency to explain its reasons in the **Federal Register** for not taking action. In addition, substances covered by proposed or final SNURs are subject to the export reporting requirements of TSCA section 12(b). EPA regulations interpreting section 12(b) requirements appear at 40 CFR Part 707. Substances subject to final SNURs would be covered by TSCA section 13 import certification requirements at 19 CFR Parts 12.118 through 12.127, and 127.8 (amended). EPA regulations discussing section 13 and TSCA's import requirements appear at 40 CFR Part 707.

II. Substance Subject to Proposed SNUR

The chemical substance covered by this proposed rule was the subject of a PMN submitted by a company claiming its identity confidential. The submitter also claimed the use and production volume of the substance confidential. The PMN submitter intends to import the substance. The specific identity of the chemical is 8-acetyl-3-dodecyl-7,7,9,9-tetramethyl-1,3,8-triaza-spiro [4,5] decane-2,4-dione. This substance will be referred to by its PMN number, P83-370, throughout this preamble.

III. Background

On January 10, 1983, EPA received a PMN, which EPA designated as P83-370, in accordance with section 5(a) of TSCA (15 U.S.C. 2604(a)). The Agency announced receipt of the PMN in the **Federal Register** of January 24, 1983 (48 FR 3045). The company voluntarily suspended the review period for 10 weeks, and the 90-day review period ended on June 18, 1983.

1. *Health effects of concern.* In the PMN, the submitter provided the Agency with the following test results: acute oral LD50 (rat)—>5g/kg; eye irritation (rabbit)—slight; skin irritation (rabbit)—minimal; skin sensitization (guinea pig)—strong; and mutagenicity (Ames with and without activation)—negative. EPA's general literature searches provided no additional information on the toxicity of the substance itself.

EPA analyzed the possible toxicity of P83-370 by relying upon data submitted with the PMN and on structure activity analysis using as analogues the following substances with similar chemical structures: hydantoin, phenytoin, mephenytoin, etholoin, and phenacemide. Based on the data, both the submitter and EPA have concluded that the chemical substance is a strong skin sensitizer. In addition, the identified hydantoin analogues have demonstrated teratogenic effects in rats and mice. Such effects include growth retardation skeletal defects, cleft palate, exencephaly, and open eye. One of these hydantoin derviatives, phenytoin, is used therapeutically in treating epilepsy in humans. Phenytoin has been characterized as a known human teratogen. Prenatal exposure to phenytoin may result in "fetal hydantoin syndrome," the effects of which include growth retardation, mental retardation, craniofacial abnormalities, and nail and digital hypoplasia. Mephenytoin,

however, demonstrated no teratogenic effects when tested in mice.

Based on structure activity analysis and on the low solubility of P83-370 in water (0.2 mg/(l), the substance may be poorly absorbed via the gastrointestinal tract, lungs, and skin. Poor absorption characteristics do not, however, allay the Agency's concern about the potential health effects because there are no test data on the substance itself or the hydantoin analogues which establish a no observed adverse effect level, nor have the actual absorption characteristics of the substance been tested.

2. *Exposures of concern.* The submitter indicated that P83-370 is to be imported. Routine dermal and inhalation exposure to the substance may occur during processing. The Agency estimates that processing workers who do not use personal protective equipment, of the type described in this proposed rule, may potentially be exposed to up to 200 mg/kg/day dermally and up to 0.02 mg/kg/day by inhalation during the processing operations. A total of 12-24 workers are likely to be exposed during processing. It is expected that exposure during use will be significantly less than that experienced by formulators, because of the specific application process used. EPA has no reason to conclude that, if the substance was manufactured domestically, exposure during manufacture would be lower than during processing.

EPA and the PMN submitter have determined that the use of protective equipment during processing operations may substantially reduce potential worker exposure. The Agency estimates that use of gloves and goggles imperivous to P83-370 would significantly reduce dermal and eye exposure. Use of a National Institute for Occupational Safety and Health (NIOSH) approved dust respirator would significantly reduce inhalation exposure. EPA believes that processing the substance without such safeguards engenders risks that require additional Agency review in the presence of increased toxicity and exposure information.

IV. Reasons for Proposing This Rule

The Agency evaluated P83-370 and determined there is insufficient information to perform a reasoned evaluation of the health effects of the substance and that it may present an unreasonable risk to human health if it is domestically manufactured or processed without the use of certain protective safety equipment. Based on these findings, the Agency did not ban the substance, but rather, chose to restrict the manufacture and processing of the substance, thereby significantly reducing risk, while imposing less burden on the PMN submitter.

The submitter and the Agency negotiated a section 5(e) Consent Order which: (1) Prohibits domestic manufacture of the substance; (2) requires the use of specific personal protective equipment during processing; and (3) requires development and use of a precautionary label on containers of the substance. These controls are effective until appropriate data are developed to allow a reasoned evaluation of this substance. The Order became effective on September 4,1983.

The section 5(e) Consent Order, by its terms, applies only to the PMN submitter. Because it does not prohibit import, P83-370 will be added to the TSCA Chemical Substance Inventory when EPA receives a notice of commencement of import from the PMN submitter. As a result, other persons could begin manufacturing, importing, or processing the substance without notice to EPA and without the restrictions, imposed by the section 5(e) Order. This manufacturing, importing, or processing could allow the exposures of concern to occur. Therefore, EPA is proposing to designate: (1) Any domestic manufacture and (2) processing of the substance without certain protective equipment as significant new uses. This will enable the Agency to review exposures of concern before they occur.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. Moreover, the Agency would have an opportunity to review exposure and toxicity information on the substance so that, if necessary, action could be taken to ensure that persons will not be exposed to levels that are potentially hazardous. To assist EPA in making a reasoned evaluation of the chemical's potential to cause teratogenic effects, the notices submitted under the SNUR should contain appropriate test data. Studies that would produce data necessary to evaluate the potential effects of P83-370 are discussed in more detail later in this preamble. In addition to such data, EPA needs exposure information to aid in assessing whether exposure can be adequately controlled by means other than those stated in the proposed significant new uses for the substance.

V. Alternatives

EPA considered other possible approaches to ensure protection of human health. One alternative was to promulgate a section 8(a) reporting rule for the substance. Under such a rule, EPA could require any person to report to the Agency before manufacturing or processing P83-370 without protective equipment. Because the chemical substance is subject to a section 5(e) Order, the normal small business exemption of section 8(a) would not apply. However, the use of section 8(a) has one major shortcoming. If EPA received a report under section 8(a) indicating that a person intended to manufacture the chemical substance domestically or process the substance without protective equipment, the Agency could not take action under section 5(e), as it could under a SNUR, and thus would not be able to regulate the substance pending development of information. Rather, EPA would have to obtain test data under a section 4 rulemaking and then, if necessary, regulate the substance under section 6. This approach would not only be extremely resource intensive for the Agency, it would also allow unnecessary risks to human health during the time needed for data development. In addition, the original PMN submitter would be at a competitive disadvantage because the section 5(e) Consent Order applies only to that company. It is not the intent of EPA in the PMN process to create unfair marketplace disruptions.

Another regulatory approach considered is the authority to regulate substances under section 6 of TSCA. However, section 6(a) specifies that the Agency may regulate a chemical substance only if there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture "presents or will present" an unreasonable risk to human health or the environment. As stated previously, there is insufficient information to perform such an evaluation of the health effects of this chemical substance. Therefore, the Agency cannot state at this time that this substance "presents or will present" an unreasonable risk, but only that it "may present" an unreasonable risk of injury to health. Therefore, the Agency cannot presently use section 6 to regulate this chemical substance.

VI. Proposed Significant New Uses

To determine what would constitute a significant new use of P83-370, EPA considered relevant information about the toxicity of the substance and likely exposures associated with the manufacture and processing of the substance, and possible new uses, including the four factors listed in

section 5(a)(2) of TSCA. In particular, the Agency considered the potential for domestic manufacture and the reasonably anticipated manner and methods of processing the substance. For the latter, the extent to which these methods affect the magnitude and duration of human exposure was considered. In addition, EPA drew directly from the restrictions contained in the section 5(e) Order to determine the significant new uses. Based on these considerations, EPA proposes to define the following as significant new uses of P83–370:

1. Any domestic manufacture of the chemical substance.

2. Processing of the chemical substance without requiring use of the following personal protective equipment:

a. Protective gloves and goggles determined by the processor to be impervious to the substance under the conditions of exposure. Gloves and goggles shall be determined to be impervious to the substance either by testing under the conditions of exposure, including the duration of exposure, or reliance on the supplier's specifications.

b. Chemical worker respirators approved by NIOSH as suitable to protect against respirable dust.

EPA believes that there is a great likelihood that others will seek to manufacture P83–370 domestically, once it is entered on the Iventory. The intended use for which the substance will be imported is one that has a substantial growth potential. Thus, the Agency is concerned about potential exposures associated with domestic manufacture.

Should the substance be manufactured domestically, workers may encounter dermal and inhalation exposure that warrant cateful review. At this point, however, such exposures have not been reviewed by the Agency. In the event that domestic manufacturing were to occur, EPA and industry would need to assess the potential risks associated with exposure to the substance in a manufacturing operation. The Agency has an obligation under TSCA to reveiw such esposure thoroughly before it occurs in light of the health concerns.

With regard to processing, there exists the potential for accidental dermal or eye contact with P83–370, but there is no way to quantify the likelihood of such exposure given the available data. Use of the protective equipment designated above is expected to reduce significantly the availability of the substance for both dermal reactions and inhalation leading to teratogenic effects. Use of gloves and goggles in processing the substance is expected to reduce accidendtal exposure.

As an alternative to using personal protective equipment, potential processors may want to use a process that minimizes exposure. Such exposure controls would be described in a SNUR notice. A process that significantly reduces exposure may also reduce EPA's concerns.

VII. Recordkeeping Requirements

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing that the following records be maintained for five years, after the date of their creation, by persons who process the substance subject to this proposed rule.

1. The names of persons required to use protective equipment.

2. Records of specifications evaluated or tests performed on the prescribed protective equipment.

This proposed requirement is expected to encourage compliance with this proposed rule when promulgated and to support EPA's enforcement efforts. The Agency considered omitting recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult.

Section 5(a)(2) of TSCA does not explicitly provide for recordkeeping of the type in paragraph (g) of this proposed rule. However, as discussed above, EPA believes that such recordkeeping is necessary to implement and enforce the requirements of the SNUR effectively. EPA believes that two TSCA authorities support the recordkeeping in this proposed rule. First, EPA believes there is inherent authority in section 5 of TSCA to require the keeping of records reasonably necessary to implement the mandate of section 5. EPA has already exercised this authority in the PMN rule recordkeeping requirements (see 40 CFR 720.78). Clearly, there is no way to determine whether a processor is undertaking a new use of the type in this proposed rule unless the processor is required to keep records of his activities to show that the new use has not occurred. Otherwise, EPA would not be able to determine that a violation has occurred unless the processor was observed in violation.

Second, section 8(a) of TSCA provides broad authority for EPA to require manufacturers and processors of chemical substances to keep records. Generally, a section 8(a) recordkeeping requirement does not apply to small manufacturers and processors, but in this case a section 5(e) Order is in effect for the chemical substance in question. Thus, under section 8(a)(3)(A)(ii) of TSCA, EPA can require recordkeeping by small processors as well. However, the section 5(e) Consent Order will automatically be revoked when the SNUR goes into effect. EPA chose to write this and other section 5(e) Orders in this fashion to ensure that the original PMN submitter would be treated in the same manner as other manufacturers, importers, and processors once the SNUR is in effect.

EPA believes that revocation of the section 5(e) Order after the SNUR and its accompanying section 8(a) recordkeeping requirements go into effect would not invalidate the recordkeeping requirement for small processors. Congress clearly believed that small businesses should be subject to section 8(a) when the particular chemical substance in question was the subject of a specific regulatory action and finding. In this case the "may present an unreasonable risk" finding in the section 5(e) Order would remain valid even though the Agency had revoked the Order for administrative reasons.

As an alternative to the recordkeeping requirements in paragraph (g) of this proposed rule, EPA is considering making failure to keep certain records a significant new use. Thus, 90 days before any processor could cease keeping the specified records, the processor would be required to submit a notice to EPA. Any person who failed to keep the records without having notified EPA would be in violation of section 5 of TSCA and of the rule.

Another alternative being considered by the Agency would require recordkeeping by all persons importing, manufacturing, or processing a chemical substance subject to a 5(e) Order, in any fashion which does not constitute a significant new use.

VIII. Persons Subject to SNUR Notice Requirements

Section 5(a)(1)(B) of TSCA requires persons to submit a SNUR notice to EPA before manufacturing, importing, or processing a substance subject to a SNUR for a significant new use. The language of this proposal makes clear that manufacturers, importers, and processors are subject to SNUR notice requirements. In past proposed SNURs, however, the Agency has determined that requiring both manufacturers (including importers) and processors to submit SNUR notices may result in duplicative information and cause an unnecessary burden on industry. Therefore, the Agency proposed to allow manufacturers and processors to decide

which party should submit what information to EPA so long as all appropriate information was submitted. This approach would certainly be appropriate where the significant new use would occur downstream from the manfacture, importing, or processing operations. However, for this substance, the exposure and hazard concerns involve workers in the manufacturing and processing operations and the proposed new use is the actual domestic manufacturing or processing as opposed to a marketable end product. Therefore, the points and levels of exposure and the number of persons exposed will be unique to each manufacturer and processor. To assess the effects resulting from these significant new uses, the Agency proposes to require any person who intends to manufacture, import, or process the substance for a defined significant new use to submit a SNUR notice.

Using this approach, if a person plans to manufacture this substance in the United States, that person is required to submit a SNUR notice. Alternatively, if a person plans to process this substance without the designated protective equipment, that person would be required to submit a SNUR notice. If a person planned to import the substance and then sold the substance to a person who planned to process it without using the designated protective equipment, both persons would be responsible for submitting a SNUR notice, but EPA is proposing that only one be required to submit a notice. In this situation, that person would be the processor because he is the one most familiar with the exposures resulting from the new use. In the situations where the importer has information important to EPA's risk assessment, the Agency would encourage the two persons to make a joint submission to provide complete information. If one person did not have complete information about the substance or the use, and the other person did not submit that informtion, EPA could take action under section 5(e) to regulate the new use pending submission of the information. In situations where it is not clear who should submit a SNUR notice, the Agency encourages potential SNUR notice submitters to consult EPA prior to submitting their notice.

IX. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

EPA recognizes that when P83-370 is added to the Inventory it may be manufactured or processed for the significant new uses defined in this proposal before promulgation of the final rule. EPA has decided that the intent of section 5(a)(1)(B) can best be served by determining whether a use is "new" or "existing" as of the proposal date of the SNUR. If EPA were to consider uses begun during the proposal period to be "existing" rather than "new," it would be virtually impossible for the Agency to establish SNUR notice requirements because any person could defeat the SNUR by initiating the proposed significant new use before the rule became final. This would be contrary to the general intent of section 5(a)(1)(B).

Thus, if the substance is manufactured, imported, or processed between proposal and promulgation for a proposed significant new use, the Agency will still consider such uses to be "new" if they are retained in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who began manufacture, import, or processing for a significant new use during the proposal period. However, this proposal puts them on notice of that potential disruption, and they proceed at their own risk. The Agency specifically requests comments on ways to minimize this disruption.

X. Procedures for Informing Persons of the Existence of This Significant New Use Rule

The final rule will be published in the **Federal Register** and codified in the Code of Federal Regulations (CFR). While this will provide legal notice of the rule, EPA also intends to publish information concerning final SNURs in the TSCA Chemicals-In-Progress Bulletin, published by the TSCA Assistance Office of EPA's Office of Toxic Substances. EPA may also use the TSCA Chemical Substance Inventory to inform persons of the existence of final SNURs through footnotes to the chemical identities of substances subject to SNURs. The footnotes would refer to an Inventory Appendix which would give a **Federal Register** or CFR citation for the SNURs. As a variation of this approach, the Agency is considering publishing a list of substances subject to SNURs as an Inventory Appendix.

An person who intends to manufacture or process a substance for the first time would check the Inventory to determine if the substance is listed. If the person found that the substance is on the Inventory, but subject to a SNUR, he could determine whether he would be subject to reporting by contacting EPA or reviewing the rule. Because an updated Inventory is only published periodically, manufacturers and processors would also rely on the **Federal Register** and the TSCA Chemicals-In-Progress Bulletin. Because EPA maintains a current copy of the Inventory, any questions could be resolved by consulting EPA.

EPA believes that all manufacturers and most processors know the identities of the substances they manufacture or process and therefore can follow the above procedures. EPA recognizes, however, that some processors may not know the identity of substances they process and, as a result, may not know they are subject to a SNUR. At the same time manufacturers do not always know what their processor/customers do with substances supplied to them. Therefore, EPA has identified several alternative approaches to address liability for manufacturers, importers, and processors of substances subject to a SNUR.

First, if a required SNUR notice has not been submitted, EPA could hold manufacturers and importers of the chemical substance liable if any of their customers process the substance for a significant new use (i.e. without certain protective equipment) even if the manufacturer or importer did not know that the customer intended to process the substance for the significant new use. Manufacturers and importers could avoid liability in this situation by informing each of their customers in writing that the substance is subject to this SNUR and by maintaining records that each verify such customer notification. However, if the manufacturer or importer had reason to believe that a customer was processing the substance for a significant new use before submitting a SNUR notice, the manufacturer or importer would be required to immediately cease sales of the substance to the customer and notify EPA enforcement authorities to avoid liability. The manufacturer or importer could not resume sales of the substance to that customer until a SNUR notice had been submitted by the manufacturer, importer, or processor, and the notice review period had run without regulatory action by EPA.

Second, EPA could hold processors liable if they process the substance for a significant new use without submitting a SNUR notice, even if they did not know the identity of the substance or that the substance was subject to a SNUR. However, processors could avoid liability in this situation by asking each of their suppliers to certify in writing whether the substance is subject to a SNUR receiving a negative response, and maintaining records of each negative response. EPA believes that many processors ask suppliers to certify

that the chemical substances they purchase are on the Inventory. The Agency believes that processors can similarly ask suppliers whether the substances are subject to SNUR notice requirements. This alternative is consistent with the reporting alternative above in which EPA proposes to require submission by processors of SNUR notices for their significant new uses.

Third, EPA could require manufacturers and processors of this substance to notify, through a label or otherwise, any person to whom they distribute the substance that the substance is subject to this SNUR. EPA could accomplish this in one of two ways. EPA believes that, where necessary, there is inherent authority in section 5(e)(2) of TSCA to require such notification since lack of notification would impair compliance with the rule. In addition, EPA could define distribution of this substance without a notification as a significant new use; before anyone could distribute the substance without providing notification, they would have to submit a SNUR notice to EPA.

The Agency specifically requests comments on these approaches as well as on other approaches to ensure that SNUR notice requirements are followed.

XI. Required Information

A. General

The Agency proposes that SNUR notice submitters use the premanufacture notice form and follow the premanufacture notice rules which were published in the **Federal Register** of May 13, 1983 (48 FR 21722). EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new use. Manufacturers and processors should focus on the following information: (1) Chemical identity; (2) description of processing and use; (3) exposures related to processing and use; and (4) test data. In addition, EPA urges persons to submit information on both the potential benefits and risks of the substance compared to those posed by its substitutes.

Depending on EPA's calculations of the risks involved, if a SNUR notice is submitted for the subject substance without test data or other information to demonstrate that exposure is adequately controlled by means other than those specified in these proposed significant new uses, EPA could take action under section 5(e).

B. Test Data

EPA recognizes that under TSCA section 5, a person is not required to develop any particular test data before submitting a notice. Rather, a person is required only to submit test data in his possession or control and to describe any other data known to or reasonably ascertainable by him. However, in view of the potential health risk that may be posed by the proposed significant new uses of P83-370, EPA encourages possible SNUR notice submitters to conduct tests that would allow a more reasoned evaluation of the substance's potential to cause teratogenic effects.

The Agency has determined that fetal teratology studies with blood level testing are appropriate tests to determine the potential for teratogenic effects. Such testing will provide data necessary to determine whether effects such as fetal hydantoin syndrome will occur. This type of information is quite valuable for the Agency's ongoing review of the toxicity of this chemical substance. Therefore, such testing should be submitted in a SNUR notice.

Any testing should be conducted according to good laboratory practices and through the use of methodologies acceptable to the Agency. Failure to do so may lead the Agency to find such data to be insufficient to evaluate the health effects of this substance reasonably.

As part of an optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of P83-370. During prenotice consultation, EPA will also discuss information that will be particularly useful to the Agency in reviewing this substance. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance.

XII. EPA Review of Notice

EPA proposes to review SNUR notices the same way it reviews PMNs and to subject such notices to the procedures in the final premanufacture notice rule. Under section 5(d)(2) of TSCA, EPA will issue a summary of each notice in the **Federal Register**. The review period for the notice will run 90 days from EPA's receipt of the notice. Under TSCA section 5(c), this period may be extended up to an additional 90 days for good cause. The submitter may not manufacture, import, or process the substance for the significant new use until the review period, including extensions, has expired.

The Agency may regulate the substance during the review period. If a significant new use notice is submitted for a chemical substance without information sufficient to judge the toxicity and exposure potential of the substance, EPA may issue a section 5(e) Order limiting or prohibiting the new use until sufficient information is developed. In addition, section 5(f) authorizes EPA to prohibit the significant new use if it presents or will present an unreasonable risk to health or the environment. EPA may also refer information in a SNUR notice to other EPA offices and other Federal agencies. If EPA does not take action under section 4, 5, 6, or 7 to control a substance on which it has received a significant new use notice, section 5(g) requires the Agency to explain in the **Federal Register** its reasons for not taking action.

XIII. Modification of Reporting Requirements

The Agency believes that there may be circumstances that will lead to modification of the new use descriptions. When a significant new use notice is submitted, EPA will review the use to determine whether any regulatory action is necessary. If, after review, EPA allows the use to occur, the use arguably should not be subject to further reporting. EPA may amend the SNUR to modify or eliminate the new use description if the Agency decides that a change is warranted or that further notice of that use under a SNUR is not warranted. EPA may also amend the SNUR to modify or eliminate other use descriptions if it determines, based on new data available to EPA, that a substance no longer presents health or environmental concerns for those uses.

EPA will amend a SNUR through rulemaking. When EPA revises a SNUR by eliminating notice requirements for a single, narrow use of the substance, the Agency may dispense with notice and comment if it, for good cause, finds that notice and comment is impracticable, unnecessary, or contrary to the public interest. However, EPA will completely revoke or substantially alter a SNUR only after notice and an opportunity for comment.

XIV. Proposed Rule Language

This proposed rule is structured as follows. The chemical substance and defined significant new uses are described in paragraph (a) of this proposal. In paragraph (b), EPA proposes definitions applicable for this section. Paragraph (c) describes the persons who must report. The notice requirements and procedures for reporting under this proposal are stated in paragraph (d). Paragraph (e) clarifies which exemption of TSCA section 5(h) applies in this SNUR. Test marketing exemptions (TMEs) under TSCA section 5(h)(1) generally apply in SNURs.

However, in this case the proposed significant new uses involve actual domestic manufacture and particular processing operation as opposed to a marketable end use. Therefore, EPA believes that TMEs should not apply in this case. Paragraph (f) describes enforcement provisions applicable to this proposed rule.

EPA invites comments on all aspects of this proposed rule language.

XV. Enforcement

It is unlawful for any person to fail or refuse to comply with any provision of section 5 or any rule promulgated under section 5. Manufacture or processing of chemical substances for a significant new use without prior submission of a significant new use notice would be a violation of section 15.

Section 15 of TSCA also makes it unlawful for any person to:

1. Use for commercial purposes a chemical substance or mixture which such person knew or has reason to know was manufactured, imported or processed in violation of a SNUR.

2. Fail or refuse to permit entry or inspection as required by section 11.

3. Fail or refuse to permit access to or copying of records, as required by TSCA.

Violators may be subject to various penalties and to both criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of a SNUR may be subject to penalties calculated as if they never filed their notices. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation could constitute a separate violation. Knowing or willful violation of a SNUR could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under sections 7 and 17 of TSCA such as seeking an injunction to restrain violations of a SNUR and the seizure of chemical substances manufactured or processed in violation of a SNUR.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false information or cause it to be reported.

XVI. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for P83–370. The economic analysis of the possible outcomes as a result of the promulgation of this SNUR is summarized below.

The only costs that will definitely occur as a result of this SNUR will be EPA's cost of issuing and enforcing it. It is estimated that the Agency costs of issuing the SNUR are $42,150. The Agency would also incur enforcement costs.

After promulgation to the proposal of the SNUR, the Agency believes that there are five possible scenerios for firms that may wish to manufacture or process P83–370. First, a company may process the substance using the required protective equipment; therefore, no SNUR notice would need to be submitted. Second, a firm may desire to manufacture or process the substance for a significant new use and then would submit a SNUR notice. Third, a firm may desire to manufacture or process the substance for a significant new use and then would submit a SNUR notice with information showing alternative methods of controlling exposures that allay Agency concerns. Fourth, a SNUR notice may be submitted that includes the results of the recommended testing or notification that the firm is preparing to test the substance. Fifth, a firm may decide not to manufacture or process the substance because of the restrictions imposed by the SNUR.

The costs associated with these possible outcomes have been calculated by EPA. If a company decides to produce the substance under the terms of the SNUR, it will not incur the cost of submitting a SNUR notice. The only cost to the company would be that of the protective equipment. The present value of the protective equipment is $999. This cost is computed over a 10-year period for one worker. The estimate is based on use over 10-year economic life of the substance and utilizing a 10- percent discount rate.

In some circumstances it could be cost effective for a company to file a SNUR notice with data which show that other means of controlling exposures could mitigate EPA's concern. In this case, the company would incur the cost of filing the SNUR notice ($1,375 to $7,950) and possibly the cost of some exposure controls which ordinarily would not be used without the existence of the SNUR. EPA's costs following proposal of a SNUR would include reviewing the SNUR notice ($6,865) and modifying the terms of the SNUR ($8,430) if the information provided shows that EPA's concerns would be adequately addressed by the use of a different type of exposure control.

It is theoretically possible that a company could file a SNUR notice which would include the test results of the recommended testing. In such a situation, a company would incur the cost of filing a notice ($1,375 to $7,950), performing the test ($70,000), and the cost of production delay (probably a delay in profits of 0.5 year).

Some companies could find the cost of controlling exposures too expensive to justify manufacturing or processing. If this were true, the company would not incur any direct cost as a result of the SNUR. However, the company and society could then lose benefits that could have been derived from the manufacture or processing of the substance.

The Agency has not attempted to quantify the benefits of the proposed rule or of the possible outcomes. In general, benefits will accrue if the proposed action leads to the identification and control of unreasonable risks before significant health effects can occur. The issuance of the SNUR provides the benefits of reduced health risks until production or processing ceases. Furthermore, these benefits would continue regardless of decisions made by industry in response to the SNUR.

XVII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "Major Rule" because it does not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this proposed rule, EPA believes that the cost will be low. Even if EPA received 25 SNUR notices, and each submitter performed the recommended testing, the direct cost of the rule would be under one million dollars. In addition, because of the nature of the rule and the substance subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an

innovation which has high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This proposal was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small businesses. The agency has no way to predict whether parties affected by this proposed rule are likely to be small businesses. However, EPA believes that few manufacturers or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this proposed rule might be significant for some small businesses, the number of such businesses affected would not be substantial. The Agency expects that one of the first notice submitters will test the substance as suggested earlier. With these data, EPA would be able to evaluate the risks posed by the substance in these uses and, if necessary, take action to control those risks. At that time, the Agency presumably would repeal the SNUR. Therefore, even if all SNUR notices are submitted by small businesses, only a few small businesses will be directly affected by the proposed rule. In addition, the cost of the testing that may be encouraged by this proposal should not have a major impact on a small business that may want to use this chemical substance as set forth in this proposal.

C. Paperwork Reduction Act

The information reporting requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0012.

XVIII. Confidential Business Information

Any person who submits comments which the person claims as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any person submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XIX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50509). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following categories of information:

1. The PMN for this chemical substance.
2. The **Federal Register** notice of receipt of the PMN.
3. A copy of the section 5(e) Consent Order.
4. Data on chemical analogues of the substance.
5. The toxicity support documents for the Significant New Use Rule.
6. The economics support document for the Significant New Use Rule.

A public version of this record containing sanitized copies of this information from which CBI has been deleted, is available to the public in the OTS Public Information Office, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. E–107, 401 M St., SW., Washington, D.C.

EPA will identify the complete rulemaking record by the date of promulgation. The Agency will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. The final rule will also permit persons to point out any errors or omissions in the record.

(Sec. 5, Pub. L. 94–469, 90 Stat. 2012 (15 U.S.C. 2604))

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: December 21, 1983.

William D. Ruckelshaus,

Administrator.

PART 721—[AMENDED]

Therefore, it is proposed that proposed Part 721 of Chapter I of Title 40 be amended by adding § 721.25 to read as follows:

§ 721.25 8-acetyl-3-dodecyl-7,7,9,9-tetramethyl-1,3,8-triaza-spiro [4,5] decane-2,4-dione.

This section identifies activities with respect to a chemical substance which EPA has determined are "significant new uses" under the authority of section 5(a)(2) of the Toxic Substances Control Act. In addition, it specifies the procedures for reporting on this substance.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The following chemical substance is subject to reporting under this section for the significant new uses listed in paragraph (a)(2) of this section: 8-acetyl-3-dodecyl-7,7,9,9-tetramethyl-1,3,8-triaza-spiro [4,5] decane-2,4-dione.

(2) Significant new uses subject to reporting:

(i) Any manufacture within the United States.

(ii) Processing without requiring use of the following personal protective equipment:

(A) Protective gloves and goggles determined by the processor to be impervious to the substance either: (*1*) By testing the equipment under conditions of exposure, or (*2*) by evaluating the specifications supplied by glove and goggle manufacturers which indicate that the items will be impervious to chemical substances in the class containing the substance under conditions of exposure, including expected duration of exposure.

(B) Chemical worker respirators approved by the National Institute for Occupational Safety and Health (NIOSH) as suitable to protect against respirable dust.

(b) *Definitions.* Applicable definitions in section 3 of the Act, 15 U.S.C. 2602, apply to this section. Applicable definitions in § 720.3 of this Chapter apply to this section. In addition, the following definitions apply:

(1) "Process for commercial purposes" means preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included. If a chemical substance or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

(2) "Manufacture." For the purposes of this rule the term "manufacture" is exclusive of importation.

(3) [Reserved]

(c) *Persons who must report.* Any person who intends to manufacture, import (other than as part of an article), or process for commercial purposes the substance listed in paragraph (a) of this section for a significant new use defined

in that paragraph must submit a notice to the EPA Office of Toxic Substances in Washington, D.C. under the provisions of section 5(a)(1)(B) of the Act, Part 720 of this Chapter, and this section. Any notice of import must be submitted by the principal importer.

(d) *Notice requirements and procedures.* Each person who is required to submit a significant new use notice under this section must submit the notice at least 90 calendar days before commencing the significant new use. The submitter must comply with any applicable requirement of section 5(b) of the Act, and the notice must include the information and test data specified in section 5(d)(1) of the Act. The notice must be submitted on the notice form in Appendix A to Part 720 of this Chapter and must comply with the requirements of Part 720, except to the extent that they are inconsistent with this section. EPA will process the notice in accordance with the procedures in Part 720 of this Chapter, except to the extent that they are inconsistent with this section.

(e) *Exemptions and exclusions.* The chemical substance listed in paragraph (a) of this section is not subject to the notification requirements of this section if:

(1) The substance is manufactured or processed only in small quantities solely for research and development, and the substance is manufactured or processed in accordance with the provisions of § 720.36 of this chapter.

(2) The substance is manufactured or processed only as an impurity or byproduct.

(f) *Enforcement.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Using for commercial purposes a chemical substance or mixture which a person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Failure or refusal to permit access to or copying of records, as required by section 11 of the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Failure or refusal to permit entry or inspection, as required by section 11 of the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(5) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation. Persons who submit materially misleading or false information in connection with the requirement of any provision of this section may be subject to penalties calculated as if they never filed their notices.

(6) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section or act to seize any chemical substance manufactured or processed in violation of this section or take other actions under the authority of sections 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

(g) *Recordkeeping.* Processors who process the substance identified in paragraph (a) of this section must maintain the following records for five years from the date of their creation:

(1) The names of persons required to use protective equipment.

(2) Records of specifications evaluated or tests performed on the prescribed protective equipment.

(Approved by the Office of Management and Budget under control number 2070–0012)

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40 CFR Part 799

[OPTS–42050; TSH–FRL 2483–1]

Mono-, Di-, and Trichlorinated Benzenes; Proposed Environmental Effects Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 4 of the Toxic Substances Control Act (TSCA), EPA is proposing that manufacturers and processors of mono-, di-, and trichlorinated benzenes conduct certain chemical fate and environmental effects tests on these chemicals. The testing being proposed will be performed according to protocols adopted by the Agency. EPA is not proposing chemical fate or environmental effects testing of the tetrachlorobenzenes or pentachlorobenzene at this time. However, in view of recently obtained information indicating production and environmental release of the tetrachlorobenzenes, the Agency is issuing an Advance Notice of Proposed Rulemaking (ANPR) for the tetrachlorobenzenes and is soliciting comments on the possible need to issue a proposed test rule for one or more of the tetrachlorobenzene isomers. This notice constitutes EPA's response to the Interagency Testing Committee's (ITC) designation of mono-, di-, tri-, tetra- and pentachlorinated benzenes as priority candidates for environmental effects testing consideration.

DATES: Submit written comments on or before March 13, 1984. If persons request an opportunity for oral comment by February 27, 1984, EPA will hold a public meeting on March 28, 1984, on this rule in Washington, D.C. For further information on arranging to speak at the meeting see Unit VI of this preamble.

ADDRESS: Submit written comments in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St. SW., Washington, D.C. 20460. Include the document control number [OPTS–42050] on all submissions.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator—202–554–1404).

SUPPLEMENTARY INFORMATION: .

I. Introduction

Section 4(e) of TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act. The ITC may designate substances on the list for priority consideration for testing under section 4(a) of the Act.

The ITC designated the chlorinated benzenes for priority consideration in its Initial (mono-, di-, and trichlorinated benzenes) and Third (tetra-, and pentachlorinated benzenes) Reports, published in the **Federal Register** of October 12, 1977 (42 FR 55026) and October 30, 1978 (43 FR 50630), respectively. The ITC recommended that mono-, di-, tri-, tetra- and pentachlorinated benzenes be considered for health and environmental effects testing. EPA's response to the ITC's health effects testing recommendations for these chlorinated benzenes was published in the **Federal Register** of July 18, 1980 (45 FR 48524). This notice constitutes EPA's response to the ITC's designation of chlorobenzenes as priority candidates for consideration for environmental effects testing, with particular emphasis on long-term environmental studies on freshwater and marine organisms or populations.

The ITC's testing recommendations for mono- and dichlorinated benzenes were based on the reported large U.S. production volumes of these compounds. The ITC's Initial Report stated that the U.S. production of monochlorobenzene

was over 300 million pounds/year. Production of 1,2- and 1,4-dichlorobenzene was estimated by the ITC at 50 million pounds each. In addition, the ITC was concerned that the manufacture of mono- and dichlorobenzenes and their use alone and in products could present an environmental hazard, particularly in light of the high release rate of mono- and dichlorobenzenes and their anticipated persistence in the environment.

The ITC's recommendations for tri-, tetra- and penta-chlorinated benzenes were based on reports of contamination of air, water, soil and food chains by chlorinated benzene compounds. The ITC cited several possible sources of contamination, which included the use of chlorinated benzenes as chemical intermediates, as solvents in the manufacture of dyes, as lubricants and pesticides, and as transformer oils. The ITC also speculated that a reduction in the use of polychlorinated biphenyls may result in increased use of trichlorobenzenes as transformer oils.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight of evidence approach in making a section 4(a)(1)(A)(i) finding in which both exposure and toxicity information are considered to make the finding that the chemical may present an unreasonable risk. For the section 4(a)(1)(B)(i) finding, EPA considers only production, exposure, and release information to determine if there is substantial exposure or release. For the second finding under both sections 4(a)(1)(A) and 4(a)(1)(B), EPA examines toxicity and fate studies to determine if exisiting information is adequate to determine or reasonably predict the effects of human exposure to, or environmental release of, the chemical. In making the third finding, that testing is necessary, EPA considers whether any ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings can be made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300), respectively. The section 4(a)(1)(A) findings are discussed in (45 FR 48528), and the section 4(a)(1)(B) findings are discussed in (46 FR 30300).

In evaluating the ITC's testing recommendations concerning the chlorinated benzenes, EPA considered all available relevant information, which included the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of the chlorinated benzenes under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted by the manufacturers of the chlorinate benzenes under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716); and published and unpublished data available to the Agency. On the basis of its evaluation, as described in this preamble and the accompanying technical support document, EPA is proposing environmental effects and chemical fate testing requirements for the mono-, di-, and trichlorinated benzenes under either section 4(a)(1)(A) or 4(a)(1)(B), as appropriate. EPA also is soliciting comments on the need for environmental effects and chemical fate testing of tetrachlorobenzenes through an Adnvance Notice of Proposed Rulemaking (ANPR) contained in this Notice. The Agency is not proposing testing for pentachlorobenzene because available information indicates that pentachlorobenzene is not produced in or imported into the United States. By these actions, EPA is responding to the ITC's designations of mono-, di-, tri-, tetra- and pentachlorinated benzenes for testing consideration.

II. Chlorinated Benzenes

A. Profile

The eleven chlorinated benzenes listed in Table 1 are those considered in this response to the ITC. For membership in the category, a substance must be a benzene ring in which one to five hydrogen atoms are replaced by a chlorine.

TABLE 1.—IUPAC NAMES, CAS NUMBERS AND SYNONYMS OF THE CHLORINATED BENEZENES

IUPAC name	CAB No.	Synonyms
Chlorobenzene	108-90-7	Monochlorobenzene, benzene chloride.
1,2-Dichlorobenzene	95-50-1	*ortho* or *o*-Dichlorobenzene.
1,3-Dichlorobenzene	541-73-1	*meta*- or *m*-Dichloroberizene
1,4-Dichlorobenzene	105-46-7	*para*- or *p*-Dichlorobenzene.
1,2,3-Trichlorobenzene	87-61-6	*vic*-Trichlorobenzene.
1,2,4-Trichlorobenzene	120-82-1	*unsym*-Trichlorobenzene.
1,3,5-Trichlorobenzene	108-70-3	*sym*-Trichlorobenzene.
1,2,3,4-Tetrachlorobenzene.	634-66-2	1,2,3,4-Tetrachlorobenzol.
1,2,3,5-Tetrachlorobenzene.	634-90-2	1,2,3,5-Tetrachlorobenzol.
1,2,4,5-Tetrachlorobenzene.	95-94-3	1,2,4,5-Tetrachlorobenzol.
1,2,3,4,5-Pentachlorobenzene.	608-93-5	Quintochlorobenzene.

Ranges of chlorinated benzene production in and/or import into the United States are presented in Table 2. These figures were derived from information reported under the TSCA section 8(a) Preliminary Assessment Information Rule published in the **Federal Register** of June 22, 1982 (47 FR 26992), using the techniques for aggregating data as described in the **Federal Register** of June 13, 1983 (48 FR 27041), and rounding off to three significant figures.

TABLE 2.—UNITED STATES PRODUCTION AND/OR IMPORT OF THE CHLORINATED BENZENES

Chlorinated benzene	Production and/or import volume (lbs/year)*
Monochlorobenzene	195,000,000 to 284,000,000.
1,2-Dichlorobenzene	40,300,000 to 47,300,000.
1,3-Dichlorobenzene	323,000 to 1,010,000.
1,4-Dichlorobenzene	62,300,000.
1,2,3-Trichlorobenzene.	51,300 to 163,000.
1,2,4-Trichlorobenzene.	2,750,000 to 8,070,000.
1,3,5-Trichlorobenzene.	244,000 to 462,000.
Tetrachlorobenzene	Unknown.[b]
Pentachlorobenzene	None.

*Data were derived from information reported under the TSCA Section 8(a) Preliminary Assessment Information Rule (47 FR 26992) using the techniques for aggregating data described in 48 FR 27041 and EPA communications with the chlorobenzene manufacturers.

[b] The single tetrachlorobenzene manufacturer that reported under the TSCA Section 8(a) Preliminary Assessment Information Rule (47 FR 26992) informed the Agency that it no longer produced tetrachlorobenzene. However, recent information now indicates that potentially significant levels of tetrachlorobenzene may now or soon will be produced by another chlorobenzene manufacturer (CBI 1983).

The principal uses of the chlorobenzenes are summarized in Table 3.

TABLE 3.—PRINCIPAL USES OF CHLOROBENZENES*

Chlorinated benzene	Principal uses
Monochlorobenzene.	Intermediate in dye and herbicide manufacture; solvent in pesticide* and degreasing formulations.
1,2-Dichlorobenzene.	Production of 3,4-dichloroaniline; intermediate in manufacture of herbicides, dyes, polyethers, and epoxy resins; organic solvent.
1,4-Dichlorobenzene.	Space deodorants and moth-control.*
Trichlorobenzenes.	Organic intermediates; solvents; dye carriers; transformer and dielectric fluids.
Tetrachlorobenzenes.	Intermediate in production of dielectric fluids, pesticides, herbicides, and pentachlorobenzene.
Pentachlorobenzene.	Production of pentachloronitrobenzene.

*Use of chlorinated benzenes as pesticide products or as solvents in such pesticides is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act and was not considered in this rulemaking.

B. Findings

1. *TSCA Section 4(a)(1)(B).* The EPA is basing its proposed testing of monochlorobenzene, 1,2- and 1,4-dichlorobenzenes and 1,2,4-trichlorobenzene on the authority of section 4(a)(1)(B) of TSCA. EPA has concluded that monochlorobenzene, 1,2- and 1,4-dichlorobenzenes and 1,2,4-trichlorobenzene are produced in substantial quantities, and may enter the environment in substantial quantities. Furthermore, EPA has concluded that there are insufficient data available to either reasonably determine or predict the results of this exposure in the areas of chemical fate and environmental effects and that testing is necessary to develop such data.

EPA has reached these conclusions for the following reasons: (1) Available information indicates that the annual United States production and/or import volumes for monochlorobenzene, 1,2- and 1,4-dichlorobenzenes and 1,2,4-trichlorobenzene are substantial (see Table 2), based on information reported under the TSCA section 8(a) Preliminary Assessment Information Rule (47 FR 26992), aggregated using the techniques described in 48 FR 27041 and rounded off to three significant figures. (2) Available information indicates that there are substantial amounts of monochlorobenzene, 1,2- and 1,4-dichlorobenzenes and 1,2,4-trichlorobenzene released to the environment each year via manufacturing, processing and/or use activities. Table 4, presents aggregated environmental release estimates of the chlorinated benzenes resulting from their manufacture, based on information reported under the TSCA section 8(a) Preliminary Assessment Information Rule (47 FR 26992) and rounded off to three significant figures. In addition, available data indicate that the uses of these chlorinated benzenes may result in substantial release of monochlorobenzene, 1,2- and 1,4-dichlorobenzenes and 1,2,4-trichlorobenzene into the environment. Johnston et al. (1980) and Mathtech (1983) estimated the following environmental releases from use: monochlorobenzene—2 million pounds released to air, and 70 million pounds released to water; 1,2-dichlorobenzene—<0.1 million pounds released to air, 9.1 million pounds released to water, and <0.1 million pounds released to land; 1,4-dichlorobenzene—15.7 million pounds released to air, 11.8 million pounds released to water, and 0.6 million pounds released to land; and 1,2,4-trichlorobenzene—3.2 million pounds released to water (Refs. 1 and 2). (See section 2.1 of the technical support document for additional information on the environmental release of the chlorinated benzenes.) (3) EPA has concluded that there are insufficient data on the chemical fates and environmental effects of monochlorobenzene, 1,2- and 1, 4-dichlorobenzenes and 1,2,4-trichlorobenzene to reasonably determine or predict the results of their environmental releases, and that testing is necessary to develop such data.

TABLE 4.—ANNUAL ENVIRONMENTAL RELEASE ESTIMATES DURING THE MANUFACTURE OF FOUR CHLORINATED BENZENES

Chlorinated benzene	Annual release estimate in pounds
Monchlorobenzene	420,000–605,000
1,2-Dichlorobenzene	65,800
1,4-Dichlorobenzene	365,000–592,000
1,2,4-Trichlorobenzene	801–2,033

2. *TSCA Section 4(a)(1)(a).* EPA is basing its proposed testing of 1,2,-trichlorobenzene on the authority of TSCA section 4(a)(1)(A), because EPA has concluded that 1,2,3-trichlorobenzene may present an unreasonable risk of injury to organisms in the aquatic environment. EPA has reached this conclusion for the following reasons: (1) Existing toxicity data indicate that among the mono-, di-, and trichlorobenzenes, 1,2,3-trichlorobenzene is the most toxic chlorinated benzene to aquatic organisms (Ref. 3). Toxicity measurements include reported 48-hr LC_{50}s of 0.71 mg/L and 3.1 mg/L for rainbow trout and zebra danios, respectively, and a 24-hr daphnid LC_{50} of 3.35 mg/L (Ref. 3). In addition, chronic toxicity data on daphnids show significant effects at concentations as low as 0.1 mg/L (Ref. 3). (2) Available information indicates that the manufacture and uses of 1,2,3-trichlorobenzene (dye carrier, organic solvent, intermediate and dielectirc fluid) are the principal sources of its environmental release. Ware and West (1977) reported levels of 21–46 mg/L 1,2,3-chlorobenzene in municipal discharge, measured using flame-ionization gas chromatography (Ref. 5). Using these measured levels of 1,2,3-trichlorobenzene of 1200–2600× in rainbow and its trout (Ref. 4) the potential concentration of 1,2,3-trichlorobenzene in fish is in the range of 25—120 mg/L (measured levels in water×BCF's for rainbow trout=potential concentration of 1,2,3,-trichlorobenzene in fish). Due to this potential bio-concentration of 1,2,3-trichlorobenzene, and its reported LC_{50} of 0.71 ml/l for rainbow trout, the Agency has determined that 1,2,3-trichlorobenzene may present an unreasonable risk to aquatic organisms. (3) EPA has concluded that there are insufficient data on the environmental effect of 1,2,3-trichlorobenzene to reasonably determine or predict the result of its environmental release and that testing is necessary to develop such data.

On the basis of these findings, the agency is proposing the testing requirements summarized in Tables 5 and 6 as a basis for determining the chemical fate and/or environmental effects of monochlorobenzene, 1,2- and 1,4/dichlorobenzenes, 1,2,4-tricholorbenzene and 1,2,3-trichlorobenzene.

TABLE 5.—PROPOSED TESTING REQUIREMENTS FOR MONO-, 1,2DI, 1,4-DI- AND 1,2,4-Trichlorinated Benzene

Chlorinated benzene	Proposed testing
Monocholorobenzene.	Chemical fate: Atmospheric oxidation via hydroxyl radical. Environmental effects: Speed germination, root elongation and early seedling growth in terrestrial macrophytes.
1,2- and 1,4-Dichlorobenzenes.	Chemical fate; Atmospheric oxidation via hydroxyl radical, and soil adsorption coefficient. Environmental effects: Speed germination, root elongation and early seedling growth in terrestrial macrophytes.
1,2,4-Trichlorobenzene.	Chemical fate: Atmospheric oxidation via hydroxyl radical, and soil adsorption coefficient.

TABLE 5.—PROPOSED TESTING REQUIREMENTS FOR MONO-, 1,2Di, 1,4-Di- AND 1,2,4-Trichlorinated Benzene—Continued

Chlorinated benzene	Proposed testing
	Environmental effects: Acute and chronic toxicity to mysid shrimp; acute toxicity to the aquatic macrophyte *Lemna gibba*; seed germination, root elongation and early seedling growth in terrestrial macrophnytes.

TABLE 6.—PROPOSED TESTING REQUIREMENTS FOR 1,2,3-TRICHLOROBENZENE

Environmental effects
96-hr LC_{50} for fathead minnow; 96-hr EC_{50} for one species of *Gammarus*; acute toxicity to the aquatic macrophyte *Lemna gibbs*; acute toxicity to mysid shrimp and silversides; chronic toxicity to mysid shrimp if LC_{50} is <1 ppm.

3. *No Further Testing.* For 1,3-dichlorobenzene, the Agency has concluded that no further testing should be proposed at this time. Existing data for 1,3-dichlorobenzene adequately characterize its toxicity to aquatic organisms. In addition, available information provides no basis for believing that 1,3-dichlorobenzene may present an unreasonable risk to the terrestrial environment.

For 1,3,5-trichlorobenzene, the Agency has concluded that no further testing should be proposed under either TSCA section 4(a)(1)(B) or 4(a)(1)(A) at this time. This conclusion is based on the following factors: (1) Data submitted under TSCA section 8(a) indicate that 1,3,5-trichlorobenzene is not currently produced in the United States; (2) the primary uses of 1,3,5-trichlorobenzene, for which it is imported into the United States, are expected to result in low environmental releases and exposures; and (3) in view of the level of exposure, currently available, albeit limited, data on the chemical fate and environmental effects of 1,3,5-trichlorobenzene do not support a finding that this compound may pose an unreasonable risk of injury to organism in the aquatic and terrestrial environments.

For pentachlorobenzene, the Agency concludes that no additional testing should be proposed at this time. This conclusion is based on the fact that pentachlorobenzene is neither produced in nor imported into the United States at this time. The only former U.S. pentachlorobenzene manufacturer and/or importer has notified EPA that it no longer manufactures and/or imports pentachlorobenzene.

4. *Advance Notice of Proposed Rulemaking.* For the tetrachlorobenzenes, this Notice constitutes an Advance Notice of Proposed Rulemaking. The Agency decided to issue an ANPR for tetrachlorobenzenes based on the following factors: (1) Information submitted to the EPA under the June, 1982, TSCA section 8(a) Preliminary Assessment Information Rule (47 FR 26992) indicated that only one manufacturer produced 1,2,4,5- and 1,2,3,5-trichlorobenzenes in the U.S., and that no tetrachlorobenzene was imported into the country. On May 2, 1983, this sole manufacturer notified the Agency that it no longer produced 1,2,4,5- and 1,2,3,5-trichlorobenzenes. Because these chlorobenzenes were neither produced in nor imported into the United States, the Agency had initially decided not to propose environmental effects testing for 1,2,4,5- and 1,2,3,5-tetrachlorobenzenes under TSCA section 4(a). (2) In September 1983, EPA was informed that a chlorinated benzene manufacturer in the United States had received and accepted an order for a mixture of tri- and tetrachlorinated benzenes to be used as a substitute for polychlorinated biphenyls (PSBs) in transformers. On September 27, 1983, the Agency received information, claimed as confidential business information (CBI), as to which isomer or isomers of tri- and tetrachlorinated benzenes make up this mixture and in what percentages. (3) EPA believes that the use of tetrachlorobenzene in transformers may result in environmental release and exposure similar to that demonstrated with polychlorinated bephenyls (PCBs). However, EPA does not know the potential production/importation volume of tetrachlorobenzenes for this use and cannot estimate potential release of tetrachlorobenzenes to the environment at this time.

EPA believes that an ANPR is an appropriate mechanism to obtain information on the potential production, use, and environmental release of tetrachlorobenzene as a PCB substitute. The Agency is asking for public comment on the need to test the tetrachlorobenzenes for environmental effects. (See Unit II. I). If EPA determines that there is a significant potential for environmental release from the manufacturing, processing, use or disposal of tetrachlorobenzenes, EPA will propose that they be tested for chemical fate and/or environmental effects.

The analyses on which the above findings are based are presented in the Chlorinated Benzenes Support Document, which is available from the TSCA Assistance Office (TAO).

C. Test Substance

EPA is proposing that chlorinated benzenes of 99 percent purity be used as the test substances for the chemical fate and environmental effects testing. This stipulation increases the likelihood that any toxic effects observed are related to the chlorinated benzenes and not to any impurities.

D. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which the Administrator makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal.

EPA has found that (a) mono-, 1,2-di, 1,4-di, and 1,2,4-trichlorinated benzenes are produced in substantial quantities and that their manufacture, processing, and use are likely to result in significant or substantial exposure to the environment, and (b) for 1,2,3-trichlorobenzene, manufacture, processing and use may lead to unreasonable risk to organisms in the aquatic environment. Thus, EPA is proposing that persons who manufacture or process, or who intend to manufacture or process monochlorobenzene, 1,2- and 1,4-dichlorobenzenes, and 1,2,4- and 1,2,3-trichlorobenzenes at any time from the effective date of this test rule to the end of the reimbursement period be subject to the requirements of the rule for the chlorinated benzene(s) that they manufacture or process. The end of the reimbursement period ordinarily will be 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to a test rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement as discussed in Unit II.E. below.

E. Exemptions

EPA's proposed policy on application for exemptions from section 4 testing requirements was published in the **Federal Register** of July 18, 1980 (45 FR 48512). EPA intends to promulgate its final procedures for exemptions in 40 CFR Part 770. The exemption procedures described below and included in the proposed rule language are consistent with EPA's current thinking on exemption procedures. If the general rule is promulgated before this proposal becomes final, the chlorinated benzenes rule will be modified to comport with the general procedural provisions.

Any manufacturer or processor of the chlorinated benzenes identified in paragraph (a) of this proposed rule would be able to apply for an exemption. Any person who has applied for an exemption would not be in violation of the rule until such time as EPA denies the application.

If manufacturers perform all the required testing, processors would be granted exemptions automatically without having to file applications.

When EPA has received a proposed study plan for a test set and has adopted the plan as the test standard, EPA would conditionally grant all exemption applications for that test set. If the test sponsor later fails to perform the testing, EPA would notify all persons who had submitted exemption applications for that test set that the exemptions would be denied unless within 30 days a manufacturer or processor notified EPA of its intent to perform the testing in accordance with the adopted test standards.

F. Approach to Adoption of Test Rules

1. *General process.* EPA announced a new approach to adoption of test rules published in the **Federal Register** of March 26, 1982 (47 FR 13012). EPA intends to promulgate a general procedural rule in 40 CFR Part 770 which will contain the procedural requirements for this approach. However, because that procedural rule is not in effect, this proposed rule contains specific procedures for adoption of this test rule. If the general rule is promulgated before this proposal becomes final, the chlorinated benzenes final rule will be modified to comport with the general procedural provisions.

Under the approach being followed for chlorinated benzenes, test rule development will be a two-phase process. In phase I, EPA is proposing that specific testing be required for chlorinated benzenes. This phase of the rulemaking will allow the public to comment on the decision to require testing and the specific types of tests to be required. Phase II begins after promulgation of the phase I test rule. In phase II, EPA will propose study plans submitted by test sponsors for public comment. After comment, the Agency will adopt the study plans, as proposed or modified, as specific test standards for the tests required by the phase I rule. Persons who submit the study plans will be obligated to perform the tests in accordance with the test standards adopted.

2. *Letter of intent to test or exemption application.* The proposed rule would require manufacturers and processors of chlorinated benzenes to perform certain tests. Once the rule is in effect, 30 days after publication in the **Federal Register**, each current manufacturer of monochlorobenzene, 1,2-dichlorobenzene, 1,4-dichlorobenzene, 1,2,4-trichlorobenzene, and 1,2,3-trichlorobenzene would have 30 days to submit for each required test set (see paragraphs (j) (1) through (9) of the proposed rule) either a letter of intent to perform the test set or an application for exemption. Each manufacturer who submitted a letter of intent to perform a specific test set would be obligated, first to submit, within 90 days of the effective date, a proposed study plan for the test set and, ultimately, to perform the testing.

Because EPA is making findings on individual chlorinated benzenes, the exemption procedures for the chlorobenzenes are the same as the procedures for individual chemicals discussed in Unit II.E. If manufacturers of a chlorinated benzene performed all the required test sets, processors of that chlorinated benzene would not be required to test or to submit exemption applications. EPA would automatically grant them exemptions from the requirements of the rule.

If no manufacturer of a given chlorinated benzene submitted a letter of intent to perform a particular test set within the 30-day period, EPA would publish a notice in the **Federal Register** to notify all processors of that chlorinated benzene. The notice would state that EPA had not received letters of intent to perform certain test sets and that current processors would have 30 days to submit, for each test set remaining, either a letter of intent to perform the test set or an exemption application for that test set. Each processor who submitted a letter of intent to perform a specific test set would be obligated, first, to submit, within 90 days of the publication of the **Federal Register** notice, a proposed study plan for the test set and, ultimately, to perform the testing.

If no manufacturer or processor submitted a letter of intent to perform a particular test set, EPA would notify all manufacturers and processors, by letter or through the **Federal Register**, that all exemption applications for that chlorinated benzene would be denied and that all manufacturers and processors of that chlorinated benzene would be in violation of the rule until a proposed study plan is submitted for that test set.

Any person not manufacturing chlorinated benzenes subject to testing requirements in effect, who later begins manufacturing before the end of the reimbursement period, would be required to submit a letter of intent to test or an exemption application for each required test set by the day the person begins manufacture. If EPA has published a notice in the **Federal Register** telling processors to submit letters of intent or exemption applications for certain test sets, any person not processing chlorinated benzenes at the time the rule goes into effect, who later begins processing before the end of the reimbursement period, would be required to submit a letter of intent to test or an exemption application for each test set specified in the **Federal Register** notice by the day the person begins processing.

3. *Submission and adoption of study plans.* Any manufacturer of chlorinated benzenes who submitted a letter of intent to perform a test set would have to submit, within 90 days after the effective date of the rule, a proposed study plan for that test set. In the event manufacturers do not submit letters of intent for all the required test sets, any processor who submits a letter of intent to perform a specific test set would have to submit, within 90 days of the publication of the **Federal Register** notice notifying processors, a proposed study plan for that test set. Paragraph (e) of the rule describes the contents of a proposed study plan.

EPA proposed generic test methodology requirements (generic test standards) in the **Federal Register** of May 9, 1979 (44 FR 27334), July 26, 1979 (44 FR 44054), and November 21, 1980 (45 FR 77332). In response to concerns about the rigidity of generic test methodology requirements, EPA has changed its approach for providing test standards for TSCA section 4 test rules. It has issued generic test methodology guidelines to replace the previously proposed generic test methodology requirements. The TSCA guidelines have been published by the National Technical Information Service (NTIS) for health effects (PB 82-232984),

environmental effects (PB 82-232992), and chemical fate (PB 82-233008). Good Laboratory Practice (GLP) standards for development of data on physical and chemical properties, persistence, and ecological effects of chemical properties, persistence, and ecological effects of Chemical Substances under TSCA were proposed in the **Federal Register** of November 21, 1980 (44 FR 77357). These GLP standards will be promulgated as generic requirements. These final TSCA GLP regulations will apply to the chlorinated benzenes test rule.

For guidance in preparing study plans, EPA recommends that test sponsors consult the TSCA Test Guidelines and the TSCA GLP standards as referenced above; the Organization for Economic Cooperation and Development's (OECD) Guidelines, as adopted by the OECD Council on May 12, 1981; or the FIFRA Pesticide Registration Guidelines: Proposed Data Requirements published by the National Technical Information Service (see the **Federal Register** of November 24, 1982 (47 FR 53192), for a list of these guidelines).

Failure to submit a study plan would be a violation of the rule.

EPA would review the proposed study plans. If they are incomplete, the manufacturer or processor would be notified of the deficiency and would have 15 days to provide appropriate information to make the plan complete. If the information is not provided in 15 days, the manufacturer or processor would be in violation of the rule. In addition, EPA would return to the appropriate stage of the process and require manufacturers or processors, as appropriate, to submit letters of intent, exemption applications, and study plans.

If the proposed study plan is complete, EPA would propose the study plan for public comment. In particular, the request for comments would focus on whether the study plan will ensure that data from the test set will be reliable and adequate. There would be a 45-day comment period and the opportunity to present views orally upon request. After considering the public comment, EPA would adopt the study plan as proposed, or as modified in response to comment, as the test standard for the required test set.

The person who submitted the proposed study plan would be required to perform the testing according to that standard. Failure to perform the testing would be in violation of the rule.

G. Reporting Requirements

EPA is proposing that all data be reported in accordance with the EPA GLP Standards to appear in 40 CFR Part 792. EPA has reviewed public comment on the proposed GLP Standards and is now developing final GLP standards. The final GLP Standards will apply to this rule.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the phase II rulemaking in which study plans are approved, or in a subsequent FR notice if EPA changes its policy as described in Unit II.E.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

H. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any rule issued under TSCA .

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce* * *." The Agency considers a testing facility to be a place where the chemical is held or stored, and, therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for chlorinated benzenes. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to EPA GLP standards and the test standards established in the phase II rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA , which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent to perform testing or an exemption request. Continued manufacturing or processing after the deadlines for such submissions would be a violation of the rule. Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking and injunction to restrain violations of TSCA section 4.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

I. Issues

The decision to defer environmental testing of the tetrachlorobenzenes is one for which further input by interested parties will be particularly useful. Therefore, EPA is soliciting public comment on the following information needs: (1) Production in and/or import

into the United States of tetrachlorobenzenes, (2) anticipated environmental release from production, use, distribution, or disposal of tetrachlorobenzenes; (3) ratios and isomer specific chemical components of mixtures of the chlorinated benzenes, including impurities, for use as a polychlorinated biphenyls substitute, and (4) the potential production of chlorinated benzenes (isomer specific) for use as a substitute for polychlorinated biphenyls.

The public comments received in response to this ANPR for the tetrachlorobenzenes will be instrumental in assisting the Agency in its determination on whether to require environmental effects testing of these chlorinated benzenes. If, after public comments are reviewed and evaluated, the Agency is unable to obtain specific information concerning tetrachlorinated benzene production in and/or importation into the United States, and their potential environmental release from use as a substitute for polychlorinated biphenyls, then the Agency may issue a TSCA section 8(a) rule requiring this specific information. In addition, the Agency may issue a TSCA section 5 Significant New Use Rule (SNUR) on 1,3-dichlorobenzene, 1,3,5-trichlorobenzene, and/or pentachlorobenzene.

III. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis. This consists of evaluating each chemical group on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis, along with the consideration of the costs of the required tests, indicate whether the possibility of a significant adverse economic impact exists. Where the indication is negative, no further economic analysis is done for that chemical substance or group. However, for those chemical substances or groups where the Level I analysis indicates a potential for a significant economic impact, a more comprehensive and detailed analysis is conducted. This Level II analysis attempts to predict more precisely the magnitude of the expected impact.

Total testing costs for the proposed rule for the chlorinated benzenes are estimated to range from $100,900 to $210,600. The annualized cost range is $26,100 to $54,600, based on a 25 percent cost of capital over 15 years; the estimated unit costs range from 0.01 to 0.03 cents per pound. These estimates indicate that the economic impact of the proposed testing will not be significant. Moreover, on the basis of its Level I assessment, EPA believes that this proposed test rule will not result in a loss to society of the benefits of the chlorinated benzenes.

A detailed discussion of the methodology used to conduct the economic analysis for this test rule, the "Level I Economic Impact Analysis for Chlorobenzenes" (EPA Contract No. 68–01–6630), is available from the TSCA Assistance Office (TAO)[1] and is part of the public docket for this rulemaking.

IV. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing, October, 1981," can be obtained through the NTIS (PB 82–140773).

On the basis of this study, the Agency believes that there will be available resources to perform the testing in this proposed rule.

V. Guidelines and Study Plans

The following guidelines and/or study plans cited in this proposed test rulemaking are available from: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650.

NTIS publication No.	Title	Price
PB 82–140773	Chemical Testing Industry: Profile of Toxicological Testing.	$16.00
PB 82–232992	TSCA Environmental Effects Test Guidelines for Acute Toxicity Testing.	60.00
PB 83–153908	OECD Test Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms.	11.50
PB 83–153916	FIFRA Pesticides Registration Guidelines: Proposed Data Requirements for Hazard Evaluation: Humans and Domestic Animals.	11.50

VI. Public Meetings

If persons indicate to EPA that they wish to present comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting on March 28, 1984 in Washington, D.C. Persons who wish to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800–424–9065); In Washington, D.C.: (554–1404); Outside the U.S.A. (Operator–202–554–1404), by February 27, 1984. The meeting will not be held if members of the public do not indicate that they wish to make oral presentations. This meeting is scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to check whether the meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VII. Public Record

EPA has established a record for this rulemaking docket number [OPTS–4250]. This record includes the basic information the Agency considered in developing this proposal, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received. The Record includes the following information:

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of proposed rule on the chlorinated benzenes.

(b) Notice containing the ITC designation of the chlorinated benzenes to the Priority List [42 FR 55026, October 12, 1977 and 43 FR 50630, October 30, 1978].

(c) Notices relating to EPA's environmental effects test guidelines and EPA Good Laboratory Practice Standards.

(d) Notice of proposed rule on exemption policy and procedures.

(e) Notice of final rule on reimbursement policy and procedures.

(2) Support Documents consisting of:

(a) Chlorinated Benzenes Technical Support Document.

(b) Economic Analysis Support Document.

(3) Minutes of informal meetings.

(4) Communications before proposal consisting of:

[1] TSCA Assistance Office, EPA, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800–424–9065), In Washington, D.C. (554–1404), Outside USA: (Operator–202–554–1404).

(a) Written public and intra- or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Meeting summaries.

(d) Reports—published and unpublished factual materials, including contractors' reports.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Room, Rm. E–107, 401 M St. SW., Washington, D.C. from 8:00 a.m. to 4:00 p.m., Monday through Friday except legal holidays.

VIII. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the actual annual cost of the testing prescribed for the chlorinated benzenes is less than $55,000 over the testing and reimbursement period. Second, because the cost of the required testing will be distributed over a large production volume, the rule will have only very minor effects on producers' costs or users' prices for these chemicals. Finally, taking into account the nature of the market for these chemicals, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic impact of any type as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the public record.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (15 U.S.C. 601, *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They will not perform testing themselves and will not participate in the organization of the testing effort; (2) they will experience only minor costs in securing exemptions from testing requirements; and (3) they are unlikely to be significantly affected by reimbursement requirements.

X. Paperwork Reduction Act

The information collection requirements in the proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB mailed Attention: Desk Officer for EPA.

XI. References

(1) Johnston P, Hodge V, Slimak K. 1980. Materials Balance—Task #4—Chlorobenzenes. Prepared by J.R.B. Associates, Inc., for Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency. Report 560/13–80–001.

(2) Mathtech, Inc., 1983. Draft Report Level I Economic Evaluation Chlorobenzenes. Prepared for Economics and Technology Division, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency. Contract No. 68–01–6630.

(3) Calamari D, Galassi S, Setti F, Vighi M. 1983. Toxicity of Selected Chlorobenzenes to Aquatic Organisms. Chemosphere 12(2): 253–262.

(4) Oliver BG, Niimi AJ. 1983. Bioconcentration of Chlorobenzenes From Water by Rainbow Trout: Correlations

(5) Ware SA, West WL. 1977. Investigation of Selected Potential Environmental Contaminants: Halogenated Benzenes. Report 560/2–77–004. U.S. Environmental Protection Agency, Office of Toxic Substances.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous material, Chemicals.

(Sec. 4, Pub. L. 94–469, 90 stat. 2003; (15 U.S.C. 2061))

Dated: December 23, 1983.

Alvin L. Alm,

Acting Administrator.

PART 799—[AMENDED]

Therefore, it is proposed that a new § 799.2900 be added to Subpart B of the proposed Part 799 to read as follows:

§ 799.2900 Monochlorobenzene; 1,2-dichlorobenzene; 1,4-dichlorobenzene; 1,2,4-trichlorobenzene and 1,2,3-trichlorobenzene.

(a) *Identification of test substance.* (1) Monochlorobenzene (CAS No. 108–90–7); 1,2-dichlorobenzene (CAS No. 95–50–1), 1,4-dichlorobenzene (CAS No. 106–46–7); 1,2, 4-trichlorobenzene (CAS No. 120–82–1); and 1,2,3-trichlorobenzene (CAS No. 87–61–6) each shall be tested in accordance with this section.

(2) Monochlorobenzene; 1,2-dichlorobenzene; 1,4-dichlorobenzene; 1,2,4-trichlorobenzene and 1,2,3-trichlorobenzene of 99 percent purity shall be used as the test substance in all tests.

(b) *Persons required to submit study plans, conduct tests and submit data.* (1) all persons who manufacture or process monochlorobenzene; 1,2-dichlorobenzene; 1,4-dichlorobenzene; 1,2,4-trichlorobenzene; or 1,2,3-trichlorobenzene or any mixture of these chlorinated benzenes from the effective date of this rule February 13, 1984 to the end of the reimbursement period shall submit letters of intent to test, exemption applications and study plans and shall conduct tests and submit data as specified in paragraphs (c), (d), (e), (h), (j), and (k) of this section.

(2) Any person subject to the requirements of this section may apply to EPA for an exemption from study plan submission and testing requirements. Any such application shall be in accordance with paragraph (h) of this section.

(c) *Submission of notice of intent to test or exemption application.* (1) No later than 30 days after the effective date of this rule, each person manufacturing monochlorobenzene, 1,2-dichlorobenzene, 1,4-dichlorobenzene, 1,2,4-trichlorobenzene, and 1,2,3-trichlorobenzene, or any mixture thereof, as of the effective date of this rule must, for each test or test set required by paragraphs (j)(1) through (j)(9) of this section, either notify EPA by letter of its intent to perform the test set or submit an application for an exemption from the study plan submission and testing requirements for the test set.

(2) If, by the date specified in paragraph (c)(1) of this section, for each of the chlorinated benzenes identified in paragraph (a) of this section, no manufacturer has notified EPA of its intent to perform testing for each test set required by paragraph (j) of this section, EPA will publish a notice in the **Federal Register** of this fact specifying the chlorobenzene and the testing for which no notice of intent has been submitted. No later than 30 days after publication of such a notice, each person processing the chlorinated benzenes identified in the notice as of the effective date of this section must, for each test set specified in the **Federal Register** notice, either notify EPA by letter of its intent to prform the test set or submit an application for an exemption from the study plan submission and testing requirements for the testing.

(3) Any person not manufacturing the chlorinated benzenes identified in paragraph (a) of this section as of the effective date of this rule who, before the end of the reimbursement period, manufactures any one of them must comply with the requirements of

paragraphs (c)(1) and (d)(1) of this section. For the pupose of paragraph (c) of this section, the manufacturer must submit the notice of intent to test or exemption application required by paragraph (c)(1) of this section by the date manufacture begins and must submit any proposed study plan required by paragraph (d)(1) of this section within 60 days of the date manufacture begins.

(4) If a **Federal Register** notice has been published under paragraphs (c)(2) or (d)(4) of this section, any person not processing the chlorinated benzenes identified in the notice described in paragraph (c)(2) of this section, as of the effective date of this rule who, before the end of the reimbursement period, begins processing the chlorobenzenes must comply with the requirements of paragraphs (c)(2) and (d)(2) of this section. For purposes of paragraph (c) of this section, the processor must submit the notice of intent to test or exemption application required by paragraph (c)(2) of this section by the date processing begins and must submit any proposed study plan required by paragraph (d)(2) of this section within 60 days of the date processing begins.

(5) Any manufacturer or processor of the chlorinated benzenes identified in paragraph (a) of this section, which has notified EPA under paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section of its intent to perform testing for a test set required by paragraph (j) of this section, must submit a proposed study plan for the test set and must perform that test set in accordance with the test standards in paragraph (k) of this section.

(d) *Submission of proposed study plans.* (1) Manufacturers of the chlorinated benzenes identified in paragraph (a) of this section which notify EPA under paragraph (c)(1) of this section that they intend to perform a test set must submit a proposed study plan for the test set in accordance with paragraph (e) of this section no later than 90 days after the effective date of this rule. Manufacturers may jointly submit a single proposed study plan if they plan to sponsor or perform the test set jointly. Any manufacturer which, having notified EPA of its intent to perform a test set, fails to submit a proposed study plan for that test set will have been in violation of this section as if no letter of intent to perform the test had been submitted.

(2) Processors of the chlorinated benzenes identified in paragraph (a) of this section which notify EPA under paragraph (c)(2) of this section that they intend to perform a test set must submit a proposed study plan for the test set in accordance with paragraph (e) of this section no latter than 90 days after the publication of the notice specified in paragraph (c)(2) of this section. Processors may jointly submit a single proposed study plan if they plan to sponsor or perform the test set jointly. Any processor which, having notified EPA of its intent to perform a test set, fails to submit a proposed study plan for that test set will have been in violation of this section as if no letter of intent to perform the test set had been submitted.

(3) If EPA determines in accordance with paragraph (f)(1)(i) of this section that a proposed study plan is incomplete and the manufacturer or processor has not, after notice from EPA, submitted appropriate information to make the study plan complete within 15 days, the manufacturer or processor will have been in violation of this section as if no letter of intent to perform the test set had been submitted.

(4) If either by:

(i) The date specified in paragraph (d)(1) of this section a manufacturer of the chlorinated benzenes identified in paragraph (a) of this section, which notified EPA of its intent to perform a test set, has failed to submit a proposed study plan for that test set; or

(ii) A proposed study plan submitted under paragraph (d)(1) of this section has been found to be incomplete under paragraph (f)(1)(i) of this section and the manufacturer has not submitted appropriate information to make the study plan complete within 15 days, EPA will publish a notice in the **Federal Register** of this fact specifying the test set. The requirements of paragraphs (c)(2) and (d)(2) of this section for processors to submit letters of intent to perform testing, applications for exemption and proposed study plans will apply.

(5) If either:

(i) By the date specified in paragraph (c)(2) of this section no processor of the chlorinated benzenes has notified EPA of its intent to perform testing for any test set identified in a **Federal Register** notice published under paragraphs (c)(2) or (d)(4) of this section,

(ii) The date specified in paragraph (d)(2) of this section any processor of the chlorinated benzenes identified in paragraph (a) of this section, which notified EPA of its intent to perform a test set, has failed to submit a proposed study plan for that test set; or

(iii) A proposed study plan submitted under paragraph (d)(2) of this section has been found to be incomplete under paragraph (f)(1)(i) of this section and the processor has not submitted appropriate information to make the study plan complete within 15 days, all applications for exemption from the requirements to submit study plans and to perform tests for the specified test set involved will automatically be denied. EPA will notify each manufacturer and processor of the chlorinated benzenes identified in paragraph (a) of this section, which applied for an exemption for the specific test set involved, of this automatic denial either by letter or by notice in the **Federal Register.** Each manufacturer or processor of the chlorinated benzenes identified in paragraph (a) of this section for whom an exemption application has been automatically denied will be in violation of this section 30 days from the time that it receives the notice letter or 30 days from the time that the notice is published in the **Federal Register,** whichever comes first. The violation will continue until a manufacturer or processor of the chlorinated benzenes identified in paragraph (a) of this section, submits a proposed study plan for each test set involved.

(6) Any manufacturer or processor of the test substance specified in paragraph (a) of this section may submit a proposed study plan for any test set required by this section at any time, regardless of whether the manufacturer or processor submitted an application for exemption from testing that test set.

(e) *Content of study plans.* (1) All study plans are required to contain the following information:

(i) A citation to this section.

(ii) The specific test set covered by the study plan.

(iii) (A) The names and addresses of the test set sponsors.

(B) The names, addresses, and telephone numbers of the responsible administrative officials and project manager(s) in the principal sponsor's organization.

(C) The name, address, and telephone number of the appropriate individual(s) for oral and written communication with EPA.

(D)(*1*) The name and address of the testing facility(ies) and the names, addresses, and telephone numbers of the testing facility's administrative officials and project managers responsible for the testing.

(*2*) Brief summaries of the training and experience of each professional involved in the study, including study director, veterinarian(s), toxicologist(s) pathologist(s) and laboratory assistants.

(iv) Identity and data on the substances or mixtures being tested, including appropriate physical constants, spectral data, chemical analysis and stability under test and storage conditions.

(v) Study protocols, including rationales for: species/strain selection; dose selection (and supporting data); route(s) or method(s) of exposure; a description of diet to be used and its source, including nutrients and contaminants and their concentrations; for *in vitro* test systems, a description of culture medium and its source; and a summary of expected spontaneous chronic disease (including tumors), genealogy, and life span.

(vi) Schedule for initiation and completion of major phases of long-term tests; schedule for submission of interim progress and final reports to EPA.

(2) Information specified under paragraph (e)(1)(iii)(D) of this section is not required in proposed study if the information is not available at the time of submission; however, the information must be submitted before the initiation of testing.

(f) *Review and adoption of study plans.* (1) Upon receipt of a proposed study plan, EPA will review the study plan to determine whether it complies with paragraph (e) of this section.

(i) If EPA determines that the proposed study plan does not comply with paragraph (e) of this section, EPA will notify the submitter that the submission is incomplete and identify the deficiencies and the steps necessary to complete the submission. The submitter will have 15 days from the day it receives this notice to submit appropriate information to make the study plan complete. If the submitter fails to provide appropriate information to complete the study plan within this time, the submitter will have been in violation of this section as if no study plan had been submitted.

(ii) If EPA determines the proposed study plan complies with paragraph (e) of this section, EPA will publish a notice in the **Federal Register** requesting comments on the ability of the study plan to ensure that data from the test set will be reliable and adequate. EPA will provide a 45-day comment period and will provide an opportunity for an oral presentation upon request of any person. EPA may extend the comment period if it appears from the nature of the issues raised by EPA's review or from public comments that further comment is warranted.

(2) After receiving and considering public comment, EPA will adopt the study plan, including time deadlines and reporting schedules, as proposed or as modified in response to EPA review and public comments, as test standards for the testing of the chlorinated benzenes in paragraph (k) of this section.

(g) *Modification of study plans during conduct of study*—(1) *Application.* Any test set sponsor who wishes to modify the adopted study plan for any test set or study required under this rule must submit an application in accordance with this section. Application for modification shall be made in writing to the Chief, Test Rules Development Branch, Office of Toxic Substances, or by phone, with written confirmation to follow as soon as feasible. Applications must include appropriate explanations of why the modification is necessary.

(2) *Adoption.* To the extent feasible, EPA will seek public comment on all substantive changes in study plans. EPA will issue a notice in the **Federal Register** requesting comments on requested modifications. However, EPA will act on the requested modification without seeking public comment:

(i) If EPA believes that an immediate modification to a study plan is necessary in order to preserve the accuracy or validity of an on-going study; or

(ii) if EPA determines that a modification clearly does not pose any substantive issues. EPA will notify the sponsor of the Agency's approval or disapproval. When the Agency approves a modification, it will publish a notice in the **Federal Register** indicating that the study plan has been modified.

(h) *Exemption applications.* (1) Any manufacturer or processor of the chlorinated benzenes identified in paragraph (a) may submit an application to EPA for an exemption from submitting proposed study pans for and from performing any or all of the test sets specified in paragraph (j) of this section. The application must include the name and address of the manufacturer or processor and must identify the specific requirements of this section from which the exemption is sought.

(2) No manufacturer or processor of the chlorinated benzenes identified in paragraph (a) of this section will be in violation of the requirment to perform a specific test set under paragraph (j) of this section if it has submitted a timely application for an exemption for that test set and the application has not been denied by EPA.

(3) EPA will conditionally grant any requested exemption for a specific test set required by paragraph (j) of this section if EPA has received a complete proposed study plan for that test set in accordance with paragraph (e) of this section and has adopted the study plan in accordance with paragraph (f)(2) of this section.

(4) EPA will deny any exemption for a specific test set in paragraph (j) of this section if the study sponsor fails to perform the test set or to submit data as required in the test standards adopted under paragraph (k) of this section.

(5) If manufacturers of the chlorinated benzenes identified in paragraph (a) of this section perform all the tests required by paragraph (j) of this section, processors of the chlorinated benzenes identified in paragraph (a) of this section will automatically be granted an exemption from the study plan submission and testing requirements without the need to file an application for exemption.

(i) *Test results.* Except as set forth in paragraph (j) of this section, a positive or negative test result in any of the environmental health effects or chemical fate tests enumerated in paragraph (j) of this section is defined as specified in the TSCA Environmental Effects Test Guidelines or the TSCA Chemical Fate Guidelines published by the National Technical Information Service (NTIS).

(j) *Environmental Effects Testing.*—(1) *Aquatic macrophyte acute toxicity testing*—(i) *Required testing.* Testing using measured concentrations, flow through or static renewal systems and systems that control for evaporation of the test substance, shall be conducted for 1,2,4-trichlorobenzene and 1,2,3-triclorobenzene. Testing shall be conducted with *Lemna gibba* to develop data on the acute toxicity of the above chlorobenzene isomers to aquatic plants.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Environmental Effects Test Guidelines for *Lemna* acute toxicity testing (EG–23), available in the public record for this rulemaking, be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908).

(2) *Marine invetebrate acute toxicity testing*—(i) *Required testing.* Testing using measured concentrations, flow through or static renewal systems, and systems that control for evaporation of the test substance, shall be conducted for 1,2,4-trichlorobenzene and 1,2,3-triclorobenzene. Testing shall be conducted with mysid shrimp (*Mysidopis bahia*) to develop data on the acute toxicity of the above chlorobenzene isomers to marine invertebrates.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Environmental Effects Guidelines for mysid shrimp acute toxicity testing (EG–3), available in the public record for this rulemaking, be consulted.

(3) *Marine fish acute toxicity testing*—(i) *Required testing.* Testing using measured concentrations, flow through systems, and systems that control for evaporation of the test substance shall be conducted for 1,2,3-trichlorobenzene. Testing shall be conducted with Silversides *(Menidia menidia)* to develop data on the acute toxicity of 1,2,3-trichlorobenzene to saltwater fish.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the American Society for Testing and Materials (ASTM) publication "Conducting Acute Toxicity Tests With Fishes, Macroinvertebrates, and Amphibians" be consulted (ASTM) Designation E729–80). Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83–153908) and the Ecological Research Series, "Methods for Acute Toxicity Tests with Fish, Macroinvertebrates and Amphibians" (EPA–660/3–75–009).

(4) *Freshwater fish acute toxicity testing*—(i) *Required testing.* Testing using measured concentrations, flow through systems, and systems that control for evaporation of the test substance shall be conducted for 1,2,3-trichlorobenzene. A 96-hr LC50 test shall be conducted with the fathead minnow to develop data on the acute toxicity of 1,2,3-trichlorobenzene to freshwater fish.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Environmental Effects Test Guidelines for fish acute toxicity testing (EG–9), available in the public record for this rulemaking, be consulted. Additional guidance may be obtained by consulting the Organization for Economic Cooperation and Development's (OECD) test guideline for fish acute toxicity testing (EG–20) available in the public record for this rulemaking.

(5) *Freshwater invertebrate acute toxicity testing*—(i) *Required testing.* Testing using measured concentrations, flow through or static renewal systems, and system that control for evaporation of the test substance shall be conducted for 1,2,3-trichlorobenzene. A 96-hr EC50 test shall be conducted for one species of *Gammarus* to develop data on the acute toxicity of 1,2,3-trichlorobenzene to aquatic freshwater invertebrates.

(ii) *Study plans.* For guidance in preparing study plans it is recommended that the American Society For Testing and Materials (ASTM) publication, "Conducting Acute Toxicity Tests With Fishes, Macroinvertebrates, and Amphibians," be consulted. Additional guidance may be obtained by consulting the Ecological Research Series, "Methods for Acute Toxicity Tests with Fish, Macroinvertebrates and Amphibians" (EPA–660/3–75–009).

(6) *Mysid shrimp chronic toxicity testing*—(i) *Required testing.* Testing using measured concentrations, flow through or static renewal systems, and systems that control for evaporation of the test substance shall be conducted for 1,2,3-trichlorobenzene. Testing shall be conducted with mysid shrimp *(Mysidopsis bahia)* to develop data on the chronic toxicity of 1,2,4-trichlorobenzene to marine invertebrates. The above testing shall also be conducted for 1,2,3-trichlorobenzene, should the acute LC50 of this chemical for mysid shrimp be determined to be 1 ppm or less.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Environmental Effects Test Guidances for mysid shrimp chronic toxicity testing (EG–4), available in the public record for this rulemaking, be consulted.

(7) *Seed germination, root elongation and early seedling growth in terrestrial macrophytes*—(i) *Required testing.* Testing, using measured concentrations and systems that control for evaporation of the test substance, shall be conducted for monochlorobenzene, 1,2-dichlorobenzene, 1,4-dichlorobenzene, and 1,2,3-trichlorobenzene. Testing shall be conducted with terrestrial macrophytes to develop data on the acute toxicities of the above chlorobenzenes to terrestrial plants.

(ii) *Study Plans.* For guidance in preparing study plans, it is recommended that the TSCA Environmental Effects Test Guidelines for seed germination/root elongation (EG–12) and early seedling growth (EG–13), available in the public record for this rulemaking, be consulted. Additional guidance may be obtained by consulting the proposed Organization for Economic Cooperation and Development (OECD) plant toxicity test guideline, available in the public record of this rulemaking.

(8) *Atmospheric oxidation*—(i) *Required testing.* Testing shall be conducted for monochlorobenzene; 1,2-dichlorobenzene; 1,4-dichlorobenzene, and 1,2,4-trichlorobenzene to develop data on the rate of atmospheric oxidation via the hydroxyl radical.

(ii) *Study Plans.* For guidance in preparing study plans it is recommended that the "Experimental Protocol for Determining Hydroxyl Radical Reaction Rate Constants" (EPA 600/3–82–038), available in the public record for this rulemaking, be consulted.

(9) *Soil adsorption coefficient test*—(i) *Required testing.* Testing, using systems that control for evaporation of the test substance, shall be conducted for 1,2-dichlorobenzene; 1,4-dichlorobenzene, and 1,2,4-trichlorobenzene to develop data on the adsorption of the above chlorobenzenes to sediments.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Chemical Fate Guidelines for sediment and soil adsorption isotherms (CG–1710), available in the public record for this rulemaking, be consulted.

(k) *Test Standards.* (1) All data must be developed and reported in accordance with the EPA Good Laboratory Practice Regulations in 40 CFR Part 792.

(2) [reserved].

(l) *Enforcement.* (1) If a manufacturer or processor, which notified EPA under paragraph (c) (1), (2), (3) or (4) of this section of its intent to perform testing for a test set required by paragraph (j) of this section, fails to perform the test set in accordance with the test standards in paragraph (k) of this section, that failure will be in violation of this rule.

(2) EPA will publish a notice in the **Federal Register** to inform all manufacturers and processors that all exemptions for performance of the test set will be denied unless, within 30 days of the publication of the notice, a manufacturer or processor of the chlorobenzenes notifies EPA by letter that it intends to perform the test set in accordance with the test standards in paragraph (k) of this section.

(3) Any person who fails or refuses to comply with any aspect of this rule is in violation of section 15 of TSCA.

(m) *Sources of study plans/guidelines.* The various study plans/guidelines given in this proposed rulemaking are available from the following source. Address and telephone number: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 477–4650.

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BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6581]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Connecticut, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Washington, D.C. 20472 (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirements; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Connecticut	North Haven, town, New Haven County	Quinnipiac River	Upstream of Broadway	*11	*13
			Defco Park Road (extended)	*16	*17
			Confluence of Pine Brook	*17	*18
			Approximately 300 feet downstream of confluence of Wharton Brook.	*20	*21
Maps available for inspection at the Town Hall, 18 Church Street, North Haven, Connecticut.					
Send comments to Honorable Walter Garwrych, Mayor of North Haven, Town Hall, 18 Church Street, North Haven, Connecticut 06473.					
Maryland	Harford County	Bush River	Easten shoreline north of CONRAIL to Park Beach Drive extended (north).	*13	*10
			Northern shoreline	*13	*10
			Western shoreline from Birch Avenue extended to the Bush River Yacht Club.	*12	*10
			Western shoreline from Bush River Yacht Club to Baker Avenue West (extended).	*14	*10
			Western shoreline north of CONRAIL	*13	*10
		Gunpowder River	Shoreline from confluence of Foster Branch to confluence with Gunpowder Falls.	*13	*10
Maps available for inspection at the Harford County Building, 45 South Main Street, Bel Air, Maryland.					
Send comments to Honorable Habern Freeman, Harford County Executive, 45 South Main Street, Bel Air, Maryland 21014.					
Massachusetts	Waltham, city, Middlesex County	West Chester Brook	Bacon Street Culvert Inlet (upstream side)	*74	*72
			Upstream of most downstream Private Drive	*87	*82
Maps available for inspection at the City Hall, 610 Main Street, Waltham, Massachusetts.					
Send comments to Honorable Arthur J. Clark, Mayor of Waltham, 610 Main Street, Waltham, Massachusetts 02154.					
New York	Rye, city, Westchester County	Long Island Sound	Eastern shoreline of North Manursing Island	*17	*19
			Manursing Way extended east	*17	*18
			Oakland Beach	*17	*18
			Parsonage Point	*17	*18
			Milton Point	*17	*18
			Crane Island	*17	*16
Maps available for inspection at the City Hall, Boston Post Road, Rye, New York.					
Send comments to Honorable Frederick J. Hunziker, Mayor of Rye, City Hall, Boston Post Road, Rye, New York 10580.					
Oklahoma	Moore, city, Cleveland County	North Fork River	Upstream of Bryant Avenue (upstream crossing)	*1,188	*1,187
			Upstream of Bronze Medal Road	*1,204	*1,202
			Approximately 100 feet downstream of NE 12th Street	*1,218	*1,216

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, 125 East Main Street, Moore, Oklahoma. Send comments to Honorable Louis Kindrick, Mayor of Moore, P.O. Box 7248, Moore, Oklahoma 73153.					
Ohio	(C) Louisville, Stark County	East Branch Nimishillen Creek	Approximately 1.54 miles downstream of Conrail	*1,087	*1,084
			State Route 153	*1,105	*1,102
			North Chapel Street	*1,107	*1,104
			Approximately 0.52 mile upstream of North Chapel Street.	*1,110	*1,109
Maps available for inspection at City Hall, 215 S. Mill Street, Louisville, Ohio. Send comments to Honorable Roger H. Howard, City Manager, City of Louisville, 215 S. Mill Street, Louisville, Ohio 44641.					
Pennsylvania	New Hope, borough, Bucks County	Delaware River	Downstream corporate limits	*66	*67
			Confluence of Aquetong Creek	*69	*70
			Upstream corporate limits	*72	*73
		Aquetong Creek	Confluence with Delaware River	*69	*70
Maps available for inspection at the Borough Hall, 41 North Main Street, New Hope, Pennsylvania. Send comments to Honorable Jay Snyder, Mayor of New Hope, P.O. Box 141, New Hope, Pennsylvania 18938.					
Texas	Castle Hills, city, Bexar County	Olmos Creek	Downstream corporate limits	*772	*773
			Upstream of Interstate Route 410	*777	*780
			Upstream corporate limits	*813	*814
Maps available for inspection at the Castle Hills City Hall, 6915 West Avenue, San Antonio, Texas. Send comments to Honorable H. P. Lundblade, Mayor of Castle Hills, 6915 West Avenue, San Antonio, Texas 78213.					
Texas	Galveston, city, Galveston County	Gulf of Mexico	Old Fort San Jacinto between 2nd Street and Seawall Boulevard.	None	*11
Maps available for inspection at the City Hall, 2715 Ball Street, Galveston, Texas. Send comments to Honorable E. Gus Manuel, Mayor of Galveston, P.O. Box 779, Galveston, Texas 77553.					
Texas	Temple, city, Bell County	Bird Creek	Upstream of corporate limit at Nugent Road	None	*697
			Approximately 1,000 feet upstream of corporate limit	None	*704
		Little Elm Creek Tributary No. 2	Downstream of Atchinson Topeka and Santa Fe Railroad.	None	*696
			Downstream of Old U.S. Highway 81	None	*664
Maps available for inspection at the Municipal Building, Temple, Texas. Send comments to Honorable John F. Sammons, Jr., Mayor of Temple, Municipal Building, Temple, Texas 76501.					
Texas	Three Rivers, city, Live Oak County	Olds Slough	Entire streamline located within community	*152	*141
		Nueces River	Tullos Street (extended)	*152	*141
			South of levee located approximately 550 feet south of Tullos Street.	*152	*141
Maps available for inspection at the City Hall, Three Rivers, Texas. Send comments to Honorable E. L. Evans, Mayor of Three Rivers, P.O. Box 398, Three Rivers, Texas 78071.					
Virginia	Chincoteague, town, Accomack County	Chincoteague Bay	Entire shoreline of Chincoteague Bay and Chincoteague Channel within community.	*11	*8
Maps available for inspection at the Chincoteague Town Office, Chincoteague, Virginia. Send comments to Honorable Asa T. Hickman, Mayor of Chincoteague, Town Office, Chincoteague, Virginia 23336.					
Wisconsin	(C) Jefferson, Jefferson County	Rock River	About 3,500 feet downstream of South Main Street	*790	*787
			About 0.93 mile upstream of West North Street	*791	*789
Maps available for inspection at 317 South Main Street, Jefferson, Wisconsin. Send comments to Honorable Richard Fischer, Mayor, City of Jefferson, 317 South Main Street, Jefferson, Wisconsin 53549.					
Wisconsin	(Uninc.) Outagamie County	Wolf River	Just upstream of city of New London corporate limits	*762	*762
			Just upstream of County Highway S	*765	*764
			About 5.6 miles upstream of State Highway 54	*772	*770
		Bear Creek	About 0.1 mile upstream of State Highway 76	*764	*764
			About 1.45 miles upstream of State Highway 76	*766	*767
		Fox River	About 22.9 miles above mouth near intersection of Hass Road and County Highway ZZ.	None	*610
			Just downstream of Cedars Lock Dam	None	*694
			Just upstream of Cedars Lock Dam	None	*702
			Just downstream of city of Appleton corporate limits (approximately 2.4 miles upstream of Cedars Lock Dam).	*704	*704
		Black Otter Creek	About 950 feet downstream of village of Hortonville western corporate limits.	None	*764
			Just upstream of village of Hortonville corporate limits (Black Otter Lake).	None	*792

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Planning and Zoning Department, County Courthouse, 410 South Walnut Street, Appleton, Wisconsin.					
Send comments to Honorable John R. Schreiter, County Executive, Outagamie County, County Courthouse, 410 South Walnut Street, Appleton, Wisconsin 54911.					

THE PROPOSED BASE FLOOD ELEVATIONS FOR SELECTED LOCATIONS ARE: PROPOSED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	California City city, Kern County	Tierra del Sol Creek	25 feet upstream from the center of California City Boulevard.	*2,353
Maps are available at City Hall, 21000 Hacienda Boulevard, California City, California.				
Send comments to the Honorable Lou Logue, 21000 Hacienda Boulevard, California City, California 93505.				
California	East Palo Alto city, San Mateo County	San Francisco Bay	Intersection of Pulgas Avenue and O'Connor Street	*7
Maps are available at City Manager's Office, 2515 University, East Palo Alto, California.				
Send comments to the Honorable Barbara Mouton, 2515 University, East Palo Alto, California 94303.				
Georgia	City of Clayton, Rabun County	Bynum Creek	Approximately 500 feet upstream of U.S. Highway 76	*1,885
		Needy Creek	Just upstream of North Main Street culvert inlet	*1,896
		Norton Creek	Just upstream of Warwoman Road culvert inlet	*1,899
		Possum Creek	Just upstream of Marsingill Drive culvert inlet	*1,892
		Saddle Gap Branch	Just upstream of Duggan Hill Road culvert inlet	*1,875
			Approximately 75 feet upstream of Polly Gap Drive culvert inlet.	*1,886
		Scott Creek	Just upstream of South Main Street culvert inlet	*1,873
			Approximately 600 feet upstream of Marsingill Drive	*1,883
		Scott Creek Tributary 2	Just downstream of U.S. Highway 76	*1,900
		Stekoa Creek	Just downstream of Camper Corral incorporated Bridge.	*1,866
			Just upstream of U.S. Highway 441 culvert inlet	*1,921
Maps available for inspection at City Hall, Corner of Church and Hiawasse Streets, Clayton, Georgia 30525.				
Send comments to Mayor Paul Buchanan or Mr. Howard Pollard, City Administrator, City Hall, P.O. Box 702, Clayton, Georgia 30525.				
Illinois	(V) Pearl, Pike County	Hardy Creek	At mouth	*443
			About 0.7 mile upstream of East Street	*452
		Illinois River	Within the community	*443
Maps available for inspection at the Holloway's Red and White Grocery Store, Pearl, Illinois.				
Send comments to Honorable Roger Hatcher, Village President, Village of Pearl, Village Hall, Pearl, Illinois 62361.				
Illinois	(V) Thebes, Alexander County	Mississippi River	About 2.16 miles downstream of Missouri Pacific Railroad.	*345
			About 0.55 mile upstream of Missouri Pacific Railroad	*348
Maps available for inspection at the Village Hall, Thebes, Illinois.				
Send comments to Honorable John H. Masterson, Village President, Village of Thebes, Village Hall, Thebes, Illinois 62990.				
Maryland	Wicomico County	Tonytank Creek	Confluence with Wicomico River	*6
			Upstream South Camden Avenue	*11
			Downstream South Division Street	*17
			Upstream U.S. Highway 13 bypass	*33
			Downstream Nutters Cross Road	*36
		Beaverdam Creek	Approximately 500 feet downstream of Memorial Plaza	*11
			Approximately 500 feet upstream of North Schumaker Dam.	*25
			Downstream 2nd crossing of North Schumaker Drive	*30
		Slab Bridge Creek	Confluence with Morris Prong	*23
			Approximately 2,075 feet upstream of confluence with Morris Prong.	*24
		White Marsh Creek	Confluence with Tonytank Creek	*33
			Downstream of Nutters Cross Road	*37
		Wood Creek	Confluence with Leonard Pond Run	*28
			Downstream Connelly Mill Road	*39
		Morris Prong	Confluence with Tonytank Creek	*15
			At City of Fruitland and County Boundary	*22
			Upstream U.S. Highway 13 bypass	*29
			Approximately 4,900 feet upstream U.S. Highway 13 bypass.	*35
		North Prong	Confluence with Leonard Pond	*37
		Leonard Pond	Downstream Williams Mill Pond Road	*37
		Andrews Branch	Upstream Williams Mill Pond Road	*40
			Just upstream Gordy Mill Road	*43
		South Prong	Confluence with Leonard Pond	*37
		Leonard Pond	Downstream Rum Ridge Road	*40
		Unnamed	Confluence with South Prong	*38
		Tributary to South Prong	Downstream Williams Mill Pond Road	*39
		Jackson Branch	Confluence with North Prong Leonard Pond	*37
			Downstream Gordy Mill Road	*42
		Connelly Mill Branch	Confluence with Leonard Pond Run	*25
			Downstream Connelly Mill Road	*32
		Beaglin Branch	Downstream College Avenue	*26

THE PROPOSED BASE FLOOD ELEVATIONS FOR SELECTED LOCATIONS ARE: PROPOSED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Downstream Mount Hermon Road	*35
		Unnamed	Confluence with Beaglin Branch	*29
		Tributary to Beaglin Branch	Downstream Mount Hermon Road	*31
		Brewington Branch	Confluence with Johnson Pond	*14
			Downstream West Gordy Road	*31
			Downstream U.S. Highway 13 bypass	*32
		Coty Cox Branch	Approximately 600 feet downstream of downstream corporate limits.	*20
			Upstream Keene Avenue	*23
			Downstream Jersey Road	*31
		Walston Branch	Confluence with Beaverdam Creek	*27
			Upstream U.S. Highway 13 bypass	*38
			Approximately 4,860 feet upstream Ward Road	*38
		Peggy Branch	Confluence with Middle Neck Branch	*31
			Upstream Parker Road	*36
			Downstream end of culvert U.S. Highway 13 bypass	*42
		Mayer Branch	Confluence with Andrews Branch (Williams Mill Pond)	*40
			Downstream Gordy Mill Road	*41
		Middle Neck	Confluence of Peggy Branch	*31
			Approximately 1,570 feet upstream Parker Road	*35
		Leonard Pond Run	Confluence with main body Johnson Pond	*14
			Approximately 870 feet upstream of Naylor Mill Road	*24
			Confluence of Wood Creek	*28
			Approximately 4,300 feet upstream confluence of Wood Creek.	*31
		Nanticoke River	Shoreline from Runaway Point to upstream county boundary.	*6
			Shoreline from Runaway Point to Roaring Point	*8
			Shoreline from Roaring Point to Mollies Point	*9
		Wicomico River	Shoreline from Mollies Point to downstream of Shiles Creek.	*8
			Shoreline from Shiles Creek to confluence of Tonytank Creek.	*6
		Wicomico Creek	Entire shoreline in the county	*6

Maps available for inspection at the Public Works Office, Room 201, Government Office Building, Salisbury, Maryland.
Send comments to Honorable Matthew Creamer, Administration Director of Wicomico County, P.O. Box 870, Salisbury, Maryland 21801.

New Jersey	Ocean City, city, Cape May County	Atlantic Ocean	Entire shoreline within community	*15
		Egg Harbor	Shoreline of the lagoon	*9
			Shoreline of Carnival Bayou	*9

Maps available for inspection at the City Clerk's Office, City Hall, 9th Street and Asbury Avenue, Ocean City, New Jersey.
Send comments to Honorable Jack Bittner, Mayor of the City of Ocean City, City Hall, 9th Street and Asbury Avenue, Ocean City, New Jersey 08226.

New Jersey	Sparta, township, Sussex County	Wallkill River and Lake Mohawk	Downstream corporate limits	*574
			West Mountain Road (upstream side)	*592
			Downstream crossing of NJ State Highway Route 517 (upstream side).	*645
			Upstream of Lake Mohawk Dam	*730
			Upstream corporate limits	*730
		Sparta Junction Tributary	Downstream corporate limits	*569
			Downstream crossing of Private Drive (upstream side)	*577
			Abandoned bridge (upstream side)	*600
			Upstream corporate limits	*611

Maps available for inspection at the Municipal Building, 65 Main Street, Sparta, New Jersey.
Send comments to Honorable Michael LaRose, Mayor of the Township of Sparta, 65 Main Street, Sparta, New Jersey 07871.

New York	Beekman, town, Dutchess County	Fishkill Creek	Downstream corporate limits	*311
			Confluence with Frog Hollow Brook	*315
			Upstream of Green Haven Road	*331
			Upstream of Beekman Poughquag Road	*342
			Upstream of dam	*364
			Upstream of State Route 55	*371
			At confluence of Tributary to Fishkill Creek	*379
		Tributary to Fishkill Creek	Confluence with Fishkill Creek	*379
			Upstream of Dorn road	*408
			Upstream corporate limits	*440
		Sylvan Lake Outlet	Downstream corporate limits	*321
			Upstream Miller Road	*322
			Confluence with Sylvan Lake	*325
		Frog Hollow Brook	Confluence with Fishkill Creek	*315
			Upstream of Farm bridge	*333
			Upstream of State Route 216	*362
			Upstream of 3rd upstream Wood Footbridge	*385
			Approximately .93 mile upstream of Wood Footbridge	*429
		Whaley Lake Stream	Confluence with Fishkill Creek	*350
			Upstream of dam located approximately 700 feet upstream of Beekman Poughquag Road.	*376
			Upstream of County Route 7	*424
			Approximately 75 feet upstream of State Route 55 (first crossing).	*446
			Upstream of State Route 55 (second crossing) approximately .59 mile upstream State Route 55 (second crossing).	*476
			Upstream of State Route 216	*582

THE PROPOSED BASE FLOOD ELEVATIONS FOR SELECTED LOCATIONS ARE: PROPOSED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream of Private Bridge located approximately 870 feet upstream of State Route 216.	*617
			Upstream corporate limits	*657

Maps available for inspection at the Office of the Town Clerk, Town Hall, Poughquag, New York.
Send comments to Honorable Gerald Richardson, Town Supervisor of Beekman, Town Hall, Poughquag, New York 12570.

New York	Clermont, town, Columbia County	Hudson River	Entire shoreline within corporate limits	*9
		Roeliff Jansen Kill	Approximately .42 mile upstream of State Route 70	*244
			Approximately 1.53 miles downstream of upstream corporate limits.	*263
			Upstream corporate limits	*283

Maps available for inspection at the Town Clerk's Office, Route 6, Clermont, New York.
Send comments to Honorable William E. Banks, Town Supervisor of Clermont, R.D. 1, Box 626, Germantown, New York 12526.

New York	Cortlandt, town, Westchester County	Annsville Creek	At confluence with Hudson River	*8
			At confluence with Peekskill Hollow Brook and Sprout Brook.	*8
		Peekskill Hollow Brook	At confluence with Annsville Creek and Sprout Brook	*8
			Upstream of Pump House Dam	*31
			Approximately 3,850' upstream of Gallows Hill Road	*50
			At first upstream corporate limits	*99
			At third upstream corporate limits	*123
		Sprout Brook	At confluence with Annsville Creek and Peekskill Hollow Brook.	*8
			Upstream of abandoned road	*14
			Upstream of Cortlandt Lake Dam	*97
		Furnace Brook	Approximately 130' downstream of Furnace Dock Road.	*77
			Upstream of Washington Street	*186
			Upstream of Furnace Brook Drive	*238
			Approximately 2,000' upstream of Furnace Brook Drive (2nd crossing).	*251
		Croton River	At downstream corporate limits	*9
			Upstream of Quaker Bridge Road (1st crossing)	*44
			At upstream corporate limits	*50

Maps available for inspection at the Town Clerk's Office, Municipal Building, Croton-on-Hudson, New York.
Send comments to Honorable Charles DiGiacomo, Cortlandt Town Supervisor, Municipal Building, Croton-on-Hudson, New York 10520.

New York	Fairport, village; Monroe County	Thomas Creek	Downstream corporate limits	*424
			Upstream of downstream CONRAIL crossing	*449
			Upstream corporate limits	*461

Maps available for inspection at the Village Hall, Fairport, New York.
Send comments to Honorable Vincent G. Kennelley, Mayor of the Village of Fairport, Fairport Village Hall, 31 South Main Street, Fairport, New York 14450.

New York	Wellsville, town, Allegany County	Brimmer Brook	At downstream corporate limits	*1,493
			Upstream side of Philips Road	*1,510
			500 feet upstream State Route 417	*1,590
			Upstream corporate limits	*1,708
		Chenunda Creek	At confluence with Genesee River	*1,518
			Upstream State Route 19	*1,541
			At upstream corporate limits	*1,561
		Dyke Creek	At downstream corporate limits	*1,505
			Upstream State Route 417	*1,514
			Upstream CONRAIL	*1,524
			Upstream Williams Grove Road	*1,546
			2,350 feet upstream Williams Grove Road	*1,553
		Genesee River	At downstream corporate limits	*1,478
			At downstream corporate limits for the Village of Wellsville.	*1,486
			At upstream corporate limits for the Village of Wellsville.	*1,499
			Upstream Weidrick Road	*1,515
			At confluence of Chenundo Creek	*1,518
			At upstream corporate limits	*1,521
		Wightman	At confluence with Dyke Creek	*1,528
		Hollow Creek	Downstream State Route 417	*1,550
			400 feet upstream of first crossing of Wightman Hollow Road.	*1,610
			Upstream second crossing of Wightman Hollow Road 2,250 feet upstream of second crossing of Wightman Hollow Road.	*1,727

Maps available for inspection at the Municipal Building, Main Street, Wellsville, New York.
Send comments to Honorable Lester D. Loucks, Town Supervisor of Wellsville, Main Street, Wellsville, New York 14895.

Oregon	Adrian city, Malheur County	Snake River	At the intersection of 5th Street and Oregon Street	*2,201

Maps available for inspection at City Hall, Adrian, Oregon.
Send comments to Honorable Clay Weht, P.O. Box 226, Adrian, Oregon 97901.

Oregon	Jordan Valley city, Malheur County	Jordan Creek	100 feet upstream from confluence with Baxter Creek	*4,383

Maps are available at City Hall, Jordan Valley, Oregon.
Send comments to the Honorable Marvin D. Bowers, P.O. Box 587, Jordan Valley, Oregon 97910.

South Carolina	City of Beaufort, Beaufort County	Atlantic Ocean/Beaufort River	Intersection of Craven St. and New Street	*11

THE PROPOSED BASE FLOOD ELEVATIONS FOR SELECTED LOCATIONS ARE: PROPOSED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Atlantic Ocean/Battery Creek	Intersection of Battery Creek Road and First Boulevard.	*10

Maps available for inspection at City Hall, 302 Carteret Street, Beaufort, South Carolina 29902

Send comments to Mayor Henry Chambers or Mr. Jack Miller, City Manager, City Hall, P.O. Drawer 1167, Beaufort, South Carolina 29902.

South Carolina	Unincorporated Areas of Beaufort County	Atlantic Ocean/Broad River	Intersection of State Highway 3 and Interstate Highway 17.	*8
		Atlantic Ocean/Beaufort River	Intersection of Central Drive and Brickyard Road	*11
		Atlantic Ocean/New River	At Seaboard Coast Line Railroad	*11
		Atlantic Ocean/St. Helena Sound	Intersection of State Highway 77 and Interstate Highway 21	*12
		Atlantic Ocean	Intersection of State Highway 195 and Seaside Road	*14
			Intersection of South Sea Pines and Gulf Point Road	*14
			Intersection of Queens Folly Road and Sea Lane	*15
			Intersection of State Highway 335 and State Highway 434.	*15
			Intersection of Piper Street and North Forest Beach Drive.	*16
			Porpoise Drive extended to Atlantic Ocean	*19
			Pope Avenue extended to Atlantic Ocean	*20
		Atlantic Ocean/Cooper River	Confluence of Bull Creek & Hoophole Creek	*13
		Atlantic Ocean/Calibogue Sound	Intersection of South Calibogue Cay Road and North Calibogue Cay Road.	*14
		Atlantic Ocean/May River	Confluence of Rose Dew Creek and May River	*11
		Atlantic Ocean/Colleton River	Confluence of Colleton River and Okatee River	*16
		Atlantic Ocean/Skull Creek	Intersection of Gumtree Road and Squire Pope Road	*12
		Atlantic Ocean/Port Royal Sound	Intersection of North Port Royal Drive and Fort Walker Drive.	*13
		Atlantic Ocean/Cobsaw River	Confluence with Morgan Back Creek	*16
		Atlantic Ocean/Combahee River	Confluence of Briars Creek and Wimbee Creek	*11

Maps available for inspection at the Arthur Horne Building, 999 Ribaut Road, Beaufort, South Carolina 29902 and at the County Courthouse Annex, Hiltonhead Island, South Carolina 29925.

Send comments to Mr. John Perry, County Administrator, or Mr. Sandy Teal, Plan Examiner, P.O. Box 1228, Beaufort, South Carolina 29902.

South Carolina	Town of Port Royal, Beaufort County	Atlantic Ocean/Beaufort River	ntersection of Fort Frederick Road and Old Shell Road.	*11
		Atlantic Ocean/Battery Creek	Intersection of Paris Avenue and 7th Street	*13

Maps available for inspection at City Hall, 1406 Paris Avenue, Port Royal, South Carolina 29935.

Send comments to Mayor Henry Robinson or Mr. Harvey Cawthorn, Public Works Director, City Hall, P.O. Drawer 8, Port Royal, South Carolina 29935.

Tennessee	Unincorporated Areas of Anderson County	Coal Creek	Approximately 320 feet upstream of Beech Grove Road.	*876
			Approximately 320 feet upstream of Railroad Avenue	*893
		Bullrun Creek	Just upstream of Old U.S. Highway 25W	*808
			Just downstream of Bell Campground Road	*816
		Hinds Creek	Approximately 900 feet upstream of Mountain Road	*848
			Approximately 440 feet upstream of Brushy Valley Road.	*876
		Brushy Fork Poplar Creek	Approximately 980 feet upstream of State Highway 61 (upstream crossing).	*788
			Just upstream of State Highway 61 (upstream crossing).	*816
		Poplar Creek	Approximately 1,320 feet upstream of Strutt Street	*780
			Approximately 100 feet upstream of Dutch Valley Road.	*791
		Blue Spring Branch	Approximately 500 feet upstream of Donovan Road	*791
		Indian Creek	Just downstream of Green Street	* 841
		Clinch River	Just downstream of Louisville and Nashville Railroad	* 797
			Approximately 1,000 feet upstream of Southern Railway.	* 804
		Right Fork Coal Creek	Just upstream of Town of Lake City corporate limits	* 863

Maps available for inspection at Purchasing Department, County Courthouse, 100 North Main Street, Clinton, Tennessee 37716.

Send comments to Mr. David Bolling, County Executive or Ms. Brenda McCaney, Administrative Assistant, County Courthouse, 100 North Main Street, Clinton, Tennessee 37716.

Tennessee	City of Erwin, Unicoi County	North Indian Creek	Just upstream of State Highway 81	* 1,651
		Rock Creek	Just upstream of Highway 19W and 23	* 1,760
		Martin Creek	Just downstream of U.S. Highway 19W and 23	* 1,722

Maps available for inspection at City Recorder's Office, Municipal Building, Corner of Church and Gay Streets, Erwin,Tennessee 37650.

Send comments to Mayor Herman May or Mr. Joe Frazier, City Recorder, P.O. Box 59, Erwin, Tennessee, 37650.

Tennessee	City of Harriman, Roane County	Emory River	At the confluence of Emory River and Bullard Branch	*763
			Just upstream of Old U.S. Highway 27	* 767
			Just upstream of Cincinnati, New Orleans, Texas, and Pacific Railroad.	* 772

Maps available for inspection at Mayor's Office, Old Temperance Building, Roane and Walden Streets, Harriman, Tennessee 37748.

Send comments to Mayor Harold Wester or Mayor Pro Tem Jerry Davis, P.O. Box 433, Harriman, Tennessee 37748.

Tennessee	City of La Follette, Campbell County	Big Creek	Just downstream of Beech Street	*1,052
			Just downstream of U.S. Highway 25 West	*1,081
			Approximately 100 feet upstream of U.S. Highway 23 West.	*1,088

THE PROPOSED BASE FLOOD ELEVATIONS FOR SELECTED LOCATIONS ARE: PROPOSED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at City Hall, 205 South Tennessee Avenue, La Follette, Tennessee 37766.				
Send comments to Mayor R. C. Alley, City Hall, 205 South Tennessee Avenue, La Follette, Tennessee 37766 or Ms. Gwen Wilson, Tennessee State Planning Office, P.O. Box 1069, Knoxville, Tennessee 37901.				
Tennessee	Unincorporated Areas of Unicoi County	Buffalo Creek	Just downstream of Castile Road	*1,700
			Just upstream of U.S. Highway 23 & 19W and State Highway 36.	*1,899
		Scioto Creek	Just downstream of Forest Service Raod	*1,928
			Just downstream of State Highway 107	*1,963
		Nolichucky River	Just upstream of U.S. Highway 23 and 19W By-pass	*1,645
			Just downstream of U.S. Highway 23 and 19W	*1,652
			Approximately 100 feet upstream of U.S. Highway 23 and 19W and Highway 36.	*1,680
		North Indian Creek	Just downstream of State Highway 81	*1,647
			Just upstream of U.S. Highway 23 and 19W By-Pass (upstream crossing).	*1,670
			Approximately 100 feet upstream of U.S. Highway 23 and 19W.	*1,920
		South Indian Creek	Approximately 200 feet downstream of County Road (County Road is located approximately 1,300 feet above mouth).	*1,645
			Just downstream of Unnamed Road (approximately 500 feet from the intersection of Mill Road and U.S. Highway 19W and 23).	*1,785
		Martin Creek	Just upstream of Carolina Avenue	*1,685
			Just upstream of U.S. Highway 23 & 19W	*1,725
		Odom Branch	Just upstream of Private drive (approximately 700 feet upstream of mouth).	*1,855
		Rock Creek	Just upstream of U.S. Highway 23 and 19W	*1,760
Maps available for inspection at Unicoi County Courthouse, Main Street, Erwin, Tennessee 37650.				
Send comments to Judge Howard Garland, County Executive, County Courthouse, P.O. Box 169, Erwin, Tennessee 37650.				
Texas	Town of Stagecoach, Montgomery County	Walnut Creek	Approximately 150 feet upstream of Southernmost Corporate Limits.	*177
		Sulphur Branch	Approximately 200 feet downstream of confluence of Sulphur Branch.	*178
			Approximately 150 feet downstream of Hartman Road	*179
			Approximately 400 feet downstream of Dam on Old Coach Road.	*180
Maps available for inspection at the home of the Town Secretary, Ms. Eileen Klein, 16111 Wagon Wheel, Magnolia, Texas 77355.				
Send comments to Mayor Walter cook, 15310 Stagecoach Road or Ms. Elileen Klein, Town Secretary, 16111 Wagon Wheel, Magnolia, Texas 77355.				
Vermont	Middlebury, Town, Addison County	Otter Creek	Village of Middlebury downstream corporate limits	*320
			State Route 30 (upstream side)	*346
			Village of Middlebury upstream corporate limits	350
			Upstream corporate limits	*351
		Middlebury River	Confluence with Otter Creek	*351
			Creek Road (upstream side)	*356
			First upstream corporate limits	*360
			Second upstream corporate limits	*363
			U.S. Route 7 (upstream side)	*376
			Grist Mill Road (upstream side)	*445
			Approximately 130 feet downstream of High Plains Road.	*506
Maps available for inspection at the Office of Fred Dunnington, Administrative Officer of Middlebury Municipal Building, Middlebury, Vermont.				
Send comments to Honorable Timothy Buskey, Chairman of the Board of Selectmen for the Town of Middlebury, Municipal Building, Middlebury, Vermont 05753.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: January 4, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-794 Filed 1-12-84; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Scoping/Planning Meeting for the Development of Regulations for the Taking of Marine Mammals Incidental to Commercial Fishing Operations for 1986 and Beyond

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of Intent to Prepare an EIS for Tuna/Porpoise Rulemaking and Hold Scoping Meetings.

SUMMARY: The National Marine Fisheries Service (NMFS) intends to prepare an Environmental Impact Statement (EIS) for regulations to govern the taking of marine mammals (porpoise) incidental to commercial purse seine fishing for tuna in the eastern tropical Pacific Ocean beginning January 1, 1986. The NMFS will convene scoping meetings early in the process to ensure that the public has an opportunity to advise on the issues which need to be considered in developing the regulatory regime. This Notice announces the details on scoping meetings and the tentative schedule for the rulemaking process.

DATES: Public scoping meetings will be held as follows: San Diego, California, February 14, 1984; Washington, D.C., February 16, 1984.

ADDRESSES: Meetings will be held at the following locations:

City: San Diego, California
Location: Federal Building, Room 2S31, 800 Front Street
Time: 9:00 a.m.–4:00 p.m.

City: Washington, D.C.
Location: Conference Room, Page Building 2, 3300 Whitehaven Street NW.
Time: 9:00 a.m.–4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Karnella, NMFS, 3300 Whitehaven Street NW., Washington, DC, (202) 634–7471; or Svein Fougner, Southwest Region, NMFS, 300 South Ferry St., Terminal Island, California 90731, (213) 548–2517.

SUPPLEMENTARY INFORMATION: The General Permit and regulations governing the taking of marine mammals (porpoises) incidental to the commercial purse seine fishery for tuna in the eastern tropical Pacific Ocean are in effect until 2400 hours, December 31, 1985. The NMFS is initiating the consideration of alternative management strategies and regulatory measures to be effective January 1, 1986, in anticipation that the Marine Mammal Protection Act (MMPA) will be reauthorized and that the American Tunaboat Association will apply for an extension of its General Permit under the MMPA. Among the management strategies to be addressed are continuation of current measures with little or no modification (the "no action" alternative); a more stringent regime; and a more flexible regime, for one year or several years. The ultimate recommendations will depend on the status of porpoise stocks relative to their optimum sustainable population (OSP) levels; the economic and technological feasibility of alternative management measures; and the type, magnitude, and distribution of beneficial and adverse effects of alternative management strategies and regulatory measures. An Environmental Impact Statement (EIS) will be prepared to present information and analyses of the impact of the alternatives which must be considered by the Agency. Public scoping meetings will be held to ensure full opportunity for interested members of the public and government agencies to advise the Agency on the issues, alternatives, and impacts which should be addressed in the EIS and to provide information for use in decisionmaking. Background materials are being prepared for distribution to interested persons prior to the scoping meetings. Please contact one of the individuals named in this notice if you need a copy.

The tentative schedule to consider these measures is as follows:

February 1984—Completion of public scoping meetings
February 1985—Distribution of draft EIS
April 1985—Completion of Administrative Law Judge (ALJ) hearings
August 1985—Receipt of ALJ Recommendations
October 1985—Announcement of decision by Administrator, NOAA
January 1986—Effective date of regulations

(Marine Mammal Protection Act of 1972, as amended; 86 Stat. 1027; 16 U.S.C. 1361–1407; Pub. L. 92–522)

Dated: January 9, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-926 Filed 01-12-84; 8:45 am]

BILLING CODE 3510-08-M

Notices

Federal Register
Vol. 49, No. 9
Friday, January 13, 1984

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.

INTERNATIONAL DEVELOPMENT AGENCY

Agency for International Development

Amendment to A.I.D. Delegation of Authority No. 38; Assistant Administrator for Africa

A.I.D. Delegation of Authority No. 38 (June 21, 1977, 42 FR 31511) is hereby amended as follows:

In paragraph 1—

(a) Insert after "the Assistant Administrator for Africa," the following "and the Assistant Administrator for the Private Enterprise Bureau," and

(b) Insert after "the benefit of countries," the following "and/or programs."

Dated: October 19, 1983.

Frank B. Kimball,

Counselor to the Administrator.

[FR Doc. 84-963 Filed 1-12-84; 8:45 am]

BILLING CODE 6116-01-M

Amendment to A.I.D. Delegation of Authority No. 142; Housing Guaranty Program

A.I.D. Delegation of Authority No. 142 (July 22, 1981, 46 FR 37823) is hereby amended by deleting section 1, paragraph 2., and substituting therefor the following:

"2. The Housing Guaranty program and other shelter and urban development programs administered and/or funded by the Private Enterprise Bureau."

Dated: October 19, 1983.

Frank B. Kimball,

Counselor to the Administrator.

[FR Doc. 84-962 Filed 1-12-84; 8:45 am]

BILLING CODE 6116-01-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

ATBCB Meeting; Change in Location

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of change in location of ATBCB meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) will be holding its February 10, 1984, meeting in the Hubert H. Humphrey Building, 200 Independence Ave., Room 503A, from 1:00 pm to 5:00 pm. This meeting was originally scheduled to be held in the Main Hall of the Disabled American Veterans (DAV) National Service and Legislative Headquarters, 807 Maine Avenue SW., Washington, D.C. 20024.

DATE: February 10, 1984—1:00 pm–5:00 pm.

ADDRESS: Hubert H. Humphrey Building, Room 503A, 200 Independence Ave. SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Specialist Assistant for External Affairs (202) 245–1591 (voice or TDD).

Committee meetings of the ATBCB will be held on Thursday, February 9 and Friday morning, February 10, in the Hubert Humphrey Building.

Contact Larry Allison, Special Assistant for External Affairs (202) 245–1591 (voice or TDD), for further information.

Robert M. Johnson,

Executive Director.

[FR Doc. 84-972 Filed 1-12-84; 8:45 am]

BILLING CODE 6820-BK-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations; Week Ended January 6, 1984

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
1-6-84	41342	Polynesian Airlines (Holdings) Limited and Polynesian Airlines (Operations) Limited., c/o Robert D. Papkin, Squire, Sanders & Dempsey, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Date filed	Docket No.	Description
1-3-84	41882	Supplement No. 2 to Joint Application of Polynesian Airlines (Holdings) Limited and Polynesian Airlines (Operations) Limited for a foreign air carrier permit. (Additional Information). Answers may be filed by February 3, 1984. Royale Airlines, Inc., c/o Theodore I. Seamon, Seamon, Wasko & Ozment, 1211 Connecticut Avenue, N.W., Suite 300, Washington, D.C. 20036. Amendment No. 1 to the Application of Royale Airlines, Inc. for a certificate of public convenience and necessity under Section 401(d)(1) of the Act to engage in interstate and overseas scheduled air transportation. (Additional Information)
1-3-84	41923	Lone Star Overseas, Inc., c/o Bert W. Rein, Wiley, Johnson & Rein, 1776 K Street, N.W., Washington, D.C. 20006. Application of Lone Star Overseas, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate under Section 401 of the Act authorizing Lone Star to engage in scheduled foreign air transportation of persons, property and mail between a point or points in the United States, its territories, and possessions and a point or points in France (Paris), Belgium (Brussels) and the Netherlands (Amsterdam). Conforming Applications, Motions to Modify Scope and Answers may be filed by January 31, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-1001 Filed 1-12-84; 8:45 am]
BILLING CODE 6320-01-M

[Order 84-1-32]

Bidzy Ta Hot' Aana d/b/a Tanana Air Service for Certificate Authority; Application

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (84-1-32).

SUMMARY: The Board is proposing to find Bidzy Ta Hot' Aana d/b/a Tanana Air Service fit, willing, and able and to issue it a certificate of public convenience and necessity under section 401 of the Federal Aviation Act authorizing it to provide interstate and overseas scheduled air transportation of persons, property, and mail in Alaska.

DATES: All interested persons wishing to respond to the Board's tentative fitness determination and proposed certificate award shall file, and serve upon all persons listed below no later than February 1, 1984, a statement of their response, together with a summary of testimony, statistical data, and other material expected to be relied upon to support any objections raised.

ADDRESSES: Response should be filed in Docket 40966 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon the parties listed in the Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Joseph W. Bolognesi, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-1-32 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-1-32 to that address.

By the Civil Aeronautics Board: January 10, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-998 Filed 1-12-84; 8:45 am]
BILLING CODE 6320-01-M

[Order 84-1-31]

Fitness Determination of Fort Worth Airlines, Inc., Order to Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 84-1-31, Order to Show Cause.

SUMMARY: The Board is proposing to find that Fort Worth Airlines, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than January 31, 1984 together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-5918.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-1-31 is available from the Distribution Section, Room 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-1-31 to that address.

By the Civil Aeronautics Board: January 10, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-997 Filed 1-12-84; 8:45 am]
BILLING CODE 6320-01-M

[Docket 40662]

Aero West Airlines, Inc., Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter will be held on January 20, 1984, at 9:30 a.m. (local time) in Room 1012, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., January 9, 1984.

Ronnie A. Yoder,
Administrative Law Judge.

[FR Doc. 84-1003 Filed 1-12-84; 8:45 am]
BILLING CODE 6320-01-M

[Docket 41919]

Airmark Corporation Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications should be addressed to him.

Dated Washington, D.C., January 9, 1984.

Elias C. Rodriguez,
Chief Administrative Law Judge.

[FR Doc. 84-1004 Filed 1-12-84; 8:45 am]
BILLING CODE 6320-01-M

[Docket 41860]

Braniff, Inc., Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Future communications should be addressed to him.

Dated: Washington, D.C., January 9, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84-1005 Filed 1-12-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41860]

Braniff, Inc., Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on January 23, 1984, at 10:00 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned.

Dated at Washington, D.C., January 10, 1984.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 84-1002 Filed 1-12-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-1-35]

National Aircraft Sales and Service; Application

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: 84-1-35. Application of Air National Aircraft Sales and Service, Inc. in Docket 41664 to provide scheduled air transportation of persons, property and mail between points in the United States, and Athens, Greece via points in Belgium and the Netherlands.

SUMMARY: The Board has tentatively found and concluded that Air National is fit to provide the scheduled service proposed in its application which constitutes a substantial change in operations, and that grant of the application is consistent with the public convenience and necessity.

The complete text of Order 84-1-35 is available as noted below.

DATES: Objections to the Board's tentative findings and conclusions shall be filed by February 7, 1984.

ADDRESSES: All pleadings should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 in Docket 41664.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428, (202) 673-5415.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-1-35 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 85-1-35 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: January 10, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-1000 Filed 1-12-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-1-30]

Pacific American Air Lines, Inc. for Review of Fitness; Application

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause (84-1-30).

SUMMARY: The Board is proposing to find that Pacific American Air Lines, Inc. continues to be fit to provide the air transportation authorized by the certificates issued to it in Orders 80-10-16 and 80-11-87, for domestic and foreign charter air transportation, respectively. The complete text of this order is available, as noted below.

DATES: Objections: All interested persons having objections to the Board's tentative fitness findings shall file, and serve upon all persons listed below no later than January 30, 1984, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the objections.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 41665 and should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon Pacific American and the Federal Aviation Administration.

FOR FURTHER INFORMATION CONTACT: Carolyn S. Kramp, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-5919.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-1-30 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-1-30 to that address.

By the Civil Aeronautics Board: January 10, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-999 Filed 1-12-84; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Meeting Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Advisory Committee of the Commission originally scheduled for January 18, 1984, at Birmingham, Alabama (FR Doc. 83-33455 on page 55888, December 16, 1983), has a new meeting date.

The meeting date will be February 2, 1984. The address and time will remain in the same.

Dated at Washington, D.C., January 10, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-945 Filed 1-12-84; 8:45 am]

BILLING CODE 6335-01-M

Minnesota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 6:30 p.m. and will end at 9:00 p.m., on February 13, 1984, at the Minnesota AFL-CIO Office, Conference Room, 175 Aurora Avenue, St. Paul, Minnesota 55103. The purpose of the meeting is to discuss the status of the project on mental health and the complaint of medical students.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Ruth Myers, at (218) 726-8878 or the Midwestern Regional Office at (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 5, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-946 Filed 1-12-84; 8:45 am]

BILLING CODE 6335-01-M

South Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 9:30 a.m. and will end at 11:30 a.m., on January 24, 1984, at the Gressette Senate Office Building, Room 409, State Capitol Complex, Columbia, South Carolina 29201. The purpose of this meeting is to discuss the project, *South Carolina's Use of Block Grant Funds*, and the reorganization of the U.S. Commission on Civil Rights.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Dr. Oscar P. Butler, Jr., at (803) 536–7040 or the Southern Regional Office at (404) 221–4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 10, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–944 Filed 1–12–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

National Institutes of Health; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 83–80. Applicant: National Institutes of Health, Bethesda, MD 20205. Instrument: Ion Source and Power Supply. Manufacturer: Ion Tech Limited, United Kingdom. Intended use: See notice at 47 FR 57982.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (September 22, 1981).

Reasons: The foreign instrument can ionize high molecular weight compounds for analysis. The National Bureau of Standards advises in its memorandum dated February 23, 1983 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to the foreign instrument being manufactured at the time the foreign instrument was ordered.

We understand that the instrument to which this application relates was liquidated on June 11, 1982. Duty-free entry will depend on whether the applicant successfully protests this liquidation.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–931 Filed 1–12–84 8:45 am]

BILLING CODE 3510–25–M

Texas A & M University, et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (5) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–28. Applicant: Texas A & M University, Gelogogy Department, College Station, TX 77843. Instrument: Isotope Mass spectrometer, Model MAT 251 with Accessories. Manufacturer: Finnigan Corporation, West Germany. Intended use: Study of carbon and oxygen iostope fractionation in the shells of live benthonic foraminifera. The isotopic composition of these shells, when measured in specimens from a sediment core, provide a record of ancient Ice Ages and an important tool for stratigraphic correlation of marine sediments and sedimentary rock. Implicit in these application is an understanding of the factors that influence the isotopic make-up of the foraminifera; however, that is often not the case, hence the intended research. Education—Hands on experience on the instrument in the form of organized lab excercises and term projects in the courses Stable Isotope Geology and Methods of Geochemistry. Students in Methods of Geochemistry will, in addition, receive training in the extraction and analysis of very small samples. Application received by Commissioner of Customs: December 7, 1983.

Docket No. 84–29. Applicant: Baylor College of Medicine, 1200 Moursund Avenue, Houston, TX 77030. Instrument: Hydraulic Microdrives, Model MO–10 & MO–103–R. Manufacturer: Narishige Scientific Instrument Lab., Japan. Intended use: Physiological studies of mammalian brain cells with the objective of obtaining a better understanding of the functioning of the brain in health and disease. Application received by commissioner of Customs: December 7, 1983.

Docket No. 84–30. Applicant: Baylor College of Medicine, 1200 Moursund Avenue, Houston, TX 77030. instrument: Micromanipulators. Manufacturer: Narishige Scientific Inst., Japan. intended use: To test various hypotheses on the neural function of guinea-pig hippocampus cells. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: December 7, 1983.

Docket No. 84–31. Applicant: Baylor College of Medicine, Department of Cell Biology, Houston, TX 77030. Instrument: Electron Microscope, Model Em 410LS and Accessories. Manufacturer: Nederlandse (Philips) Bedri/ven B.V., The Netherlands. Intended use: Research activities of four faculty members of the Department of Cell Biology as follows:

(1) Molecular Basis for Force Generation in Eukaryotic Flagella.

(2) The Mitotic Apparatus and Chromosome Movement in Eukaryotic Cells.

(3) Electron Microscopic Characterization of Isolated Gap Junctional Membrane.

(4) Chemistry and Localization of an Actin End-Binding Protein. Application Received by Commissioner of Customs: December 7, 1983.

Docket No. 84–32. Applicant: University of South Carolina, School of Medicine, Columbia, SC 29208. Instrument: Electron Microscope, Model

JEM–200CX with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: Study of the interaction between extracellular matrix components and the cell surface of muscle cells in normal and diseased animals. Other phenomena to be investigated are the origin and formation of foam cells in atherosclerosis, organization of calcium deposits in the pineal gland, and Herpes virus infection of lung and heart. Education—Demonstration of standard electron microscopic techniques as well as certain specialized procedures in the course "Electron Microscopy in Pathology". Application Received by Commissioner of Customs: December 7, 1983.

Docket No. 84–34. Applicant: National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709. Instrument: Mass Spectrometry Data System, 11/250. Manufacturer: VG Analytical, united Kingdom. Intended use; The data system is to be interfaced to an existing high resolution double focusing mass spectormeter and the combined instrument is to characterize individual components of complex samples of biological or environmental origin, analyze middle molecular weight biological samples and perform quantitiative analyses at mass resolutions of 10,000. Specifically, the research will involve identification of environmental agents and their transformation products, the identification of xenobiotic chemical metabolities, the measurement of the changes in the levels of naturally occurring biological compounds as a result of exposure of test systems to xenobiotic chemcials and the identification of any modifications occurring to natural biochemicals in test systems resulting from exposure to xenobiotics. Application Received by Commissioner of Customs: December 7, 1983.

Docket No. 84–35. Applicant: Stanford University, Department of Radiology, Stanford, CA 94305. Instrument: Radiotherapy Treatment planning Simulator. Manufacturer: Varian, United Kingdom. Intended use: A variety of scientific research protocols investigating the efficacy of various cancer treatment modalities. Education—Training of radiation therpy residents and students undertaking clerkships in radiation therapy. In addition, radiation therapy technologists are involved in the teaching programs leading to their certification as radiation therapy technologists. Application Received by Commissioner of Customs: December 7, 1983.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–930 Filed 1–12–84; 8:45 am]

BILLING CODE 3510–25–M

Minority Business Development Agency

Financial Assistance Application Announcement; California

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) program to operate two projects for a 12-month period in the following locations:

Vallejo SMSA—I. D. Number 09–10–84002–01:		
Maximum MBDA Contribution	$144,500	
SCS Contribution	14,450	
Total Federal Contribution		$158,950
Minimum Cost Sharing Contribution		28,050
Minimum Total Project Cost		$187,000
Start Date—May 1, 1984.		
Oxnard SMSA—I. D. Number 09–10–84004–01:		
Maximum MBDA Contribution	$212,500	
SCS Contribution	21,250	
Total Federal Contribution		$233,750
Minimum Cost Sharing Contribution		41,250
Minimum Total Project Cost		$275,000
Start Date—May 1, 1984		

Applicants shall be required to contribute at least 15% of the total program cost through Non-Federal funds. Cost sharing contributions can be in the form of cash contributions, fee for services or in-kind contributions.

CLOSING DATE: February 13, 1984.

ADDRESS: Minority Business Development Agency, U.S. Department of Commerce, 450 Golden Gate Avenue, Box 36114, San Francisco, California 94102.

FOR FURTHER INFORMATION CONTACT: Ms. Liz Embry at (415) 556–6733.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of this Announcement.

Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible clients in areas related to the establishment and operation of businesses. The MBDC program is specifically designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit through which and from which information and assistance to and about minority businesses are funneled.

B. Eligible Applicants.

Awards shall be open to all individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

C. Evaluation Process.

All proposals received as a result of this announcement will be evaluated by a MBDA review panel.

D. Evaluation Criteria for Minority Business Development Center Applications.

The evaluation criteria is designed to facilitate an objective evaluation of competitive applications for the Minority Business Development Center program.

MBDA reserves the right to reject any or all applications, including the application receiving the highest evaluation, and will exercise this right when it is determined that it is in the best interest of the Government to do so (e.g., the apparent successful applicant has serious unresolved audit issues from current or previous grants, contracts or cooperative agreements with an agency of the Federal Government).

Evaluation of proposals will employ the following criteria:

I. *Capability and Experience of Firm/Staff*—provide information that demonstrates the organization's capabilities and prior experiences in addressing the needs of minority business individuals and firms. Provide information that demonstrates the staff's capabilities and prior experiences in providing management and technical assistance to minority individuals and firms. Indicate previous experience in MBE community to be served in terms of: inventorying resources and

opportunities; the brokering thereof; and providing management and technical assistance.

The following are key factors to be considered in this section:

Firm

The organization's receptivity in the MBE community to be served, i.e., business contacts in the public and private sector; leadership responsibilities; and experience in assisting MBE business persons and firms. (References from clients assisted are pertinent.)

Background credentials and references for the owners of the organization and a capability statement of what the organization can do.

Knowledge of the geographic area to be served in terms of the needs of minority businesses and past ongoing relationships with local, public and private—entities that can possibly enhance the BDC program effort—i.e., Chambers of Commerce, trade associations, venture capital organizations, banks, SBA, HUD, state, city and county government agencies, etc.

Staff

List personnel to be used. Indicate their salaries, educational level and previous experience. Provide résumés for all professional staff personnel.

Demonstrate competence among staff to effectuate mergers, acquisitions, spin-offs and joint-ventures.

Provide organizational chart, job descriptions and qualification standards involving all professional staff persons to be utilized on the project.

If any contractors are to be utilized, identify and indicate areas and level of experience. *Primary consideration will be given to inhouse capability.*

Note.—All contracting proposed should be in accordance with procurement standards in Attachment 0 of OMB Circulars A–110 or A–102.

II. *Techniques and Methodology*—specify plans for achieving the goals and objectives of the project. This section should be developed by using the outline of the Work Requirements and the MBDC responsibilities as *guides* and will become part of the award document. Include start-up plan and example of work plan format. Fully explain the procedures for: outreach, screening, assisting and monitoring clients; maintaining the profile inventory of minority businesses; and brokering of new business ownership, market and capital opportunities and prevention of business failures. In summary, address how, when and where work will be done and by whom. Include level of performance.

III. *Resources*—address technical and administrative resources, i.e., computer facilities, voluntary staff time and space; and financial resources in terms of meeting MBDA's 15% cost-sharing requirement and including a fee for services for assistance provided clients. A fee for services in the amount of 10% of the cost of assistance will be charged to all clients receiving management and technical assistance.

Cost-sharing is that portion of project costs not borne by the Federal Government. The composition and amount of cost-sharing are key factors that will be considered in determining the merit of this section. The cost sharing requirement can be met through the following order or priority: (1) Cash contributions; (2) fee for services; and (3) in-kind contributions.

A. *Cash contribution*—Means cash that is contributed or donated by the recipient, and other Non-Federal sources, i.e., public agencies and institutions, private organizations, corporations and individuals.

B. *Fee for services*—Is a charge to a client for assistance provided by the MBDC for M&TA and/or SCS.

C. *In-Kind contribution*—Represents the value of non-cash contributions provided by the recipient and other Non-Federal sources. The order of priority for in-kind contributions are: high technology systems to be utilized to achieve program objectives; top level staff personnel and real and personal property donated by other public agencies, institutions and private organizations. Property purchased with Federal funds will not be considered as the recipient's in-kind contribution. Under no circumstances can the in-kind contribution exceed 50% of the total Non-Federal contribution.

IV. *Costs*—Demonstrate in narrative format that costs being proposed will give the minority business client and the government the most effective program possible in terms of quality, quantity, timeliness and efficiency.

Include the principal costs involved for achieving work plan under Cooperative Agreement by completing Part III—the Budget Information Section of the Request for Application.

Provide cost-sharing plan information in terms of methodology and format for billing the costs of management and technical assistance and specialized consulting services to clients.

Total project cost will be evaluated in terms of:

Clear explanations of all expenditures proposed, and

The extent to which the applicant can leverage Federal program funds and operate with *economy* and *efficiency*.

In conclusion, the applicant's schedule for start of the MBDC operation should be included in Part II. Part II will be known as the applicant's plan of operation and will be incorporated into the Cooperative Agreement Award.

A detailed justification of all proposed costs is required for Part III and each item must be fully explained.

The failure to supply information in any given category of the criteria will result in the application being considered non-responsive and dropped from competitive review.

All information submitted is subject to verification by MBDA.

E. Disposition of Proposals.

Notification of awards will be made by the Grants Officer, U.S. Department of Commerce (DOC) Organizations whose proposals are unsuccessful will be advised by MBDA, DOC.

F. Proposal Instructions and Forms.

This program is subject to OMB Circular A–95 requirements.

Questions concerning the preceding information, copies of application forms, and applicable regulations can be obtained at the above address.

Nothing in this solicitation shall be construed as committing MBDA to divide available funds among all qualified applicants.

G. A pre-application conference to assist all interested applicants will be held at the following address and time:

San Francisco

Minority Business Development Agency, U.S. Department of Commerce, 450 Golden Gate Avenue, Room 13029, San Francisco, California 94102, January 25, 1984 at 10:00 a.m.

11.800 Minority Business Development-Catalog of Federal Domestic Assistance.

Dated: January 9, 1984.

Powell McDaniel,

Acting Regional Director.

[FR Doc. 84–966 Filed 1–12–84; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The North Pacific Fishery Management Council, established by

Section 302 of the Fishery Conservation and Management Act of 1976 (Pub L. 94–265, as amended, its Scientific and Statistical Committee (SSC) and its Advisory Panel (AP) will hold joint and separate meetings. The Council will also meet in joint session with the Alaska Board of Fisheries.

DATES: The Council will meet at 9:00 a.m. Wednesday, February 1, 1984, in the Gastineau Room of the Baranof Hotel in Juneau and will meet with the Alaska Board of Fisheries beginning at 1:30 p.m. the same day in the Gold Room of the Baranof Hotel. The Council will continue meeting with the Board on Thursday, February 2, and will meet alone again at 9:00 a.m. on Friday, February 3, in the Gastineau Room to conduct Council business.

The Scientific and Statistical Committee meeting will convene on Monday, January 30, 1984, at noon in the Gastineau Room of the Baranof Hotel and will adjourn about 5 p.m. on Tuesday, January 31. The Advisory Panel will meet in the Capitol Room of the Baranof beginning at noon on January 30 and will continue on Tuesday, January 31. The meetings may be lengthened or shortened depending upon progress on the agenda items.

A workgroup will meet at 8:30 a.m. on Monday, January 30, in the Baranof Hotel to develop a status report for the Council on research on the occurrence and origin of net marks on salmon. The Council's Permit Review Committee and a workgroup on Council/Alaska Board of Fisheries working procedures will meet at the Baranof the week of the Council meeting, exact time and place to be announced.

Proposed Agenda

Council—A detailed agenda will be sent to the public around January 16, 1984. The Council and Board of Fisheries will meet jointly to hear salmon staff reports, a technical report on the U.S.-Canada salmon interception treaty negotiations and hear public testimony on salmon regulatory proposals before taking action on 1984 management proposals for chinook salmon in the fishery conservation zone off Southeastern Alaska. The Board and the Council will also review joint working procedures for Tanner crab management and regulatory review.

When the Council meets alone, they will review several groundfish management items including restrictions on joint venture trawling for sablefish and ways to reduce catches of halibut, salmon and crabs by trawlers in various areas of the Bering Sea and Gulf of Alaska. A discussion of NMFS' disapproval of Amendment 6 (establishing a Fishery Development Zone) to the Bering Sea/Aleutian Islands fishery management plan is also on the agenda. The Council will also be asked to review and reaffirm pelagic gear restrictions on the foreign pollock fishery in the Gulf of Alaska adopted at their December meeting.

The Council will consider management proposals to promote a developmental halibut fishery in the Bering Sea by residents of the Pribilof and Nelson Islands. Among the management alternatives the Council may consider in this regard are the following:

1. Establishing IPHC Area 4C as an exclusive registration area;

2. Imposing a maximum vessel size limit of 5 net tons in IPHC Area 4C;

3. Requiring all halibut commercially harvested in IPHC Area 4C be landed at ports within that area;

4. Creation of 12-nautical mile fishery development zones around St. Paul, St. George, Nelson and Nunivak Islands with exclusive area registration, vessel size limit of 5 net tons and separate harvest quotas for each zone.

5. Imposing a trip-poundage limit on vessels fishing in IPHC Area 4C.

The Council may also consider proposals submitted by concerned parties prior to the meeting in Juneau.

The Council will review a Request for Proposals for herring research in the Bering Sea, and also review foreign vessel permit applications received since the last Council meeting. They include requests for joint ventures by ships from Norway and Poland, and for directed fisheries by Norwegian, Polish and Japanese ships.

The Council will confirm new SSC and AP officers. Various contracts may also be reviewed.

The SSC and AP agenda items will be similar to that of the Council.

Plan team and workgroup meetings may be held on short notice during the Council meeting week. These meetings will be posted at the hotel. All meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510, (907) 274–4563.

Dated: January 10, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84–1008 Filed 1–12–84; 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: The Western Pacific Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended) has established a Scientific and Statistical Committee which will meet to review draft assessment of deep sea shrimp, crab and slipper lobster resources; review studies about need for escape gaps in lobster traps, and discuss lobster monitoring activities and need for future research; review studies that have: (a) Complied catch rates for billfish and other pelagic species experienced by Hawaiian fishermen over the past several decades, (b) analyzed factors believed to affect the abundance of blue marlin in Hawaiian waters, and (c) provide preliminary evidence of genetic variation in blue marks from different parts of the Pacific ocean; review the draft of the bottomfish framework fishery management plan, as well as discuss any other Committee business.

DATES: The meeting will convene Thursday, January 26, 1984, at approximately 9:00 a.m. and will adjourn at approximately 3:00 p.m. on Friday, January 27, 1984.

ADDRESS: The meeting will take place at the Ala Moana Banquet Halls, Ala Moana Center, Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: Western Pacific Fishery Management Council, Room 1405—1164 Bishop Street, Honolulu, Hawaii 96813, Telephone: (808) 523–1368.

Dated: January 10, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84–1009 Filed 1–12–84; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected

inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Government Inventions and Patents, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-245,464 (4,416,881)
Insect Repellents Employing Cyclohexane-Carbonyl Morpholine Compounds

SN 6-294,096 (4,416,069)
Enhancement of Color Quality of Lumber During Drying

SN 6-367,638 (4,415,350)
Auxin Compositions of Phenyl Thioesters of Indole-3-Alkanoic Acids and Their Use as Auxin Growth Regulators

SN 6-367,639 (4,411,684)
Auxin Compositions of N-Phenyl And N-Chloro Phenyl Indolyl-3-Alkylene Amides and Their Ue as Auxin Growth Regulators

SN 6-409,268 (4,414,084)
Process for Conversion of Cellulose to Amino Acids by Radiofrequency Plasma of Nitrogen and Hydrogen

SN 6-464,530 (4,413,997)
Dicarbamoylsulfonate Tanning Agent

SN 6-496,518
Ova Harvesting System

SN 6-507,192
Control of Insects

SN 6-530,829
Transport Carriage

SN 6-532,411
Forest Fire Rate of Spread Timer and Method

SN 6-539,027
Adjustable Sheave Wheel

SN 6-543,730
Process and Compositions for Preserving Fresh Hides and Skins

Department of Health & Human Services

SN 6-250,840 (4,415,807)
Cross-Slice Data Acquisition System For Pet Scanner

SN 6-271,271 (4,416,662)
Roller Infusion Apparatus

SN 6-315,271 (4,414,108)
Apparatus and Method for Continuous Countercurrent Extraction and Particle Separation

SN 6-325,730 (4,413,985)
Hydrocephalic Antenatal Vent for Intrauterine Treatment (HAVIT)

SN 6-338,537 (4,416,871)
Inhibition By Peptides of Tolerance to and Physical Dependence on Morphine

SN 6-389,118 (4,412,066)
Polymer Bound Dyes Prepared By Diazo Coupling Reactions With Poly(Organophosphazenes)

SN 6-402,353 (4,416,761)
Multi Slab Gel Casting Electrophoresis Apparatus

SN 6-537,572
Stimulation of Enzymatic Ligation of DNA By High Concentrations of Nonspecific Polymers

Department of the Air Force

SN 6-263,629 (4,407,705)
Production of Negative Ions of Hydrogen

SN 6-404,725
A Rechargeable Secondary Battery Having An Aluminum Salt Electrolyte

SN 6-515,834
Blind-Mating, Positionally Adjustable Electrical Connection Device

SN 6-532,862
Mounting Device

SN 6-533,331
Electronic Nerve Agent Detector

SN 6-534,996
Heat Management System for Aircraft

SN 6-536,142
Diffuse Incandescent Runway Marker Light Apparatus for Overt/Covert Operation

SN 6-538,872
Means for Aligning Elevation Beam Pattern Along an Isodop in Synthetic Aperture Mapping Radar

Department of the Army

SN 6-538,633
Alignment Transfer and Verification Scheme for a Portable Land Navigation System

SN 6-539,201
Liner-Propellant Bond Tests

SN 6-544,144
Protective Mask For Airborne Toxic Substances

SN 6-544,770
Method of Pretreating Carbon Black Powder to Improve Cathode Performance and Lithium Sulfuryl Chloride Cell Including the Pretreated Carbon Black Powder

[FR Doc. 84-967 Filed 1-12-84; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Textile Consultations With the Government of the Republic of Korea

January 10, 1984.

On January 9, 1984, the Government of the United States, under Article 3 of the Arrangement Regarding International Trade in Textiles, the MFA, requested the Government of the Republic of Korea to enter into consultations concerning exports to the United States of man-made fiber luggage in Category 670 (only T.S.U.S.A. Nos. 706.4144 and 706.4152), produced or manufactured in the Republic of Korea.

The purpose of this notice is to advise that, if no solution is agreed upon between the two governments within sixty days of the date of delivery of the aforementioned note requesting consultations, entry and withdrawal from warehouse for consumption of textile products in Category 670 (only T.S.U.S.A. Nos. 706.4144 and 706.4152), produced or manufactured in the Republic of Korea and exported to the United States during the twelve-month period which began on January 9, 1984, may be restrained at 18,435,270 pounds.

Anyone wishing to comment or provide data or information regarding the treatment of Category 670pt., is invited to submit such comments or information in ten copies to Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the consultations is not yet certain, it is requested that comments be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating

to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-929 Filed 1-12-84; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare Draft Environmental Impact Statement for Proposed Flood Control Project on Sauquoit Creek, Village of Whitesboro, Oneida County, New York

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Supplemental Revised Environmental Impact Statement.

SUMMARY:

1. Description of Proposed Action

The proposed plan consists of channel modification along a one-mile stretch of Sauquoit Creek from its confluence with the Mohawk River upstream to the Route 69 (Oriskany Blvd.) Bridge.

2. Reasonable Alternatives

A reasonable alternative to modification of the existing Sauquoit Creek channel is no action. Other alternatives considered include: nonstructural measures such as evacuation of the floodplain, floodproofing and land use regulations; levees; and floodwalls.

3. Scoping Process

a. Public Involvement

Coordination with Federal, State, and local interests was conducted on February 3, 1983 at the regional office of the NYS Dept. of Environmental Conservation in Utica, New York and at the Whitesboro Town Hall in the Village of Whitesboro. Views from public agencies and individuals will also be solicited by means of a public notice presenting a description of the proposed plan of improvement, and announcing that a Detailed Project Report and Draft Environmental Impact Statement are being prepared.

b. Significant Issues Requiring In-Depth Analysis

Water quality impacts, archeological and cultural resources impacts, aquatic resources impacts, and floodplain impacts.

c. Assignments

None anticipated.

d. Environmental Review and Consultation

Review will be as outlined in Council on Environmental Quality regulations dated November 29, 1983 (40 CFR Parts 1500–1508) and Corps regulations ER200–2–2 dated August 25, 1980 (revised March 2, 1981).

4. Scoping Meeting

Meeting will not be held.

5. Estimate date of statement availability June 1984

ADDRESS:

Project Manager, David Schlesinger, Attn: NANPL–FA, Tel No. 212–264–9086.

EIS Coordinator, Robert Dieterich, Attn: NANPL–E, Tel No. 212–264–4662.

US Army Engineer District, New York, 26 Federal Plaza, New York, N.Y. 10007.

Dated: January 3, 1984.

Samuel P. Tosi,

P.E., Chief, Planning Division.

[FR Doc. 84-961 Filed 1-12-84; 8:45 am]

BILLING CODE 3710-06-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51495; TSH-FRL 2481-1]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 83–32111, beginning on page 54394, in the issue of Friday, December 2, 1983, in the third column, under "PMN 84–216", in the eleventh line "1mg/l." should read "11mg/l."

BILLING CODE 1505-01-M

[OPTS-51501 TSH-FRL 2506-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of seven PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 84–309, 84–310, 84–311, and 84–312—March 28, 1984;

PMN 84–313, 84–314 and 84–315—April 2, 1984.

Written comments by:

PMN 84–309, 84–310, 84–311, and 84–312—February 27, 1984;

PMN 84–313, 84–314 and 84–315—March 3, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS–51501]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M St., SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Margaret Stasikowski, Acting Chief, Premanufacturing Notice Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M St., SW., Washington, DC 20460, (202–382–3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

PMN 84–309

Importer. Confidential.

Chemical. (G) Polyether acid phospate.

Use/Import. (G) Additive for aqueous cutting fluids. Import range: 400,000–1,000,000 kg/yr.

Toxicity Data. Acute oral: 10,000 mg/kg; Irritation: Skin—Moderate, Eye—Moderate; Inhalation: No mortalities.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

PMN 84–310

Importer. Confidential.

Chemical. (G) Amine salt of a substituted organic acid.

Use/Import. (G) Corrosion inhibitor. Import range: 200,000–500,000 kg/yr.

Toxicity Data. Acute oral: 4,750 mg/kg; Acute intraperitoneal, (rat)—700 mg/kg, (mouse)— < 2,000 mg/kg; Irritation: Skin—Moderate, Eye—Moderate; Inhalation: Highly enriched.

Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

PMN 84–311

Manufacturer. Confidential.
Chemical. (G) Cyclic alkene-yne.
Use/Production. (G) Reaction modifier. Import range: Confidential.
Toxicity Data. Acute oral: 737 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Moderate, Eye—Slight; Ames Test: Negative.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by waste water treatment.

PMN 84–312

Importer. Confidential.
Chemical. (S) Methyltris(2-methyl-3-butyn-2-oxy)silane.
Use/Import. (G) Additive for elastomers. Import range: Confidential.
Toxicity Data. Acute oral: 3,884 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Very slight, Eye—Non-irritant; Ames Test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

PMN 84–313

Manufacturer. Confidential.
Chemical. (G) Poly alkylene polyol.
Use/Production. (G) The new substance will have an open industrial use in manufacturing polyurethanes. Prod. range: 400,000–2,500,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 34 workers, up to 4 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. 15–100 kg/batch released to land. Disposal by incineration and landfill.

PMN 84–314

Manufacturer. Confidential.
Chemical. (G) Partially oxidized polysaccharide.
Use/Production. (G) Contained use in manufacturing. Prod. range: 20–80 kg/yr.
Toxicity Data. Acute oral: <3,200 mg/kg; Acute dermal: <20 ml/kg; Irritation: Skin—Slight, Eye—Slight.
Exposure. Manufacture and processing: dermal, a total of 7 workers, up to 0.3 hr/da, up to 3 da/yr.
Environmental Release/Disposal. Less than 1 to 5 kg/batch released to control technology only. Disposal by navigable waterway.

PMN 84–315

Manufacturer. Confidential.
Chemical. (G) Polymer of alkyl and heteromonocyclic amines and an alkanedioic acid.
Use/Production. (G) Adhesive component. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated: Janauary 9, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–937 Filed 1–12–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–53055; BH–FRL 2480–1]

Premanufacture Notices; Monthly Status Report for October 1983

Correction

In FR Doc. 83–31924, beginning on page 54274, in the issue of Thursday, December 1, 1983, on page 54279, in the fourth line from the bottom, for the entry 83–1310, the second column should read "Mercaptopropyl methyl dimethoxy silane".

BILLING CODE 1505–01–M

Environmental Impact Statements Filed January 3 Through January 6, 1984; Availability

[ER–FRL 2505–8]

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

EIS No. 830669, Draft, AFS, IN, Wayne-Hoosier National Forest, Land and Resource Management Plan, Due: Apr. 13, 1984.
EIS No. 84000, Final, SCS, CA, Spring Creek Subwatershed Flood Control Plan, Sonoma Co., Due: Feb. 13, 1984.
EIS No. 840001, DSuppl, NRC, PA, Three Mile Island, Nuclear Station, Unit 2, Revised Estimates of Occupational Radiation Doses, Dauphin County, Due: Feb. 27, 1984.
EIS No. 840002, Draft, FHW, TX, Rt. 734/Parmer Lane, Highway Extension, Rt. 1325 to Rt. 620, Travis and Williamson Counties, Due: Feb. 27, 1984.
EIS No. 840003, Draft, NOA, HI, Hawaii Humpback Whale National Marine Sanctuary, Designation, Due: Mar. 12, 1984.
EIS No. 840004, Final, EPA, NY, Lake George-Upper Hudson Region, Wastewater Treatment Facilities Management Plan, Grant, Warren Co., Due: Feb. 15, 1984.

Amended Notices:

EIS No. 830648, Final, FHW, PA, Mid-County Expressway/I–476/LR–1010 Completion, Ridge Pike to Pennsylvania Turnpike, Montgomery County, Due: Jan. 16, 1984. Published FR 12–16–83—Incorrect due date.
EIS No. 830580, Draft, NOA, AS, Fagatele Bay National Marine Sanctuary, Designation, Island of Tutuila, American Somoa, Due: Jan. 20, 1984. Published FR 11–04–83 Review extended.
EIS No. 830602, Draft, BLM, UT, Sunnyside Combined Hydrocarbon Lease Conversion, Carbon County, Due: Feb. 6, 1984. Published FR 11–18–84 Review extended.

Dated: January 10, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84–1010 Filed 1–12–84; 8:45 am]

BILLING CODE 6560–50–M

[SAB–FRL 2507–5]

Science Advisory Board; Subcommittee on Risk Assessment for Radionuclides Open Meeting—January 16, 1984

Under Public Law 92–463, notice is hereby given of an emergency one day meeting of the Science Advisory Board's Subcommittee on Risk Assessment for Radionuclides. The meeting will be held on January 16, 1984 in Room 1112, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia. The meeting will begin at 9:30 a.m. and will adjourn at approximately 4:00 p.m.

The emergency nature of the meeting is the result of the urgent need of the Agency to complete its ongoing regulatory programs and the need to resolve public comments and other concerns expeditiously. The Subcommittee plans to complete its review task and issue its report within three months.

The Subcommittee was formed as the result of a written request from EPA Administrator William D. Ruckelshaus to the Chairman of the Science Advisory Board on December 6, 1983. The purpose of the Subcommittee is to provide a critical and independent review of the process by which the Agency estimates human cancer and genetic risk due to radionuclides in the environment. The Subcommittee's review activities are designed to improve the scientific basis of risk assessment in EPA. The panel will not attempt to address risk management issues (such as defining acceptable risk levels or recommending what constitutes an ample margin of safety) in the course of its review.

Specific issues to be addressed by the Subcommittee include:

1. Has the EPA Office of Radiation Programs (ORP) considered and

interpreted in a scientifically adequate manner the appropriate literature on radiation risk assessment including data sources on radiation risks?

2. Are the assumptions made by ORP in estimating radiation risks reasonable, and are they justified in the supporting documentation?

3. Is ORP's selection of the National Academy of Sciences/Biological Effects of Ionizing Radiation III report as the basic guide to radiation risk estimates scientifically appropriate?

4. Is the ORP analysis of potential lung cancer risks due to radon progeny scientifically defensible?

5. Is the wide range of uncertainty in estimates of human cancer and genetic risk clearly presented?

6. Is the ORP choice of the International Council of Radiation Protection (ICRP) quality factor of twenty for high LET radiation scientifically reasonable or are there better alternatives?

7. Is the choice of ICRP dosimetric models scientifically adequate? Are there any alternatives?

8. In a few cases EPA has used organ transfer factors for a general population rather than those for occupational workers. Are these changes appropriate and justified in the documentation?

9. Are the air dispersion models reasonable to estimate radionuclide concentrations (1) in the neighborhood of a source? and (2) to regional populations?

10. Is the selection of transfer factors and other parameters in the food chain analysis reasonable?

The following individuals have agreed to serve as members of the Subcommittee to carry out the review of the risk assessment for radionuclides.

Dr. Roger O. McClellan (Chairman), Director of Inhalation Toxicology Research Institute, Lovlace Biomedical and Environmental Research Institute, P.O. Box 5890, Albuquerque, New Mexico 87115

Dr. Seymour Abrahamson, Professor of Zoology and Genetics, Department of Zoology, University of Wisconsin, Madison, Wisconsin 53706

Dr. Victor Archer, Rocky Mountain Center for Occupational Health, Building 512, Salt Lake City, Utah 84112

Dr. Victor P. Bond, Associate Director, Brookhaven National Laboratory, Upton, New York 11973

Dr. Gordon L. Brownell, Physics Research Laboratory, Massachusetts General Hospital, Boston, Massachusetts 02114

Dr. Merrill Eisenbud, New York University, Lanza Laboratory, Long Meadow Road, Tuxedo, New York 10987

Dr. Frank A. Gifford, 109 Gorgas Lane, Oak Ridge, Tennessee 37830

Dr. James V. Neel, Lee R. Dice University, Professor of Human Genetics, University of Michigan Medical School, Dept. of Human Genetics-Box 015, 1137 E Catherine Street, Ann Arbor, Michigan 48109,

Dr. William J. Schull, Director and Professor of Population Genetics, Center for Demographic and Population Genetics, School of Public Health, University of Texas Health Science Center at Houston, Houston, Texas 77030

Dr. Donovan Thompson, 4231 NE 70 Third, Seattle, Washington 98115

Dr. Ward Wicker, Savannah River Ecology Laboratory, Drawer E, Aiken, South Carolina 29801

For Further Information Contact: Cheryl B. Bentley, (202) 382–4126.

Terry F. Yosie,

Staff Director, Science Advisory Board, January 11, 1984.

[FR Doc. 84–1071 Filed 1–12–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Bath County Banking Co., et al., Formations of, Acquistitons by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y to become a bank holding company or to acquire a bank or bank holding company. 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 is available for immediate inspection at the Federal Reserve Bank indicated for that application. Once the application has been accepted for processing, it will aslo be available for inspection at the offices of the Board of Governors. With respect to each application, interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. 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, indentifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 9, 1984.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Bath County Banking Company,* Owingsville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Owingsville Banking Company, Owingsville, Kentucky.

2. *Commonwealth Trust Bancorp, Inc.,* Covington, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Covington Trust & Banking Company, Covington, Kentucky.

B. **Federal Reserve Bank of Chicago** Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Colonial Bankshares Corporation.*Chicago, Illinois; to acquire 29.1 percent of the voting shares or assets of Northwest American Bankshares Corporation, Chicago, Illinois, and thereby indirectly acquire Northwest Commerce Bank Rosemont, Illinois and All American Bank of Chicago, Chicago, Illinois.

2. *G.S.B. Financial Corporation,* Garrett, Indiana; to become a bankholding company by acquiring 100 percent of the voting shares of The Garrett State Bank, Garrett, Indiana.

3. *Northwest American Bankshares Corporation,* Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Northwest Commerce Bank, Rosemont, Illinois and 58.1 percent of All American Bank of Chicago, Chicago, Illinois.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Chester County Bancshares, Inc.,* Henderson, Tennessee; to become a bank holding company by acquiring 80 percent or more of the voting shares of Chester County Bank, Henderson, Tennessee.

2. *NSB, Inc., Metropolis,* Illinois; to become a bank holding company by acquiring 80 percent or more of the voting shares of The National State Bank, Metropolis, Illinois.

3. *Shawneetown Bancorp, Inc.,* Shawneetown, Illinois: to acquire 80 percent or more of the voting shares or assets of First National Bank in Golconda, Golconda, Illinois.

4. *TC Bankshares, Inc.,* North Little Rock, Illinois; to acquire 100 percent of the voting shares or assets of First State Bank of Morrilton, Morrilton, Arkansas and 100 percent of People Bancshares Inc., Van Buren, Arkansas, thereby

acquiring indirect control of 82.1 percent of Peoples Bank and Trust Company, Van Buren, Arkansas.

Board of Governors of the Federal Reserve System, January 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-919 Filed 1-12-84; 8:45 am]

BILLING CODE 6210-01-M

First of Austin Bancshares, Inc., et al.; Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First of Austin Bancshares, Inc.*, Austin, Texas; to acquire 100 percent of the voting shares or assets of First National Bank, Austin, Texas (in organization). Comments on this application must be received not later than February 8, 1984.

2. *University National Bancshares of San Antonio, Inc.*, San Antonio, Texas; to acquire 100 percent of the voting shares or assets of Castle Hills National Bank, San Antonio, Texas. Comments on this application must be received not later than February 9, 1984.

Board of Governors of the Federal Reserve System, January 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-920 Filed 1-12-84; 8:45 am]

BILLING CODE 6210-01-M

Penn Central Bancorp, Inc., 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 Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Penn Central Bancorp, Inc.*, Huntingdon, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Penn Central National Bank, Huntingdon, Pennsylvania. Comments on this application must be received not later than February 9, 1984.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23161:

1. *F&M Bancorp*, Frederick, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers and Mechanics National Bank, Frederick, Maryland. Comments on this application must be received not later than February 9, 1984.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *F. A. Bankshares, Inc.*, Monroe, Georgia; to become a bank holding company by acquiring up to 100 percent of the voting shares of First American Bank of Walton, Monroe, Georgia. Comments on this application must be received not later than February 8, 1984.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Financial Bancshares, Inc.*, LaVista, Nebraska; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Nebraska in LaVista, LaVista, Nebraska. Comments on this application must be received not later than February 3, 1984.

2. *National Bancshares, Inc.*, Oklahoma City, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of American National Bancshares, Inc., Midwest City, Oklahoma. Comments on this application must be received not later than February 1, 1984.

3. *Warrensburg Bancshares, Inc.*, Chillicothe, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Warrensburg, Warrensburg, Missouri. Comments on this application must be received not later than February 9, 1984.

E. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Maries County Bancorp, Inc.*, Vienna, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Maries County Bank, Vienna, Missouri, and Belle State Bank, Belle, Missouri. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of St. Louis. Comments on this application must be received not later than February 9, 1984.

Board of Governors of the Federal Reserve System, January 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-921 Filed 1-12-84; 8:45 am]

BILLING CODE 6210-01-M

Banque Paribas, et al.; Notice of Proposed de Novo Nonbank Activities by Bank Holding Companies

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or

unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific 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 New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Banque Paribas* and *Compagnie Financiere de Paribas* both of Paris, France (financing and servicing activities; Texas): To engage, through its subsidiary, Paribas Finance (Texas), Inc., in commercial financial activities, including the making and acquiring of loans and other extensions of credit such as would be made by a commercial financing company, including commercial loans secured by accounts receivable, fixed assets, equipment and inventory; making loans to finance the acquisition of residential real estate; issuing commercial and stand-by letters of credit; and servicing such loans and extensions of credit for others. These activities would be performed in the State of Texas. Comments on this application must be received not later than February 9, 1984.

2. *Key Banks, Inc.*, Albany, New York (reinsurance activities; Maine): To engage, through its subsidiary Key Bank Life Insurance, Ltd., Phoenix, Arizona, in the underwriting as reinsurer of credit life insurance and credit accident and health insurance sold in connection with extensions of credit made by Key Bancshares of Maine, a proposed subsidiary of Key Banks, Inc. The area to be served under this proposal is the State of Maine. Comments on this application must be received not later than February 8, 1984.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon National Corporation*, Pittsburgh, Pennsylvania (commercial lending and leasing activities; United States and overseas): To engage through its indirect subsidiary, Mellon Financial Services Corporation, in commercial lending, including accounts receivable and inventory financing, and permissible personal property leasing, including acting as agent, broker, or adviser in leasing such property. These activities would be conducted from an office in Kansas City, Missouri, serving the United States, as well as clients overseas. Comments on this application must be received not later than February 8, 1984.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Citizens and Southern Georgia Corporation*, Atlanta, Georgia (mortgage banking activities; Florida, Tennessee): To engage, through its subsidiary, Citizens and Southern Mortgage Company (FLA), in mortgage lending and mortgage banking activities, including the extension of direct loans to consumers, the purchase and discount of real estate loans and other extensions of credit, making, acquiring, servicing, or soliciting, for its own account or for the account of others, loans and other extensions of credit; and acting as agent for the sale of life, accident and health insurance directly related to its extensions of credit. These activities would be conducted from offices in Orlando, Florida, and Nashville, Tennessee, serving the states of Florida and Tennessee. Comments on this application must be received not later than February 8, 1984.

2. *Flint Bancshares, Inc.*, Cordele, Georgia (financing activities; Georgia): To engage through its subsidiary, Cordele Banking Company, in consumer and commercial finance activities as a purchaser, from time to time, of portions or large credit lines on a non-recourse basis. These activities would be conducted in Crisp County, Georgia, and surrounding counties. Comments on this application must be received not later than February 1, 1984.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Oakwood Bancorp, Inc.*, Springfield, Illinois, (banking and credit insurance activities; Illinois): To engage *de novo* through its banking subsidiary, the State Bank of Oakwood, Oakwood, Ilinois as a broker in the sale of credit life and credit accident and health insurance. These activities would be conducted from offices of the State Bank of Oakwood, serving the city of Oakwood, Illinois. Comments on this application must be received not later than January 27, 1984.

Board of Governors of the Federal Reserve System, January 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-922 Filed 1-12-84; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

January 10, 1984.

Background

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act [44 U.S.C. Chapter 35]. Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the **Federal Register.** This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of a form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division

of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3829).

OMB Reviewer—Judy McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202–395–6880).

Request for Revisions to an Existing Report

1. Report title: Reports of Condition and Income.

Agency form number: FFIEC 031–034.

Frequency: Quarterly.

Reporters: State member banks.

Small businesses are affected.

General description of report: Respondent's obligation to reply is mandatory [12 U.S.C. 324]; a pledge of confidentiality is not promised.

Detailed schedules of assets, liabilities, and capital accounts in the form of a condition report, and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in the equity capital in the form of an income statement; and a variety of supporting schedules. (Addition of two items on Schedule RC–L, Commitments and Contingencies, on "when-issued" securities and the addition of one item on Schedule RC–E, Deposit Liabilities, on brokered retail deposits issued in denominations of $100,000 or less.—

Board of Governors of the Federal System, January 10, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–1020 Filed 1–12–84; 8:45 am]

BILLING CODE 6210–01–M

Firstar Corp., et al.; Engaging de novo in Permissible Nonbanking Activities

The bank holding companies listed in this notice have filed a notice under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each notice is available for immediate inspection at the Federal Reserve Bank indicated for that application. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. With respect to each notice, interested persons may express their views in writing 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.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 9, 1984.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Firstar Corporation*, Appleton, Wisconsin, (trust activities; Wisconsin): To engage, through a *de novo* subsidiary Firstar Trust Company, Appleton, Wisconsin in the activities of a trust company. These activities would be conducted from an office in Appleton, Wisconsin, serving that area.

2. *Mt. Zion Bancorp, Inc.*, Mt. Zion, Illinois; Applicant proposes to engage *de novo* through its subsidiary, MZB Diversified Insurance, Inc., Mt. Zion, Illinois, in general insurance activities in a town with a population of less than 5,000, pursuant to § 225.4(a)(9)(ii) of Regulation Y. The activities will be performed from offices in Mt. Zion and Dalton City, Illinois, serving these towns.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota (financing, insurance and travelers checks activities; Pennsylvania): To engage through its subsidiaries, Norwest Financial America, Inc. and Norwest Financial Consumer Discount Company, in the activities of consumer finance, sales finance and commercial finance, the sale of credit life, credit accident and health and credit-related property and casualty insurance related to extensions of credit by those companies (such sale of credit-related insurance being a permissible activity under Subparagraph D ot Title VI of the Garn-St. Germain Depository Institutions Act of 1982) and the offering for sale and selling of travelers checks. These activities will be conducted from an office in Lancaster, Pennsylvania. This notification is (1) for the relocation of an existing office in Lancaster, Pennylvania and (2) to engage *de novo* in the activities of sales finance and commercial finance from said office, as relocated. Upon relocation, said office will serve Lancaster, Pennsylvania.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First State Holding Company, Inc.*, Mullinville, Kansas (leasing activities; Kansas): To engage directly in the leasing of personal property, including farm machinery and motor vehicles, in accordance with the Board's Regulation Y. These activities would be performed in the City of Mullinville, Kansas and Southwest Kansas.

Board of Governors of the Federal Reserve System, January 10, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–1019 Filed 1–12–84; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

State Regulation of Securities; Survey of Securities Industry Firms

AGENCY: Federal Trade Commission.

ACTION: Request for OMB Review under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) of a survey of securities industry firms' experiences in seeking State registration of common stocks.

SUMMARY: The survey for which OMB review is sought is intended to obtain information about the registration status of common stocks issued between July 1, 1979 and June 30, 1980 and to gather information on the registration process from the responding firms. The survey results will be incorporated in a study conducted by the FTC's Bureau of Economics: Blue Sky Securities Laws As Investor Protection Regulation. Data from the survey will be analyzed in conjunction with risk and return observations on these securities in a comparison of registered and unregistered securities in various States.

DATES: Comments on the proposed survey must be submitted on or before February 13, 1984.

ADDRESS: Send comments to Mr. Don Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503. Copies of this application may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: John C. Hilke, Division of Industry Analysis, Bureau of Economics, Federal Trade Commission, Washington, D.C. 20580 (202) 634–7688.

John H. Carley,

General Counsel.

[FR Doc. 84–899 Filed 1–12–84; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 6.

Public Health Service

Centers for Disease Control

Subject: The Possible Association Between Reye Syndrome and Medication Pilot Study—new
Respondents: Individuals

Note.—The Department has requested expedited OMB review for study. The public has ten days in which to comment.

OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Citizen Petition—existing collection
Respondents: Businesses, individuals, state and local governments
Subject: Filing of Objections and Requests for Hearing on a Regulation or Order—existing collection
Respondents: Businesses
OMB Desk Officer: Bruce Artim

Social Security Administration

Subject: Annual Report by Grantees of the Number and Income Levels of Households Assisted by Low Income Home Energy Assistance Program (0960–0261)—revision
Respondents: State agencies
Subject: Grantee Surveys of the Fiscal Year 1983 and 1984 Low Income Home Energy Assistance Programs (0960–0330)—revision
Respondents: State agencies
Subject: Information Exchange Between State IV–D and State Medicaid Agencies—NPRM—new
Respondents: State IV–D agencies
Subject: Report on Individual with Childhood Impairment (0960–0084)—extension/no change
Respondents: Schools, state and local agencies, and other appropriate institutions
OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503
Attn: (name of OMB Desk Officer)

Dated: January 11, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84–1032 Filed 1–12–84; 8:45 am]

BILLING CODE 4150–04–M

Office of the Assistant Secretary for Health

Meeting, National Committee on Vital and Health Statistics

Pursuant to the Federal Advisory Act (Pub. L. 92–643), notice is hereby given that the Subcommittee on the Vital Statistics Program of the National Committee on Vital and Health Statistics, pursuant to functions established by section 306(k)(2) of the Public Health Service Act, as amended, (42 USC 242k), will convene on Thursday, January 19 and Friday, January 20, 1984, at 9:00 a.m. in Room 1–23 of the Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

The Subcommittee will review the uses of vital statistics data by other Federal agencies.

Further information regarding this meeting of the Subcommittee or other matters pertaining to the National Committee on Vital and Health Statistics may be obtained by contacting William F. Stewart, National Committee on Vital and Health Statistics, Room 2–28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7122.

Dated: January 3, 1984.

Manning Feinleib,

Director.

[FR Doc. 84–934 Filed 1–12–84; 8:45 am]

BILLING CODE 4160–17–M

Food and Drug Administration

Public Workshop; Agents Used To Treat Angina

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming public workshop to discuss studies that could be considered appropriate for testing the effectiveness of agents used to treat angina.

DATE: The workshop will be held on February 17, from 9 a.m. to 5 p.m.

ADDRESS: The workshop will be held at the Auditorium, Lister Hill Center, Bldg. 38A, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Joan C. Standaert, National Center for Drugs and Biologics (HFN–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4730.

SUPPLEMENTARY INFORMATION: FDA's Division of Cardio-Renal Drug Products, National Center for Drugs and Biologics, will hold a workshop to discuss studies that could be considered appropriate for testing the effectiveness of agents used to treat angina. The workshop will be held on February 17, at the Auditorium, Lister Hill Center, Bldg. 38A, Rockville Pike, Bethesda, MD 20209. The entire meeting will be open to the public from 9 a.m. to 5 p.m.

Requests for information on the workshop should be directed to Joan C. Standaert (address above).

Dated: January 9, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–905 Filed 1–12–84; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory

committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Drug Abuse Advisory Committee

Date, time, and place. February 3, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, February 3, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to conclusion; Frederick J. Abramek, National Center for Drugs and Biologics (HFN–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4020.

General function of the committee. The committee advises the Commissioner of Food and Drugs regarding the scientific and medical evaluation of all information gathered by the Department of Health and Human Services and the Department of Justice with regard to safety, efficacy, and abuse potential of drugs or other substances and recommends actions to be taken by the Department of Health and Human Services with regard to marketing, investigation, and control of such drugs or other substances.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss Naltrexone and specifically the safety and efficacy considerations of a narcotic antagonist agent proposed for use in the treatment of detoxified, drug-dependent individuals.

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. February 9, 8 a.m., and February 10, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and executive secretary. Open committee discussion, February 9, 8 a.m. to 5 p.m.; open public hearing, February 10, 9 a.m. to 10 a.m.; open committee discussion, February 10, 10 a.m. to 5 p.m.; A. T. Gregoire, National Center for Drugs and Biologics (HFN–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1869.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drug products for use in obstetrics, gynecology, and contraception.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee, should communicate with the committee executive secretary.

Open committee discussion. On February 9, the committee will review and discuss the safety of oral contraceptives. On February 10, the committee will discuss the use of progestins during estrogen replacement therapy.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. February 16, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Joan Standaert, National Center for Drugs and Biologics (HFN–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4730.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of cardiovascular and renal disorders.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss NDA 18–972, Cordarone (amiodorone hydrochloride), Ives Laboratories, for use as an anti-arrhythmic agent and NDA 11–856 (methyl prednisolone sodium succinate), The Upjohn Co., for treatment of acute (less than 12 hours) onset of myocardial infarction.

Clinical Chemistry Device Section of the Clinical Chemistry and Hematology Devices Panel

Date, time, and place. February 28 and 29, 9 a.m., Rm. 1207, 8757 Georgia Ave., Silver Spring, MD.

Type of meeting and panel section leader. Open public hearing February 28, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; open public hearing, 1 p.m. to 2 p.m.; open committee discussion, 2 p.m. to 5 p.m.; open public hearing, February 29, 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 5 p.m.; Kaiser Aziz, National Center for Devices and Radiological Health (HFK–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7234.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the panel section leader before February 1, and submit a brief statement of the nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On February 28, the committee will discuss two petitions for reclassification of in vitro diagnostic device systems for quantitation of unconjugated bilirubin and the bilirubin binding status of the blood of neonates. This information is used as an aid in the diagnosis and management of bilirubinemia and kernicterus. On February 29, the committee will discuss a petition for reclassification of an in vitro diagnostic device system "A Cytoreceptor Assay for Measurement of 1,25-dihydroxy Vitamin D in Serum." Assessment of this hormone is useful in the diagnosis and management of patients with a variety of disorders associated with abnormal calcium metabolism.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open

public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Dated: January 9, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–907 Filed 01–12–84; 8:45 am]

BILLING CODE 4160–01–M

Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel; Amendment of Meeting Agenda

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the open committee discussion portion of the notice announcing a meeting to the Ophthalmic Device Panel scheduled for January 30 and 31, 1984. The meeting was announced in the **Federal Register** of December 28, 1983 (48 FR 57173). The notice is amended by adding a discussion that will be held on January 31, 1984.

FOR FURTHER INFORMATION CONTACT: George C. Murray, National Center for Drugs and Biologics (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: The additon to the open committee discussion portion of the agenda reads as follows:

"On January 31, the committee and FDA staff will discuss proposed amendments to the contact lens guidelines to streamline contact lens studies and the premarket approval process for contact lenses."

Dated: January 9, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–908 Filed 1–12–84; 8:45 am]

BILLING CODE 4160–01–M

Anti-Infective Drugs Advisory Committee; Republishing of Meeting; Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is republishing the notice of the Anti-Infective Drugs Advisory Committee meeting scheduled for January 30 and 31, 1984. The meeting was announced in the **Federal Register** of December 16, 1983 (48 FR 55922). The notice is being republished because of a change in the open committee discussion: Discussion of Flagyl has been deleted and discussion of the prophylactic claims for cardiac surgery with regard to PRECEF (ceforanide for injection) has been added.

Anti-Inflective Drugs Advisory Committee

Date, time, and place. January 30 and 31, 9 a.m., Conference Rm. M, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contract person. Open public hearing, January 30, 9 a.m. to 10 a.m.; open committee discussion, January 30, 10 a.m. to 4:30 p.m., January 31, 9 a.m. to 12:30 p.m.; John Curtis, National Center for Drugs and Biologics, (HFN–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6797.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drug products for use in infectious diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss Bacitracin USP Sterile Powder for Intramuscular Use, Antibiotic Form 60–733, (Upjohn); the approach to prophlactic claims for cardiac surgery with regard to PRECEF (ceforanide for injection), Antibiotic Form 50–554 (Bristol Laboratories): and Guidelines for Clinical Studies of Systemic Antimicrobial Agents Including Prophylactic Use in Surgery.

Dated: January 9, 1984.

William R. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–909 Filed 1–12–84; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Consensus Conference on the Use of Diagnostic Ultrasound Imaging in Pregnancy

Notice is hereby given of the NIH Consensus Development Conference on the Use of Diagnostic Ultrasound Imaging in Pregnancy, to be held February 6–8, 1984 in the Masur Auditorium, Warren Grant Magnuson Clinical Center (Building 10), NIH, 9000 Rockville Pike, Bethesda, Maryland. The meeting is sponsored by the National Institute of Child Health and Human Development, NIH; the National Center for Devices and Radiological Health of the Food and Drug Administration; the NIH Division of Research Resources; and the NIH Office of Medical Applications of Research.

The use of ultrasound in obstetrics has increased dramatically in recent years. It is now estimated that between one-third and one-half of all pregnancies in the United States receive ultrasound evaluation at some point. Ultrasound has been applied to assess gestational age and fetal growth, to detect fetal or maternal abnormalities, to determine the position of the fetus in utero, to recognize multiple pregnancies, and for many other purposes. Concern has risen over the safety of this procedure and over whether ultrasound use is necessary or appropriate.

In order to study this important issue, the NIH will bring together biomedical investigators, medical specialists in obstetrics, neonatology, family practice, epidemiology and radiology and other health professionals and public representatives. A panel comprised of such individuals has been reviewing diagnostic ultrasound imaging in pregnancy during the past year to develop a draft report and preliminary consensus statement. Single copies of

the report, and the draft statement and further meeting information may be obtained, at no cost from: Peter Murphy, Prospect Associates, 2115 East Jefferson Street, Suite 401, Rockville, MD 20852.

The focus of the meeting will be in answering the following questions:

- What types of ultrasound scanning are currently used in obstetric practice? How extensive is this use? What is known about dose/exposure to the fetus and the mother from each type?
- For what purposes is ultrasound now used in pregnancy? For each use what is the evidence that ultrasound improves patient management and/or outcome of pregnancy?
- What are the theoretrical risks of ultrasound to the fetus and the mother? What evidence exists from animal, tissue culture, and human studies on the actual extent of the risk?
- Based on the available evidence, what are the appropriate indications for and limitations on the use of ultrasound in obstetrics today?
- What further studies are needed of efficacy and safety of use of ultrasound in pregnancy?

During the thre-day conference, scientific presentation will be made by experts, and members of the audience will have ample time to make comments. The panel will meet in executive session at the close of the meeting on the second day and write its final consensus statement taking into consideration the draft report, the presentations and audience remarks.

At 9 a.m. on the third day, February 8, the report will be read to the audience for comment.

Dated: January 4, 1984.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 84-918 Filed 1-12-84; 8:45 am]

BILLING CODE 4140-01-M

General Clinical Research Centers Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), February 13-14, 1984, Cypress Inn, Lincoln and 7th Street, Carmel, CA.

The meeting will be open to the public on February 13, 1984, from 9:00 a.m. to approximately 12:00 noon during which time there will be comments by the Director, DRR; and update on the GCRC Program; and reports on the Clinical Associate Physician Program, the diffusion of the CLINFO System, possible new technologies for GCRCs, and Clinical Research Data Management. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public February 13, 1984, from approximately 12:00 p.m. to recess, and on February 14, 1984, from 8:30 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B-10, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-5545, will provide summaries of the meeting and rosters of the Committee members. Dr. Ephraim Y. Levin, Executive Secretary of the General Clinical Research Centers Review Committee, Bldg. 31, Room 5B51, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-6595, will furnish program information.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: January 4, 1984.

Betty J. Beveridge,

NIH Committee Management Office.

[FR Doc. 84-917 Filed 1-12-84; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Advisory Committee; Amended Notice of Meeting

Notice is hereby given for an amendment to the Notice of Meeting of the Recombinant DNA Advisory Committee, National Institutes of Health, February 6-7, 1984, which was published in the **Federal Register** on January 5, 1984 (49 FR 696).

The meeting was to be open to the public on February 6 from 9:00 a.m. to 11:00 a.m. and again from 1:00 p.m. to recess, and on February 7 from 9:00 a.m. to adjournment. The meeting was to be closed to the public from approximately 11:00 a.m. to 12:30 p.m. on February 6. The meeting will now occur only on February 6. The closed session will now occur from approximately 4:30 p.m. to 5:30 p.m. The open portions of the meeting will be from 9:00 a.m. to approximately 4:30 p.m.

For further information please contact Dr. William J. Gartland, Executive Secretary, Building 31, Room 3B10, 9000 Rockville Pike, Bethesda, Maryland 20205.

Dated: January 5, 1984.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 84-916 Filed 1-12-84; 8:45 pm]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bureau Forms Submitted to OMB 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 collections requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget Reviewing Official at 202-395-7340.

Title: 43 CFR 2562, 43 CFR 2563, 43 CFR 2567, "Notice of Location of Settlement of Occupancy Claim—Alaska"

Bureau Form Number: AK-2560-3

Frequency: Once

Description of Respondents: Claimants under the Alaska Settlement Laws

Annual Responses: 500

Annual Burden Hours: 125

Bureau clearance officer (alternate): Linda Gibbs 202-653-8853.

November 28, 1983.

James M. Parker,

Acting Director.

[FR Doc. 84-968 Filed 1-12-84; 8:45 am]

BILLING CODE 4310-84-M

[CA 13313]

California, Conveyance of Public Lands Exchange; Termination of the Segregation of Lands; Humboldt County; Correction

January 6, 1984.

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice; correction.

SUMMARY: This document corrects a notice that appeared at page 32088 in the

Federal Register on Wednesday, July 13, 1983 (48 FR 32088).

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office, (916) 484–4431.

The following correction is made in FR Doc. 83–18896 appearing at page 32088 in the issue of July 13, 1983: On page 32088, column two, under "Humboldt Meridian, California" delete "T. 4 N., R. 4 E., Sec. 22, SW¼SW¼;"

Inquiries concerning this action should be addressed to the undersigned, Bureau of Land Mangement, California State Office, Room E–2841, 2800 Cottage Way, Sacramento, California 95825.

Eleanor Wilkinson,

Chief, Lands and Locatable Minerals Section Branch of Lands and Minerals Operations.

[FR Doc. 84–969 Filed 1–12 —84; 8:45 am]

BILLING CODE 4310–84–M

[M–58101]

Montana; Conveyance of Public Lands

Correction

In FR Doc. 83–33883 appearing on page 56651 in the issue of Thursday, December 22, 1983, third column, in the land description, Sec. 24, "* * * and N½ SE¼" should read "* * * and N½ SE¼ SE¼".

BILLING CODE 1505–01–M

[M–57980, M–57980–A]

Montana; Order Providing for Opening of Public Lands

Correction

In FR Doc. 83–33923 appearing on page 56653 in the issue of Thursday, December 22, 1983, middle column, third line from the bottom of the page, "5,814.27" should read "5,814.37".

BILLING CODE 1505–01–M

Geological Survey

Presentation; Initial Results of Gorda Ridge and Juan de Fuca Surveys

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: The U.S. Geological Survey (USGS) announces a forthcoming presentation to all interested parties of initial results from joint surveys of the Gorda Ridge and nearby Juan de Fuca Ridge by the USGS, Minerals Management Service (MMS), and the National Oceanic and Atmospheric Administration (NOAA).

DATE: The presentation will be held on February 8–9, 1984, beginning at 9:00 a.m.

ADDRESS: The presentation will be held at the conference room of the USGS (Building 3), 345 Middlefield Road, Menlo Park, California 94025.

FOR FURTHER INFORMATION CONTACT:

Robert G. Beauchamp, Minerals Management Service, Mail Stop 643, Reston, Virginia 22091, telephone (703) 860–7571

or

David G. Howell, USGS, 345 Middlefield Road, Mail Stop 99, Menlo Park, California 94025, telephone (415) 856–7141.

SUPPLEMENTARY INFORMATION: Beginning at 9:00 a.m. on February 8, 1984, there will be presentations by representatives from USGS outlining the initial scientific results of the investigations followed by the afternoon and following day sessions devoted to consultations with scientists and opportunities to inspect the available data which will include:

1. Bathymetric charts of the Gorda Ridge Area.
2. Sea Mark II (sidescan) seafloor imagery.
3. Single-channel seismic profiles across the Gorda Ridge north of Escanaba Trough.
4. Two multi-channel seismic profiles across the sediment filled Escanaba Trough.
5. A suite of representative rock samples from 15 dredge hauls collected during a Gorda Ridge cruise in October 1983.
6. Preliminary chemical analyses of hydrothermal muds and manganese crusts.

Dated: January 6, 1984.

Robert Hamilton,

Chief Geologist.

[FR Doc. 84–987 Filed 1–12–84; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Development Concept Plan for Cedar Pass, Badlands National Park

AGENCY: National Park Service.

ACTION: Addendum to the Development Concept Plan for Cedar Pass, Badlands National Park.

SUMMARY: The National Park Service intends to amend the Development Concept Plan for the Cedar Pass area of Badlands National Park for the following reasons:

The development concept plan as approved in 1982 was to have resolved a number of increasingly serious problems. The plan was to have improved the relationship of visitor facilities and encouraged more desirable circulation patterns. The development concept plan called for relocating the concession lodge and residential facilities. The proposed relocation would not only have improved overall relationships but it would have also resolved the deterioration problem associated with the concession lodge.

Since the development concept plan was approved the concession lodge building has deteriorated to the point that a life, health, and safety issue has resulted. Since 1982 the park has also experienced a substantial (33 percent) decrease in visitation. As a result of this decrease and in view of efforts to cutback Federal expenditures due to austere times, implementation of the plan was held in abeyance.

The park's visitation will probably remain static. Funding for major new construction projects is not likely to be approved. Faced with these realities, the National Park Service will amend the Development Concept Plan for Badlands National Park to permit appropriate renovation to the concession lodge and thereby resolve the life, health, safety issue. The amendment and associated improvements are considered to be interim until future trends, visitation and funding dictate the need to reevaluate the Cedar Pass area.

It is not anticipated that the addendum is a major action with a potential of causing significant environmental impact or controversy. However, an environmental assessment will be prepared prior to design and construction.

Comments on the proposed addendum and request for information will be received for 30 days following publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert E. Blinn, Superintendent, Badlands National Park, Post Office Box 6, Interior, South Dakota, 57750.

Lorraine L. Mintzmyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 84–904 Filed 1–12–84; 8:45 am]

BILLING CODE 4310–10–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use

compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation, addresses of principal office and State of incorporation:

ConAgra, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Delaware corporation)

2. Wholly-owned subsidiaries which will participate in the operations, addresses of their respective principal offices and State of incorporation:

1. Alaska Packers Association, Inc., 150 Nickerson Street, Suite 300, Seattle, WA 98109 (a Washington corporation)
2. Armour Food Company, 111 W. Clarendon Station 1017, Phoenix, AZ 85077, (a Delaware corporation)
3. Armour Food Express Company, 222 S. 72nd Street, Omaha, NE 68114 (a Delaware corporation)
4. Atwood Commodities, Inc., 876 Grain Exchange Bldg., Minneapolis, MN 55415 (a Nebraska corporation)
5. Atwood-Larson Company, 876 Grain Exchange Bldg., Minneapolis, MN 55415 (a Minnesota corporation)
6. Banquet Foods Corporation, One Banquet Place, 13515 Barrett Parkway Drive, Ballwin, MO 63011 (a Delaware corporation)
7. Banquet Foods International, Inc., One Banquet Place, 13515 Barrett Parkway Drive, Ballwin, MO 63011 (a Missouri corporation)
8. CAG Company, ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (an Oklahoma corporation)
9. CAG Leasing Company, 2001 Reliance Pkwy #A, P.O. 179, Bedford, TX 76021 (a Texas corporation)
10. Caribbean Basic Foods Company, GPO Box G–1960, San Juan, Puerto Rico 00936 (a Nebraska corporation)
11. ConAgra-Europe, Inc., Bioter Biona Bldg., Emilio Vargas, 7, Madrid 27, Spain (a Nebraska corporation)
12. ConAgra Export Company, ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Nebraska corporation)
13. ConAgra de Puerto Rico, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Nebraska corporation)
14. ConAgra Pet Products Company, 3902 Leavenworth Street, Omaha, NE 68105 (a Delaware corporation)
15. ConAgra Transportation, Inc., 5301 West Channel Rd., Catoosa, OK 74105 (an Oklahoma corporation)
16. MHC, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (an Oregon corporation)
17. Molinos de Puerto Rico, Inc., GPO Box G–1960, San Juan, Puerto Rico 00936 (a Nebraska corporation)
18. OKG Bulkhandling Corp., 5301 West Channel Rd., Catoosa, OK 74105 (an Oklahoma corporation)
19. Peavey Company, 730 Second Avenue South, Minneapolis, MN 55402 (a Minnesota corporation)
20. M&R Distributing Company, P.O. Box E, West Highway 30, Grand Island, NE 68801 (a Minnesota corporation)
21. Occident Insurance Co., Ltd., 730 Second Avenue South, Minneapolis, MN 55402 (a Bermuda corporation)
22. Peavey Commodity Services, Inc., 730 Second Avenue South, Minneapolis, MN 55402 (an Illinois corporation)
23. Peavey Futures Management Corporation, 730 Second Avenue South, Minneapolis, MN 55402 (an Illinois corporation)
24. Peavey Securities, Inc., 730 Second Avenue South, Minneapolis, MN 55402 (a Minnesota corporation)
25. Peavey Delaware Limited, 730 Second Avenue South, Minneapolis, MN 55402 (a Delaware corporation)
26. Peavey Industries Limited, 730 Second Avenue South, Minneapolis, MN 55402 (a Canada corporation)
27. Peavey International Inc., 730 Second Avenue South, Minneapolis, MN 55402 (an Illinois corporation)
28. Peavey Marts, Incorporated, 730 Second Avenue South, Minneapolis, MN 55402 (a Minnesota corporation)
29. Public Grain Elevator of New Orleans, Inc., 730 Second Avenue, South, Minneapolis, MN 55402 (a Louisiana corporation)
30. Universal Wholesale, Inc., 730 Second Avenue South, Minneapolis, MN 55402 (a Minnesota corporation)
31. USF of Minnesota, Inc., 730 Second Avenue South, Minneapolis, MN 55402 (a Minnesota corporation)
32. Sea Alaska International, Inc., 150 Nickerson Street, Suite 300, Seattle, WA 98109 (a Washington corporation)
33. Sea Alaska Products, Inc., 150 Nickerson Street, Suite 300, Seattle, WA 98109 (a Washington corporation)
34. Singleton Seafood Company, 5024 Uceta Road, P.O. Box 2819, Tampa, FL 33619 (a Florida corporation)
35. The Southern Micro Blenders of Tennessee, Inc., 3801 N. Hawthorne, Chattanooga, TN 37405 (a Tennessee corporation)
36. Specialty Feed Products Company, 730 Second Avenue, South, Minneapolis, MN 55402 (a Minnesota corporation)
37. Taco Plaza, Inc., 2001 Reliance Parkway, Suite A, Bedford, TX 76021 (a Texas corporation)
38. To-Ricos, Inc., P.O. Box 646, Aibonito, Puerto Rico 00609 (a Nebraska corporation)
39. Tropmi Import Company, 5024 Uceta Road, P.O. Box 2819, Tampa, FL 33619 (a Florida corporation)
40. Ultra-Life Laboratories, Inc., 3801 N. Hawthorne, Chattanooga, TN 37405 (an Illinois corporation)
41. United Agri Products, Inc., 725 South Schneider St., Fremont, NE 68025 (a Delaware corporation)
42. Balcom Chemicals, Inc., P.O. Box 1286, Greeley, CO 80631 (a Colorado corporation)
43. United Agri Products Financial Services, Inc., P.O. Box 1286, Greeley, CO 80631 (a Colorado corporation)
44. Central Valley Chemicals, Inc., P.O. Box 446, Weslaco, TX 78596 (a Texas corporation)
45. Dixie Ag Supply, Inc., 1801 Old Montgomery Rd., Selma, AL 36701 (an Alabama corporation)
46. Hess & Clark, Inc., 7th and Orange Streets, Ashland, OH 44805 (an Ohio corporation)
47. GA AG Chem, Inc., Empire Expressway, P.O. Box 1260, Swainsboro, GA 30401 (a Georgia corporation)
48. Grower Service Corp. (NY), 16713 Industrial Parkway, P.O. Box 18037, Lansing, MI 48901 (a New York corporation)
49. Loveland Industries, Inc., 2307 West 8th Street, Loveland, CO 80537 (a Colorado corporation)
50. Mid Valley Chemicals, Inc., P.O. Box 446, Weslaco, TX 78596 (a Texas corporation)
51. Midwest Agriculture Warehouse Co., 725 South Schneider Street, Fremont, NE 68025 (a Nebraska corporation)
52. Northwest Chemical Corp., 4560 Ridge Road, N.W., Salem, OR 97303 (an Oregon corporation)
53. Ostlund Chemical Co., 1330 Northwest 40th, Fargo, ND 58102 (a North Dakota corporation)
54. Platte Chemical Co., 150 South Main, Fremont, NE 68025 (a Nebraska corporation)
55. Pueblo Chemical & Supply Co., P.O. Box 1279, Garden City, KS 67846 (a Colorado corporation)
56. Snake River Chemicals, Inc., P.O. Box 1196, Caldwell, ID 83650 (an Idaho corporation)
57. Transbas, Inc., 1525 Lockwood Road, Billings, MT 59101 (a Tennessee corporation)
58. Tri River Chemical Company, Inc., P.O. Box 2641, Pasco, WA 99302 (a Washington corporation)
59. Tri State Chemicals, Inc., P.O. Box 1206, Hereford, TX 79045 (a Texas corporation)
60. Tri State Delta Chemicals, Inc., P.O. Box 369, Clarksdale, MS 38614 (a Mississippi corporation)
61. United Agri Products, Special Products, Inc., 13808 "F" Street, Omaha, NE 68137 (a Nebraska corporation)
62. Westchem Agriculture Chemicals, Inc., 1525 Lockwood Rd., Billings, MT 59101 (a Montana corporation)
63. Yellowstone Valley Chemicals, Inc., 1525 Lockwood Rd., Billings, MT 59101 (a Montana corporation)
64. Agrichem, Inc., P.O. Box 506, Burlington, WA 98233 (a Washington corporation)

1. Parent Corporation and address of principal office:

West Coast Grocery Company, Inc. 480 East 19th Street, Tacoma, WA 98401

2. Wholly owned subsidiary which will participate in the operations, and state of Incorporation:

Wesco Freight, Inc., Washington

James H. Bayne,

Acting Secretary.

[FR Doc. 84–924 Filed 1–12–84; 8:45 am]

BILLING CODE 7035–01–M

[Decision-Notice-OP3-11]

Motor Carriers; Finance Applications

Decided: December 30, 1983.

The following applications seek approval to consolidate, purchase,

merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. §§ 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal** & *I.C.C.* **Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

James H. Bayne,

Acting Secretary.

MCF–15542 (Republication) filed December 6, 1983, previously published January 6, 1984 and republished this issue. RED & TAN ENTERPRISES (Red & Tan) (126 North Washington Ave., Bergenfield, NJ 07621)—Continuance in Control—RED &TAN TOURS (R&TT) (437 Tonnele Ave., Jersey City, NJ 07306). Representative: Michael J. Marzano, 99 Kinderkamack Rd., Westwood, NJ 07675.

Red & Tan, a non carrier, seeks to continue in control of R&TT, upon institution of operations by R&TT in interstate or foreign commerce under certificate No. MC–162174 (Sub-No. 2). Ernest Capitani, Ernest A. Capitani, Jr., Amelia Capitani Gerace, Richard A. Capitani, Ronald Gerace, Janis Gerace, Lori Finley, Arleen Schmidt, and Mildred Capitani, who control Red & Tan, seek authority to continue in control of R&TT through the transaction.

Through authority granted in previous Commission proceedings, Red & Tan controls Rockland Coaches, Inc., Hudson Bus Transportation Co., Inc., and North Boulevard Transportation Co., all of which are common carriers.

Rockland is a motor common carrier under a certificate in No. MC–29890 and subnumbers thereunder which authorize generally the transportation of passengers and their baggage, and express, and newspapers over regular and irregular routes, between named points in New Jersey and New York.

By certificates issued under Nos. MC–129854 and MC–13492 and subnumbers thereunder, Hudson and North Boulevard, respectively, were granted authority as common carriers to transport (a) passengers and their baggage, over regular routes, between named points in New Jersey and New York, and (b) passengers, in charter and special operations, over irregular routes, between points in the U.S. (except Alaska and Hawaii)

By a decision served October 7, 1983, R&TT was granted authority to transport passengers, over regular routes, between named points in New York and New Jersey.

Note.—R&TT filed a common carrier application in MC–162174 (Sub-No. 2) which was published in the **Federal Register** on August 4, 1983. As a condition to a grant of that authority, applicant was required to file this continuance in control application or submit an affidavit indicating why such approval is unnecessary.

The purpose of this republication is to reflect the correct Preface and to also show publication in the I.C.C. and **Federal Register**

[FR Doc. 84–925 Filed 1–12–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review:

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Evaluation of the Dislocated Worker Demonstration Projects
ETA–RC65
Single-time
Individuals or Households
2,000 reponses; 1,000 hours; 1 form

This project will test many of the programmatic and service delivery options available for the needs of workers dislocated by plant closings and mass layoffs. Information gathered will help States and localities plan more effective use of funds available through Title III of JTPA and help develop future policy initiatives.

Extension

Employment Standards Administration
Claims by Non-federal Law Enforcement Officer and Their Survivors
1215–0116, CA–721, CA–722
On occasion
Individuals or Households
575 responses; 102.5 hours; 2 forms

The CA–721 and CA–722 are used by non-federal law enforcement officers and their survivors to file claims under the FECA. The information is necessary to adjudicate the claims.

Extension

Mine Safety and Health Administration
Notification of Legal Identity
1219–0008, MASH Form 2000–7
On occasion
Businesses and other for profit; small businesses or organizations
10,400 responses; 10,400 hours

Requires mine operators to file with MSHA the name and address of the mine and the name and address of the persons who control and operate the mine, and any revisions of such names and addresses. The information is used to identify persons chargeable with violations of safety and health standards, in the assessment of civil penalties, and in the service of legal documents.

Signed at Washington, D.C. this 10th day of January, 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84–1013 Filed 1–12–84; 8:45 am]

BILLING CODE 4510–30, 4510–27, 4510–43–M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period January 2, 1984–January 6, 1984.

In order for affirmative determination to be made and a certification of eligibility to apply for adjustment assistnce to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increase of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–14,920; Camp Branch Coal Co., Lyburn, WV

In the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–14,901; Rola Co., Dubois, PA

Affirmative Determinations

TA–W–14,933; Robbins & Myers, Inc., Comfort Conditioning Div., Memphis, TN

A certification was issued covering all workers separated on or after January 29, 1983.

TA–W–14,932; Robbins & Myers, Inc., Comfort Conditioning Div., Foley, AL

A certification was issued covering all workers separated on or after January 29, 1983 and before September 30, 1983.

TA–W–14,902; Scovill Security Products Group, Lenoir City, TN

A certification was issued covering all workers separated on or after January 1, 1983.

TA–W–14,782; Potash Company of America, Carlsbad, NM

A certification was issued covering all workers separated on or after January 1, 1983.

I hereby certify that the aforementioned determinations were issued during the period January 2, 1984–January 6, 1984. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 10, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84–1014 Filed 1–12–84; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total

or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C., this 9th day of January 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Melville Footwear Manufacturing, Inc. (workers)	Sparta, NC	12/26/83	12/21/83	TA-W-15, 157	Men's work shoes, insulated boots & western boots.
North American Phillips Lighting Corp. (IBEW)	Reform, AL	1/4/84	12/16/83	TA-W-15, 158	Decorative lamps.
Reed Sportswear Manufacturing Co., (ACTWU)	Detroit, MI	1/3/84	12/16/83	TA-W-15, 159	Men's & women's leather coats & jackets.
Rubin Grais & Sons, Inc. (ACTWU)	Chicago, IL	1/3/84	12/16/83	TA-W-15, 160	Men's leather costs & jackets.
(The) Timken Co. (workers)	New Philadelphia, OH	1/6/84	12/28/83	TA-W-15, 161	Precision tapered roller bearings.
United States Metals Refining Co. (USWA)	Carteret, NJ	1/4/84	12/22/83	TA-W-15, 162	Refine & smelt copper & precious metals.
U.S. Steel Corp., Edgar Thomson-Irvin Works (USWA)	Braddock, PA	12/23/83	12/10/83	TA-W-15, 163	BOP shop and foundry.
Westinghouse Electric Corp. (Electrical Wkrs.)	Cheektowaga, NY	1/4/84	12/29/83	TA-W-15, 164	Electric motors & various parts.
Sterling China Co. (workers)	Wellsville, OH	1/6/84	12/27/83	TA-W-15, 165	Hotel & restaurant dinner ware.

[FR Doc. 84-1017 Filed 1-12-84; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15,082]

Aston Precision Products, Incorporated, Aston, Pennsylvania; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 31, 1983, in response to a petition received on October 28, 1983, which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers at Aston Precision Products, Incorporated, Aston, Pennsylvania.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 4th day of January 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-1016 Filed 1-12-84; 8:45 am]

BILLING CODE 4510-30-M

Office of Federal Contract Compliance Programs Reinstatement of Dibert, Bancroft & Ross Company, Ltd.

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Reinstatement, Dibert, Bancroft & Ross Company, Ltd.

SUMMARY: This notice advises that Dibert, Bancroft & Ross Company, Ltd. has been reinstated as an eligible bidder on Federal contracts and subcontracts.

FOR FURTHER INFORMATION CONTACT: John C. Fox, Executive Assistant to the Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C-3325, Washington, D.C. 20210 (202-523-9475).

SUPPLEMENTARY INFORMATION: Dibert, Bancroft & Ross Company Ltd., Amite, Louisiana, was reinstated as an eligible bidder on Federal contracts and subcontracts, effective October 23, 1983, after the company demonstrated to the Director, OFCCP, it intent and ability to comply with the equal opportunity clause of Executive Order 11246, as amended.

A copy of the Conciliation Agreement, signed on October 19, 1983, by the Director, Office of Federal Contract Compliance Programs, reinstating Dibert, Bancroft & Ross Company, Ltd., and committing the Company to specific affirmative action steps and reporting requirements follows.

Dated: December 21, 1983.

Susan R. Meisinger,

Acting Director.

Conciliation Agreement Between United States Department of Labor, Office of Federal Contract Compliance Programs and Dibert, Bancroft and Ross Company, Limited Amite, Louisiana 70422

Part I: General Provisions:

1. This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter OFCCP) and Dibert, Bancroft and Ross Company, Limited, Amited, Louisiana (hereinafter DB and R).

2. On October 8, 1974, the U.S. Department of Defense, Defense Supply Agency (hereinafter "DSA"), issued a notification of Contractor's Ineligibility for Government Contracts (Appendix 1, hereto), debarring Dibert, Bancroft and Ross Company, Ltd., Amite, Louisiana, Respondent, from Federal contracts, subcontracts or extensions, or other modifications of existing contracts funded in whole or in part by any agency or instrumentality of the United States. This debarment was the result of the following events:

On November 15, 1973, DSA scheduled a compliance review pursuant to Executive Order 11246 and 41 CFR Part 60-1 and 41 CFR Part 60-2 (1973 ed.), and on December 12, 1973, initiated an onsite review. DB and R did not have a written Affirmative Action Program (AAP) as required by 41 CFR Part 60-1 and 41 CFR Part 60-2, and refused to develop such a plan. Representatives of DSA toured the DB and R establishment in Amite, Louisiana and identified the absence of minorities in certain departments. Thereafter DB and R representatives denied DSA further access to information DSA sought pursuant to 41 CFR Part 60-1 and 41 CFR Part 60-2. DSA issued a notice to show cause to DB and R on January 24, 1974 (Appendix 2, hereto). DB and R continued to decline to prepare and submit an AAP. On August 9, 1974, DSA notified DB and R in writing of the proposed cancellation of Federal

contracts because of noncompliance (Appendix 3, hereto), and advised it of its right to request a hearing. DB and R did not reply.

On September 12, 1974, the Deputy Chief, Office of Contracts Compliance, Contract Administration Services, Department of Defense, issued a Recommendation for the Issuance of Notice of Cancellation (Appendix 4, hereto). On October 8, 1974, the Deputy Secretary of Defense issued a Notice of Debarment (Appendix 1, hereto).

These actions were taken pursuant to regulations then in effect which had been promulgated pursuant to Executive Order 11246 (30 F.R. 12319), as amended (hereinafter referred to as "Executive Order 11246"). Since the September 12, 1974 and October 8, 1974 actions, Executive Order 11246 was amended by Executive Order 12086 (43 F.R. 49420), which consolidated all the functions previously assigned to various compliance agencies for enforcement of Executive Order 11246 into the Office of Federal Contract Compliance Programs ("OFCCP"), United States Department of Labor ("DOL").

On October 10, 1978, DB and R filed a request pursuant to 41 CFR Sec. 60–1.31 that the Director, OFCCP, reinstate it as an eligible Federal contractor within the terms of Executive Order 11246. On January 17, 1979, DB and R in response to the Notification of Directed Compliance Review (dated December 15, 1978), requested an indefinite extension of time in which to prepare an AAP which effectively stayed the reinstatement procedure at that time. finally, on July 10, 1981, DB and R submitted an unacceptable AAP. Then, about four days later DB and R declined to permit OFCCP to conduct an onsite review (see 41 CFR Sec. 60–60.3(c)) as part of the reinstatement procedure. This effectively stayed the reinstatement procedure again at this time. On July 2, 1982, DB and R again filed a request pursuant to 41 CFR Sec. 60–1.31 that the Director, OFCCP, Reinstate it as an eligible Federal contractor within the terms of Executive Order 11246. This request initiated reinstatement procedures and an onsite compliance review resulting in this Agreement.

The record in this case consists of the January 224, 1974 notice to show cause (Appendix 2), the March 14, 1974 notification of non-awardable prospective contractors, the August 9, 1974 notice of proposed cancellation of Federal Contracts (Appendix 3), the September 12, 1974 Recommendation for the Issuance of Notice of Cancellation (Appendix 4), and the October 8, 1974 Notice of Debarment (Appendix 1). The parties to this Agreement hereby waive any further procedural steps which may be provided in 41 CFR Part 60–30 for a Final Administrative Order.

Furthermore, the parties to the Agreement agree that upon signature this Agreement shall consitute a Final Administrative Order and agree not to challenge or contest the validity of the Final Order.

3. Subject to the performance by DB and R of all promises and representations contained herein and in its Affirmative Action Program, all identified problem areas in this Agreement in egard to the compliance of DB and R with Executive Order 11246, as amended, shall be deemed resolved, Further, the October 8, 1974 Debarment is lifted and DB and R is entitled to bid on and to receive Federal contracts and subcontracts without restriction by OFCCP.

4. DB and R agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, examine witnesses and examine and copy documents as noted more fully below.

5. DB and R agrees that there will be no retaliation of any kind against any beneficiary of this Agreement, or against any person who has provided information or assistance, or who files a charge, or who participates in any manner in any proceeding under Executive Order 11246, as amended.

6. This Agreement will be deemed to have been accepted by the Government on the date of signature by the parties.

7. It is recognized that where OFCCP believes that DB and R has breached the Conciliation Agreement, evidence regarding the entire scope of DB and R's alleged non-compliance from which the Conciliation Agreement resulted, in addition to evidence regarding DB and R's alleged violation of the Conciliation Agreement, may be introduced at the enforcement proceeding.

8. This Agreement is applicable to and binding upon DB and R, all of its divisions and subsidiaries, and all affiliates, purchasers, successors, transferees, and/or assignees of DB and R, during the period in which the Agreement is in effect.

DB and R agrees to comply with the requirements of this Agreement. DB and R agrees to disseminate to its employees its equal employment opportunity policy and this Agreement within thirty (30) days from the execution of this Agreement. The policy and this Agreement must be posted on employee bulletin boards throughout the plant for at least 60 days and must be discussed during staff and employee meetings. It is the Chief Executive Officer's responsibility to maintain a work environment free of harassment and/or intimidation.

II. Specific Provisions:

1. Prior to entering into the Agreement, OFCCP conducted a compliance review of DB and R pursuant to 41 CFR Sec. 60–1.31. This compliance review disclosed certain deficiencies set forth below for which DB and R agreed to institute certain corrective actions, also set forth below. The listed corrective actions are part of the terms and conditions of this Agreement.

(1) DEFICIENCY. The AAP submitted by DB and R was not signed by an executive official of the company as required by 41 CFR Sec. 60–1.40(a).

CORRECTIVE ACTION. On August 30, 1982, DB and R submitted an AAP signed by the President of the company, meeting the requirements of 41 CFR Sec. 60–1.40(a).

(2) DEFICIENCY. DB and R did not maintain support data as required by 41 CFR Sec. 60–2.12(m).

CORRECTIVE ACTION. On August 23, 1982, DB and R established a system to maintain data on applicant flow, hiring, promotion, transfers, training and terminations. Data will include the date, name, race, sex and job title for each personnel transaction. In addition, applicant flow information will include the job(s) for which the applicant has applied, job category, referral source and disposition. Establishment of this system conforms to the requirements of 41 CFR Sec. 60–2.12(m).

(3) DEFICIENCY. The AAP submitted by DB and R on July 30, 1982, did not include a work force analysis as required by 41 CFR Sec. 60–2.11(a). On August 12, 1982, DB and R submitted a work force analysis. This analysis did not meet requirements set forth at 41 CFR Sec. 60–2.11(a). Specifically, the work force analysis did not contain wage rates or salary ranges for salaried personnel. Additionally, the organizational units (departments) did not include unit supervision.

CORRECTIVE ACTION. On August 19, 1982, DB and R provided salary information. On August 8, 1983, DB and R provided a revised work force analysis which included unit supervision for each organizational unit as required by 41 CFR Sec. 60–2.11(a).

(4) DEFICIENCY. The AAP submitted by DB and R on July 30, 1982, did not contain a utilization analysis as required by 41 CFR Sec. 60–2.11(b). On August 12, 1982, DB and R submitted a utilization analysis. This analysis was unacceptable, specifically,

A. Major job groups were formed by departmental units rather than by jobs having similar content, wage rates and opportunities as required by 41 CFR Sec. 60–2.11(b), resulting in the indequate identification of segregated job groups.

B. Based upon the inappropriate job groupings, the availability analysis is deficient.

C. All areas of underutilization were not identified as required by 41 CFR Sec. 60–2.11(b).

CORRECTIVE ACTION. DB and R submitted a revised utilization analysis on August 30, 1982 and September 14, 1982. These submissions reflected identification of all calculated underutilized areas using the inappropriately grouped jobs. On August 8, 1983, DB and R submitted a revised utilization analysis which did not meet the requirements of 41 CFR Sec. 60–2.11(b), in that the jobs were inappropriately grouped. On September 22, 1983, DB and R submitted a revised utilization analysis containing appropriately grouped jobs and an acceptable availability analysis meeting the requirements set forth at 41 CFR Sec. 60–2.11(b).

(5) DEFICIENCY. Due to Deficiency No. 4 above, the goals provided in the AAP, submitted July 30, 1982, did not meet the requirements of 41 CFR Sec. 60–2.12 and 41 CFR Sec. 60–2.13(e).

CORRECTIVE ACTION. On September 22, 1983, DB and R submitted revised goals meeting the requirements of 41 CFR Sec. 60–2.12 and 41 CFR Sec. 60–2.13(e).

(6) DEFICIENCY. OFCCP conducted an onsite review of DB and R's work force on August 19, 1982. This review revealed discriminatory placement of minority (Black) employees into lower paying job classifications for the relevant period of review between November 15, 1973 and October 8, 1974. Although no applicant records are available, the review of incumbent and former employee personnel files revealed that four (4) Black employees possessed qualifications equal to-or better than that of some non-minorities who were hired into the crane operator and pattern maker job classification (s). Specifically, the review revealed that the company had placed no Black employees in either the crane operator or the pattern maker classifications and/or line of progression. Further, there is only one Black employed as an apprentice in molder classification of three molder apprentice positions. Conversely, there were no Whites employed in the chipper grinder, sand mixer, helpers or laborers job classifications. DB and R contends that most of the minority incumbents do not meet the requirements for pattern maker, molder and crane operator job classifications and/or lines of progression. The foregoing reflects employment discrimination and must be remedied in accordance with 41 CFR Sec. 60–2.1(b)

CORRECTIVE ACTION. DB and R shall take the following remedial actions to ensure that all job classifications and departments are not segregated by race: Priority placement of qualified minority incumbents into these segregated job titles as vacancies occur prior to outside hiring, including the rehiring of former employees. As vacancies occur in these segregated job classifications, DB and R will make an offer of employment to victims of discrimination listed on Appendix 5 into the appropriate job classifications of molder or pattern maker apprentice or crane operator at a rate of 50% of the vacancies which arise in each classification, until all names are exhausted, starting with those employees noted with the most senior date of hire, and continuing with former employees based on date of hire. Appendix 5 identifies minority (Black) incumbents and former employees who are qualified for those job classifications and/or line of progression as indicated.

These employees must be allowed placement as described above without loss of income. If the job classification to which employees are transferred pays less than their current position, but opens the way to jobs with higher earnings potential, they must be paid at their current rates ("red circled") until, through advancement or other pay increases, their earnings in the new positions equal or exceed the red-circled rates.

Rehiring Procedures

DB and R is not a party to any written collective bargaining agreements and accordingly is not a party to any bona fide seniority systems. DB and R's layoff/recall policy is not a contractual one and rehires will not be used to occupy job classifications intended to be filled by the identified victims or discrimination. Any attempt to do so will be considered a lack of good faith and will not be a defense for the company's failure to eliminate segregated job classifications.

Selction Procedures

DB and R is obligated to ensure that, as part of the selection procedure, qualifications must be based on job-related criteria. DB and R must not use disparate placement practices which have resulted in segregated job classifications and departments during the relevant period of time. Further, any selection procedure which is neutral on its face (e.g. high school diploma, height, weight requirements), that disproportionately excludes minorities or women is a violation of 41 CFR Sec. 60–3.4 B unless validated in accordance with 41 CFR Sec. 60–3.5 and 41 CFR Sec. 60–3.14. However, DB and R may use properly validated job related tests in accordance with the Uniform Guidelines on Employee Selection Procedures.

(7) DEFICIENCY. The AAP submitted by DB and R on July 30, 1982, failed to address problem areas by organizational units and job groups (41 CFR Sec. 60–2.13(d), and action-oriented programs designed to eliminate the problem area and further designed to attain established goals (41 CFR Sec. 60–2.13(f). Specifically, DB and R did not identify and design an action-oriented program to eliminate the problem of segregated job groups. Further, DB and R failed to identify as a problem area the lack of women in the blue collar positions, despite their availability or to take specific action-oriented steps to employ available, qualified women throughout the blue collar sector of the work force.

CORRECTIVE ACTION. On September 22, 1983, DB and R agreed to identify the absence of women and minorities in several sectors of the work force, where they were otherwise available and qualified, as a problem area and to underfake the following specific action-oriented programs:

A. Within 90 days of the effective date of this Agreement, DB and R shall develop and implement a program of counseling and encouragement of present and future female and minority employees to seek and obtain jobs in every department of the facility, with special emphasis on jobs with concentrations of men or non-minority employees. DB and R will provide OFCCP with a copy of this program for prior review and approval at least 30 days prior to its implementation. Features of the program shall include, but are not limited to, the following:

(1) Within six months of the entry of the Agreement, and annually thereafter, a training program will be conducted for all supervisory personnel (including foremen and line supervisors) focusing on supervisory obligations under the AAP and this Agreement; past performance and current goals including problems previously encountered and methods whereby such can be overcome; and methods by which women and minority employees may be assisted in order for them to obtain and successfully perform in jobs with large male and/or non-minority

concentrations. An employee of the OFFCP will attend the initial supervisor training program.

(2) At the time this program is implemented and annually thereafter, the Chief Executive Officer will prepare a letter to be posted conspicuously throughout the plant, and to be shown to each female and minority employee and to each newly hired female or minority employee during their orientation period. The letter shall reaffirm the commitment of DB and R to EEO and stress the various measures DB and R is taking to fulfill that commitment.

(3) Within six months of entry of this Agreement, and annually thereafter for the duration of this Agreement, female and minority employees shall meet in groups not to exceed 8 such employees with their immediate supervisor for a counseling session. In each such session, the supervisor will provide the employees with encouragement in seeking all available jobs in the plant for which they are qualified, and will discuss any problems the employees are having on the job, training and promotion opportunities.

B. DB and R will advise all new hires of the existence of vacancies in all jobs with particular effort to encourage women and minorities to seek jobs which have concentrations of men and non-minorities.

C. All employees regardless of race or sex shall receive the same training and instruction for each job.

(8) DEFICIENCY. The AAP did not address the Sex Discrimination Guidelines but merely discussed sexual harassment which does not meet the requirements of 41 CFR Part 60–20. On September 15, 1982, DB and R submitted a pregnancy leave policy which allows a specified time off for child bearing rather than treating pregnancy leave as any other temporary illness. This policy violates the requirements of 41 CFR Sec. 60–20.3(g).

CORRECTIVE ACTION. On September 27, 1983, DB and R addressed the Sex Discrimination Guidelines including pregnancy leave policy, meeting the requirement of 41 CFR Part 60–20.

III. Reports

1. DB and R shall submit monthly reports to the New Orleans Area Office, OFCCP, beginning with the first month following the execution of this Agreement. Reports are to be received by the New Orleans Area Office not later than the fifteenth calendar day following the end of the reporting period. Data to be submitted will include a list of vacancies filled, applicant flow (including job applied for), hiring activity, terminations, transfers, training, promotions, temporary illness, disability leave, and counseling as specified in the corrective action to Deficiency Number 7. Each entry shall include date, name, race and sex. Where appropriate, indicate reasons for personnel actions; i.e., failure to select, hire or promote and reason for termination. If, after a (3) three-month period, the reports indicate compliance with this Agreement, and the Executive Order, OFCCP will review reporting requirements to determine if reporting intervals may be extended to quarterly. DB and R will also submit on an annual basis a report of the results of the prior year's AAP. Such report shall contain at least an explanation of goal attainment and good faith efforts DB and R undertook to meet any missed goal(s).

DB and R agrees to maintain for the duration of this Agreement all documents which support the statements made in the AAP and the aforementioned reports, and shall make such documents available for inspection and copying by the OFCCP upon reasonable notice. Additionally, OFCCP may conduct onsite evaluations, as necessary, of DB and R's compliance with this Agreement.

IV. Implementation and Enforcement

1. This Agreement shall expire two (2) years from the date of the Director's signature, except as to the provisions of Deficiency 6 which requirements shall terminate on the date all identified victims of emplyment discrimination are transferred to their rightful places.

2. If, at any time during the operation of this Agreement, the Office of Federal Contract Compliance Programs or its successor(s) believes that Dibert, Bancroft and Ross Company, Ltd., has violated any portion of this agreement, Dibert, Bancroft and Ross Company, Ltd., shall be promptly notified of the fact in writing. This notification shall include a statement of facts and circumstances relied upon in forming that belief. In addition, the notification shall provide Dibert, Bancroft and Ross Company, Ltd., with fifteen (15) working days to respond in writing. It is understood that OFCCP may initiate a hearing on whether this Agreement has been violated any time after the fifteen-day period has elapsed upon filing with an Administrative Law Judge the written notification sent to Dibert, Bancroft and Ross Company, Ltd., accompanied by a Motion for Sanctions.

A Motion by the Government claiming a default under this Agreement: (1) shall state briefly and concisely the facts providing the basis for the claim of violation, and (2) may request the entry of an order of debarment and/or order suspending, cancelling, or terminating whatever federally involved contracts or subcontracts which may at that time be held by DB and R or other relief as may be appropriate.

DB and R shall have the right to file and serve and answer to a Motion claiming default, with fifteen (15) days after receipt of the Motion. Failure to make timely answer to the Motion shall result in the entry of an order entering the relief requested in the Motion. A request by either party that the court give the matter expedited consideration shall not be opposed by the other party.

In the event an answer is timely filed, the Administrative Law Judge shall set a hearing date on the Motion. This hearing shall be governed by these provisions and 41 CFR Part 60–30.31, including the expedited hearing procedures at 41 CFR Sec. 60–30 *et seq.*, as applicable, at the discretion of OFCCP. The hearing shall be on the record. After the hearing, the provisions of 41 CFR Sections 60–30.25 through 60–30.30, or 60–30.35 through 60–30.37, as appropriate shall be applicable.

V. Non-Limitation of Agreement

Nothing provided in this Agreement shall be construed as a limitation upon the application of State or Local affirmative action or equal employment opportunity requirements.

VI. Non-Admissions Clause

By entering into this agreement, DB and R does not admit that it has violated E.O. 11246, as amended, or that it has in any manner discriminated against its employees or any applicant for employment based upon said individual's race, creed, color, national origin, sex, religion, handicap, or service in the armed services of the United States. Furthermore, this agreement shall not constitute an admission that DB and R was subject to E.O. 11246 during the period from February 20, 1974, to the effective date of this agreement. DR and R denies that it discriminated against anyone on the basis of race, sex, religion or national origin.

VII. Reinstatement as an Eligible Contractor

Wherefore, based on the foregoing agreements and representations, Dibert, Bancroft and Ross Company, Ltd., may be and hereby is reinstated as an eligible bidder on Federal contracts and subcontracts effective on the date of signature of the parties. Thus, Dibert, Bancroft and Ross Company, Ltd., can receive any such contracts bid upon, on

or after this date. The director of OFCCP shall expeditiously communicate this fact to contracting agencies and to the Comptroller General of the United States.

VIII. Signatures

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Dibert, Bancroft and Ross Company, Ltd., Amite, Louisiana.

Date: October 19, 1983.

For the Office of Federal Contract Compliance Programs: Ellen Shong Bergman, *Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, (202) 523–9475.*

Witness: John C. Fox, *Executive Assistant to the Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, D.C. 20210, (202) 523–9475.*

Date: October 23, 1983.

For the Company: John A. Ross, *President, Dibert, Bancroft and Ross Company, Limited, Amite, Louisiana 70422, (504) 748–7141.*

Witness: *G. Phillip Shuler, Chaffe, McCall, Phillips, Toler & Sarpy, 1500 First National Bank of Commerce Building, New Orleans, Louisiana 70112–1, (504) 568–1320.*

[FR Doc. 84–1012 Filed 1–12–84; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Repeal of Instruction Concerning Employee Salaries

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: This notice repeals the Legal Services Corporation Instruction concerning recipient employee salary levels, published in the **Federal Register** November 12, 1976 (41 FR 50042–43). This Instruction is repealed because it is clearly obsolete.

EFFECTIVE DATE: February 13, 1984.

FOR FURTHER INFORMATION CONTACT: Gregg L. Hartley, Office of Field Services, Legal Services Corporation, 733 15th Street NW., Washington, D.C. 20005; telephone (202) 272–4080.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation has been conducting a systematic review of its old Instructions, updating or eliminating them. With the repeal of this Instruction, only one Instruction dated prior to 1983 is still in effect. That one remaining old Instruction, Property Management Program for Legal Services Corporation Recipients, dated April 16, 1979, will be revised in the near future.

Dated: January 9, 1984.

Gregg L. Hartley,

Director, Office of Field Services.

[FR Doc. 84–955 Filed 1–12–84; 8:45 am]

BILLING CODE 6820–35–M

LIBRARY OF CONGRESS

American Folklife Center Board of Trustees; Meeting

In accordance with Pub. L. 94–463, the Board of Trustees of the American Folklife Center announces its meeting to be held in Washington, D.C. on Friday, February 10, from 9:30 a.m. to 4:30 p.m. in the Wilson Room of the Library of Congress. The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Eleanor Sreb, American Folklife Center (202) 287–6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94–201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has begun energetically to carry out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Raymond L. Dockstader,

Deputy Director, American Folklife Center.

[FR Doc. 84–959 Filed 1–12–84; 8:45 am]

BILLING CODE 1410–01–M

NATIONAL SCIENCE FOUNDATION

Ad Hoc Oversight Subcommittee for Astronomy Research Section; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Ad Hoc Oversight Subcommittee for Astronomy Research Section, Advisory Committee for Astronomical Sciences.

Date: January 31, February 1 and 2, 1984.

Time: 9:00 AM–5 PM each day.

Place: Room 643, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. Morris L. Aizenman, Head, Astronomy Research Section, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC, 20550 Telephone: (202) 357–7643.

Summary minutes: May be obtained from the contact person at the above address.

Purpose of committee: To provide NSF management with an advisory appraisal of the technical stewardship by the NSF. This review is in addition to the peer reviews of particular proposals, and is in accordance with policies outlined in NSF Circular No. 147.

AGENDA

Tuesday, January 31, 1984 (Closed)

9AM–5PM—Review and comparison of declined proposals (and supporting documentation) with successful awards in the Astronomy Research Section, including peer review materials and other privileged material.

Wednesday, February 1, 1984 (Closed)

9AM–5PM—Further review and comparison of declined proposals and awards.

Thursday, February 2, 1984 (Closed)

9AM–5PM—Executive Sessions: Writing of Draft Report.

Reason for closing: The Oversight Review Committee will be reviewing grant and declination jackets which contain the names of applicant institutions and principal investigators and privileged information contained in declination proposals. This session will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator

January 10, 1984.

[FR Doc. 84–915 Filed 1–12–84; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Advanced Scientific Computing.

Date and time: January 30–31, 1984; 9:00 AM to 5:00 PM each day.

Place: Room 540, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of meeting: Part Open—Open January 30—9:00 AM to noon; closed January 30—noon to 5:00 PM; closed January 31—9:00 AM to 5:00 PM.

Contact person: Dr. Edward F. Hayes, Controller, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357–9418.

Summary of minutes: May be obtained from Dr. Edward F. Hayes.

Purpose of committee: To provide advice and recommendations concerning NSF support for advanced computing resources.

Agenda: The meeting will involve briefing of the Committee by NSF staff on items of central interest to the Committee. The closed session will involve review of pending proposals.

Reason for closing: The closed session of the meeting will deal with a review of proposals containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

January 10, 1984.

[FR Doc. 84–914 Filed 1–12–84; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposal of New Forms Undergoing OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice of Proposed Information Collection 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 proposal to collect information from the public. SF 28xxC, Physician's Statement, is completed by physicians providing medical documentation in support of applications for disability retirement. Also, in certain cases SF 28xx, Documentation In Support of Disability Retirement Application, SF 28xxA, Applicant's Statement of Disability, SF 28xxB, Supervisor's Statement, SF 28xxD, Agency Certification of Reassignment and Accommodation Efforts, and SF 28xxE, Disability Retirement Application Checklist, are completed by former Federal employees who apply for disability retirement within one year of the date of separation from the service as provided by Section 8337, Title 5, United States Code. For copies of this proposal, call John P. Weld, Agency Clearance Officer, on (202) 632–7720.

DATES: Comments on this proposal should be received within ten working days from the date of this publication.

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

Mr. Frank Reeder, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: William Washington, (202) 632–5472.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84–1021 Filed 1–12–84; 8:45 am]

BILLING CODE 6325–01–M

POSTAL SERVICE

Intent To Solicit Transportation of Mail by Air

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service intends to solicit proposals for transportation of mail, by air carriers, to and from points located in the United States with service to commence on January 1, 1985.

DATES: Request for proposals will be issued on January 20, 1984. Offers will be accepted by the Postal Service until April 2, 1984.

ADDRESS: Negotiation packages may be obtained by interested parties by writing to General Manager, Transportation, Procurement and Policy Division, Room 7913, U.S. Postal Service, Washington, D.C. 20260–7132.

FOR FURTHER INFORMATION CONTACT: J. Paul Seehaver, (202)245–4035.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 84–900 Filed 1–12–84; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Executive Committee of the Government-Business Forum on Small Business Capital Formation; Meeting

The Small Business Investment Incentive Act of 1980 (Pub. L. No. 96–477, October 21, 1980) requires the Securities and Exchange Commission to conduct an annual Government-Business Forum to review the current status of problems and programs relating to small business capital formation. The Executive Committee, comprised of appointees from several federal agencies and private sector organizations, will meet on January 19, 1984, at 9:30 a.m. for the purpose of planning the Forum which is scheduled for the fall of 1984. The meeting is to be held at the Securities and Exchange Commission, Room 3059, 450 5th Street, NW., Washington, D.C. 20549, and will be open to the public.

For further information, contact H. Steven Holtzman at (202) 272–2644.

George A. Fitzsimmons,

Secretary.

January 10, 1984.

[FR Doc. 84–942 Filed 1–12–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 23196; 70–6698]

American Electric Power Co., Inc., et al.; Hearing

January 6, 1984.

In the matter of American Electric Power Co., Inc., AEP Generating Company, 1 Riverside Plaza, Columbus, Ohio 43216; Indiana & Michigan Electric Co., One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801; Proposal To Amend Revolving Credit Agreement and Capital Funds Agreement.

American Electric Power Company, Inc. ("AEP"), a registered holding company, Indiana & Michigan Electric Company, an electric utility subsidiary of AEP, and AEP Generating Company ("AEGCo"), a wholly owned generating subsidiary of AEP, have filed a post-effective amendment to their application-declaration in this proceeding pursuant to Sections 6(a), 7, 9, 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder.

By orders dated March 24, 1982 (HCAR No. 22429) and February 16, 1983 (HCAR No. 22857), AEGCo was authorized to issue and reissue unsecured promissory notes evidencing borrowings in the aggregate principal amount of up to $450 million at any one time outstanding through December 31, 1987, from a group of ten commercial banks pursuant to a revolving credit agreement, ("Revolving Credit Agreement"), as amended. Borrowings by AEGCo under the Revolving Credit Agreement, together with other funds available to AEGCo, including funds made available by AEP pursuant to a capital funds agreement ("Capital Funds Agreement"), as amended, are applied to construction costs for the Rockport Generating Station ("Rockport") in Indiana. At September 30, 1983, AEGCo's investment in Rockport was $336 million. As of November 15, 1983, AEGCo has outstanding notes evidencing borrowings under the Revolving Credit Agreement in the aggregate principal amount of $120 million.

AEGCo proposes a further amendment of its Revolving Credit Agreement under which the banks would extend their commitments to December 31, 1989. The terms of borrowing by AEGCo at the London Interbank Offering ("LIBO") rate would also be amended. The Revolving Credit Agreement currently provides that LIBO rate borrowings shall bear interest at ½ of 1% per annum above the LIBO rate until December 31, 1985 and ⅝ of 1% per annum above the LIBO rate between January 1, 1986 and December 31, 1987. This amendment will provide that LIBO rate notes bear interest at ½ of 1% per annum above the LIBO rate until December 31, 1987 and 5/8 of 1% per annum above the LIBO rate between January 1, 1988 and December 31, 1989. All other terms and conditions of borrowing under the Revolving Credit Agreement, including provisions relating to the payment of commitment fees on the unused amount of each bank's commitment thereunder, shall remain unchanged.

AEP and AEGCo also propose to amend the Capital Funds Agreement. It presently obligates AEP to contribute to AEGCo such additional amounts of capital as may be required from time to time by AEGCo in order to maintain the equity component of the capitalization of AEGCo at not less than 15% through December 31, 1984, not less than 20% thereafter through December 31, 1985, not less than 25% thereafter through June 30, 1986, and not less than 35% thereafter through December 31, 1987. This amendment will provide that AEP maintain the equity component of AEGCo's capitalization at not less than 35% at all times after June 30, 1986.

The amended 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 January 30, 1984 to the Scretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declaration 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 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. 84-943 Filed 1-12-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20537; SR-NYSE-83-58]

New York Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

January 6, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 30, 1983, the New York Stock Exchange, Inc. ("NYSE") 11 Wall Street, New York, New York 10005, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The NYSE's proposed rule change would extend the NYSE's pilot program relating to the operation of enhancements to the Automated Bond System ("ABS Enhancements") [1] from December 15, 1983 to April 30, 1984. The ABS Enhancements, as approved in SR-NYSE-83-11, consist of a pilot program whereby a universal contra party name is used (1) to compare transactions effected by matching orders through the ABS, and (2) to automate submission of trade data entered in the ABS to comparison.[2] The NYSE has noted it is requesting an extension to allow the Exchange additional time to codify the ABS Enhancements in a permanent rule change proposal. The NYSE states that the ABS Enhancements are not proposed to be changed during the extension of the pilot program. According to the NYSE, the statutory basis for the proposed rule change is Section 6(b)(5), 11A(a)(1), and 17A(a) of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 450 5th Street, NW., Washington, D.C. Reference should be made to File No. SR-NYSE-83-58.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of

[1] The Commission approved the adoption of the pilot program (SR-NYSE-83-11) on July 14, 1982 (Securities Exchange Act No. 18890, July 14, 1982; 47 FR 32674, July 28, 1982). The Commission most recently approved an extension to the pilot program until December 15, 1983 as proposed in SR-NYSE-83-50. (Securities Exchange Act No. 20321, October 21, 1983; 48 FR 49957, October 28, 1983).

[2] In its original filing (SR-NYSE-83-11), the NYSE noted that the pilot program would require modification to certain NYSE rules prior to Commission approval of the program on a permanent basis, and that any necessary changes to its rules would be submitted to the Commission during the pilot program.

publication of notice of filing thereof, in that it will provide the Exchange with the additional time necessary to codify the ABS Enhancements into a permanent rule change proposal as well as permitting it to file with the Commission the necessary modifications to NYSE rules prior to Commission approval on a permanent basis. Therefore, the Commission believes it is appropriate to extend the pilot program until April 30, 1984.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-940 Filed 1-12-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20536; SR-NYSE-83-59]

New York Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

January 6, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 30, 1983, the New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, New York 10005, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The NYSE's proposed rule change would amend paragraph .40 of the NYSE's Rule 103A, the "sunset" provision, to extend the rule's effectiveness from December 31, 1983 to March 31, 1984.[1] Rule 103A provides for the evaluation of specialist performance and establishes a non-disciplinary procedure for the reallocation of stock due to substandard specialist performance. Rule 103A authorizes the Market Performance Committee of the NYSE to withdraw NYSE approval of a member's registration as specialist in one or more stock(s) if the specialist has consistently received evaluation by floor brokers on the quarterly Specialist Performance Evaluation Questionnaire which are below a minimum level of acceptable performance. The Exchange noted in its filing that the purpose of this extension is to keep Rule 103A effective while the NYSE codifies and files with the Commission its procedures for specialist performance review and counselling of a specialist unit whose performance needs improvement. The NYSE states that the statutory basis for the proposed rule change is Section 6(b)(5) of the Act which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. Reference should be made to File No. SR-NYSE-83-59.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the pilot program under Rule 103A was scheduled to expire on December 31, 1983. The Commission believes it is appropriate to continue the program on a pilot basis for an additional calendar quarter to permit the NYSE to file with the Commission amendments to procedures under Rule 103A relating to specialist performance review and counselling of specialist units.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-941 Filed 1-12-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20538; File No. PSE-84-2]

Self-Regulatory Organization; Proposed Rule Change by the Pacific Stock Exchange Incorporated; Relating to Approval of Underlying Securities for Options Trading

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 January 4, 1984, The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") proposes the following changes to its Rule VI, governing exchange options trading. (Italics indicate added language; brackets indicate deleted language.)

Rule VI

Exchange Options Trading

Approval of Underlying Securities

Section 12. No change prior to:

(b) Underlying securities shall be *(i)* duly listed and registered on a national securities exchange, *or (ii) designated as national market system securities*

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[1] Rule 103A was approved by the Commission as a two-year pilot program terminating on May 15, 1981. (Securities Exchange Act Release No. 15827, May 15, 1979, 44 FR 100, May 22, 1979. The rule's effectiveness has been extended a number of times since then. Most recently, on October 5, 1983, the Commission approved an amendment to Rule 103A (SR-NYSE-83-48) extending the rule's effectiveness to December 31, 1983. Securities Exchange Act Release No. 20262, October 5, 1983; 48 FR 47081, October 17, 1983.

pursuant to "Tier 1 Criteria", as defined in Rule 11Aa2–1 under the Securities Exchange Act of 1934, as amended; and

(c) No change.

Commentary

.01 No change.

.02 In considering for approval underlying securities which have not been primarily traded on a national securities exchange *or designated as national market system securities* for the [two] *one* year[s] preceding such approval, the Exchange may take into account [for such portion of such two-year period as the security has not been traded on a national securities exchange] the volume of trading in such security in the over-the-counter market as reflected in the NASDAQ system. If the volume of trading in [such] *the* over-the-counter market [during such time period equals the volume which would have been required had the security been traded during such time on a national securities exchange] *meets the requirements specified in subparagraph 12(a)(iii) above,* then the security may be deemed to have met the volume requirements set forth in the agreements between the Exchange and the Clearing Corporation.

II. Self-Regulatory Organization's 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 concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizaton 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

The purpose of the proposed rule change is to increase the universe of securities eligible to serve as underlying securities for options trading. Currently, the Exchange is limited to securities which are listed and registered on a national securities exchange. The proposal expands eligible securities to include securities traded on the over-the-counter market through the NASDAQ system so long as they have met the requirements of, and been designated as, national market system ("NMS") securities, pursuant to the "Tier 1 Criteria" defined in Rule 11Aa2–1 under the Securities Exchange Act of 1934 (the "Act"). To qualify for options trading under these new standards, an underlying security must meet the initial listing standards described in Rule VI, Section 12, as well as the "Tier 1 Criteria" of Rule 11Aa2–1.

The current standards were implemented prior to the Securities and Exchange Commission's ("Commission" or the "SEC") promulgation of Rule 11Aa2–1, in response to Congress' directives in Section 11A(a) of the Act regarding the creation of a national market system. The standards required an underlying security to have been listed on a national securities exchange in order to ensure that accurate and immediate last sale and quotation data were available. The reporting mechanisms which existed for OTC securities at that time did not provide accurate and immediate last sale and quotation data. This information is essential for the maintenance of a fair and orderly market in derivative vehicles like options and therefore, it was not in the public interest to trade options on OTC securities.

The steps taken thus far towards the development of a national market system have vitiated the rationale of the current standards with respect to certain securities, specifically, those securities designated as NMS securities meeting the "Tier 1 Criteria". Transactions in NMS securities meeting the "Tier 1 Criteria" must be reported on a real-time basis within the same time-frame as listed securities and at a price net of broker/dealer commissions. Quotations in these NMS securities must be at a firm price and size, and updated as necessary in a timely fashion. Thus, these NMS securities have the same characteristics as listed securities with respect to the elements essential for the maintenance of a fair and orderly options market. Therefore, the trading of options on these NMS securities would not harm investors or the public interest.

The trading of listed options on the PSE would benefit investors by providing the full range of advantages options offer. In particular, investors would enjoy the benefits of a limited-risk hedge for positions in NMS securities without the liquidity disadvantages of a conventional over-the-counter option. The investor benefits from the fact that with an exchange-listed option, there would exist a single unfragmented market in which to acquire or dispose of an option position. In addition, the PSE's rules protecting option investors would apply to options on these NMS securities.

In conjunction with this rule change proposal, the PSE is requesting that the SEC modify Rule 12a–6, under the Act in a manner which would permit the trading of options on NMS securities. The PSE suggests that the Commission reconsider deleting paragraph (b)(3) of Rule 12a–6, as proposed in Securities Exchange Act Release No. 34–13247 (February 7, 1977). As noted above, the real-time last sale reporting of the NMS securities meeting the "Tier 1 Criteria" addresses the conberns the Commission expressed at that time.

The PSE's proposal removes impediments to the perfecting of a national market system and protects investors and the public interest. Therefore, the statutory basis for the PSE's proposal is Section 6(b)(5) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competiton.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.[1]

[1] The Commission expects to solicit comments on the specific issues raised by exchange proposals to trade options on over-the-counter securities in the context of its anticipated proposal to amend Rule 12a–6 under the Act. Such a rule amendment would be a necessary precondition to approval of this proposal, as well as similar ones previously filed by the Chicago Board Options Exchange, Incorporated (*see* Securities Exchange Act Release No. 20471, December 9, 1983, 48 FR 55939, December 16, 1983); and the American Stock Exchange, Inc. (*see* Securities Exchange Act Release No. 20498, December 16, 1983, 48 FR 56871, December 23, 1983). In addition, the Commission expects to solicit

Continued

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 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 all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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: January 6, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-939 Filed 1-12-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/703]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting of the Working Group on Transborder Data Flows (TBDF) of the Advisory Committee on International Investment, Technology, and Development on Monday, January 30, 1984, from 10:00 a.m. to noon. The meeting will be held in the Loy Henderson Conference Room of the State Department, 2201 C Street, NW., Washington, D.C. 20520. The meeting will be open to the public.

An agenda for the meeting will include reports on the OECD Symposium on Transborder Data Flows, and the meeting of the OECD/ICCP Committee Bureau, both held in London in December, 1983, and preparations for the next ICCP meeting in March 1984 including proposals for the 1985 ICCP work program. The status of the U.S. study for the UN Center for Transnational Corporations will also be discussed.

Members of the public wishing to attend the meeting must contact Mr. Lincoln's office (202-632-2728) in order to arrange admittance to the State Department. Please use the "C" Street entrance.

The Chairman of the Committee will, as time permits, entertain oral comments from members of the public attending the meeting.

Dated: December 22, 1983.

Philip T. Lincoln, Jr.,

Executive Secretary.

[FR Doc. 84-957 Filed 1-12-84; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/704]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group on Radio Communications; Meeting

The Working Group on Radio Communications of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9:30 AM on January 31, 1984 in Room 5332-5334 of the Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

The purpose of the meeting is to prepare position documents for the 27th Session of the Subcommittee on Radio Communications of the International Maritime Organization to be held in London during March 1984. In particular the Working Group will discuss the following topics:

—Maritime Distress System;
—Digital Selective Calling;
—Satellite EPIRBs;
—Preparation for the ITU WARK for Mobile Telecommunications;
—Preparations for CCIR Study Group 8;

Members of the Public may attend up to the seating capacity of the room.

For further information contact Mr. Richard Swanson, U.S. Coast Guard Headquarters (G-TPP-3/63), 2100 Second Street SW., Washington, D.C. 20593. Tel: 202-426-1231.

Dated: December 28, 1983.

Gordon S. Brown,

Chairman, Shipping Coordinating Committee.

[FR Doc. 84-958 Filed 1-12-84; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-84-1]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petitions or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: February 2, 1984.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination of the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 9, 1984.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

comment on these issues in the context of other self-regulatory organization initiatives involving options on over-the-counter securities. *See* File No. SR-NASD-80-10.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
20894	Trans-Colorado Airlines, Inc	14 CFR §135.181(a)(2)	To amend Exemption 3078 to add an additional route over which Trans-Colorado is permitted to operate certain aircraft under instrument flight rules or visual flight rules over-the-top using manufacturer's approved performance data, subject to conditions and limitations.
23835	Aircraft at your call d.b.a. Hospital Air Transport	14 CFR §135.261	To permit petitioner to operate a helicopter in hospital emergency service without complying with the duty time limitations.
23836	Southern California Air Service Inc	14 CFR §135.183	To permit petitioner to operate a short takeoff and landing (STOL) equipped single Cessna Skywagon in the vicinity of San Miguel Island without operating at an altitude that allows it to reach land in the case of engine failure.
23848	August C. Hohl	14 CFR §§141.35(b)(4), (c)(5), and (d)(4)	To permit petitioner to be eligible for designation as a chief flight instructor without meeting the required recency experience.
23843	Hendrik A. Gideonse	14 CFR § 61.161(b)	To permit petitioner to apply for an airline transport pilot certificate with a rotocraft rating without having had at least 1200 hours of flight time as a pilot within the 8 years before the date of exemption.
20846	Braniff Int'l	14 CFR Portions of Part 121, Appendix H	To extend Exempt 3147A, which expires on February 28, 1984, and which allows petitioner to conduct training and checking as permitted in a Phase II simulator without meeting the minimum visual field-of-view requirement, subject to certain conditions.
23840	Safe Flight Instruments Corp	14 CFR § 91.213	To permit petitioner to operate a Citation II aircraft, certified under Part 25, with a single pilot, provided that all requirements of a type certificate, applicable to the Citation II, under Part 23 are met.
23818	United States Gypsum Co	14 CFR Portions of Parts 21 & 91	To permit petitioner to operate on Gulfstream G-1159 and one Falcon 20 aircraft using an FAA-approved minimum equipment list.
23855	Valley Hospital Medical Center	14 CFR §135.261(b)	To permit petitioner to operate its helicopter in a hospital emergency medical evacuation service without complying with duty time limitations, subject to certain conditions.
23857	Project Orbis, Inc	14 CFR § 91.303	To allow petitioner to operate a DC-8-21 aircraft after January 1, 1985, in noncompliance with the operating noise limits in Part 91.
23854	Airline Training Institute	14 CFR §§ 61.157(d)(1), 61.63(d)(2)	To permit trainees to complete a practical test for the issuance of an airline transport pilot certificate or a type rating to be added to any grade of pilot certificate, by substituting for the flight test required by § 61.63(d) (2) and (3) the test requirements in Appendix A to Part 61.
23863	MBB Helicopter Corp	14 CFR § 47.65	Supplemental petition to permit petitioner to obtain an aircraft dealer's registration certificate without meeting the U.S. citizen requirements.
23867	Executive Helicopters	14 CFR § 141.41(a)(iii)	To permit petitioner to use the Helicopter Training Systems, Inc. HTS-100 primary helicopter training system in its Part 141 pilot school.
23862	Ford Motor Co	14 CFR § 21.181	To permit petitioner to operate two Hawker Siddeley aircraft using an FAA-approved minimum equipment list.
13416	Academy Aeronautics	14 CFR § 63.39(b)(2)	To extend Exemption 2095D, which expires March 10, 1984, and which permits flight engineer applicants being trained by Sierra Academy of Aeronautics to show that they can satisfactorily perform the normal duties and procedures of this section in an airplane simulator.
23859	Department of the Army	14 CFR § 101.23(b)	Relief from the unmanned rockets in controlled airspace provisions to allow for the launching of 2.75 "Folding Fin Aerial Rockets in the St. George Island controlled firing area."
23846	Northeastern Int'l. Airways, Inc	14 CFR § 121.291(a)	To permit petitioner to operate four B-727-100 aircraft in a 128-seat configuration without conducting an actual demonstration of emergency evacuation procedures.

[FR Doc. 84-897 Filed 1-12-84; 8:45 am]

BILLING CODE 4910-13-M

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 3-4 of the Federal Aviation Administration (FAA) National Airspace Review Advisory Committee. The agenda for this meeting is as follows: A review of the Flow Control Procedures Handbook (FAAH 7210.7) and orders to make data easier to locate and procedures more effective.

DATE: Beginning Monday, January 30, 1984, at 11 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed two weeks.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference room 9 A/B, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591 (202) 426-3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Air Traffic Service, AAT-1, 800 Independence Avenue, SW., Washington, D.C. 20591, by January 23, 1984. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C. on January 4, 1984.

Karl D. Trautmann,

Manager, Special Projects Staff, Air Traffic Service.

[FR Doc. 84-896 Filed 1-12-84; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Approval of Applicant as Trustee

Notice is hereby given that United Virginia Bank, with offices at 919 East Main Street, Richmond, Virginia, has been approved as Trustee pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30.

Dated: January 10, 1984.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Secretary.

[FR Doc. 84-986 Filed 1-2-84; 8:45 am]

BILLING CODE 4910-81-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Materials Transportation Bureau, D.O.T.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo Vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes February 14, 1984.

ADDRESS COMMENTS TO: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

NEW EXEMPTIONS

Application	Applicant	Regulation(s) affected	Nature of exemption thereof
9183-N	Bonar Industries, Inc., Macon, GA	49 CFR 173.154, 173.182, 173.245b	To manufacture mark and sell non-DOT specification reinforced, woven polypropylene bags with polyethylene liner of one metric ton capacity for shipment of various oxidizer and corrosive material (solids). (Modes 1, 2).
9184-N	Cyanamid Canada Inc., East Willowdale, Canada.	49 CFR 173.178	To authorize shipment of calcium carbide classed as a flammable solid in non-DOT specification reinforced, woven polypropylene bags having a 5 mil polyethylene liner not to exceed two metric ton capacity (4,408 pounds). (Mode 1).
9185-N	Atlas Powder International Ltd., Miami, FL	49 CFR 176.410(d)	To authorize shipment of ammonium nitrate fertilizer in either multiwall paper or plastic bags utilizing stevedoring slings and stretch wrapping, loaded aboard cargo vessels exempt from spacing criteria and location. (Mode 3).
9186-N	Alexco Industries, Texas City, TX	49 CFR 173.119(a) and (m), 173.245(a), 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT specification MC-307/312 except for bottom outlet valve variations for transportation of flammable, corrosive or poison B waste liquid or semi-solids. (Modes 1, 3).
9191-N	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 179.101 Table Note 4	To authorize shipment of hydrogen fluoride in DOT Specification 112A400W and 114A400W tanks cars that have a wide, dark-colored band encircling the tank. (Mode 2).
9192-N	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.304	To authorize shipment of various liquefied compressed gases classes as flammable gas in DOT Specification 4L-112 cylinders. (Mode 1).
9193-N	Schlumberger Well & Schlumberger Offshore Services, Houston, TX.	49 CFR 175.3, Part 173, Subpart G	To authorize shipment of a specially packaged electronic tube charged to 80 psig with sulfurhexafluoride gas, as essentially non-regulated. (Modes 1, 2, 3, 4, 5).
9194-N	Canamid Canada Inc., East Willowdale, Canada.	49 CFR 173.370	To authorize shipment of calcium cyanide, solid, classed as a poison B, in reinforced, woven polypropylene bags with a 5 mil polyethylene liner, not to exceed 2,865 pounds capacity. (Modes 1, 2).
9195-N	Owens-Illinois, Inc., Toledo, OH	49 CFR 173.119	To manufacture, mark and sell DOT Specification 12B fiberboard boxes with inside one quart capacity plastic container other than polyethylene, for shipment of various flammable liquids. (Modes 1, 2, 3).
9196-N	United Technologies, San Jose, CA	49 CFR 173.86(b), 173.92(a), 173.92(b)	To authorize shipment of a rocket motor, Class B explosive, with integral igniter and gas generators, overpacked in a metal container. (Modes 1, 3).
9197-N	Greif Bros. Corp., Springfield, NJ	49 CFR Part 173 Subpart D, Subpart F	To manufacture, mark and sell non-DOT specification polyethylene containers comparable to DOT Specification 34, except for 55 gallon capacity for shipment of various corrosive, flammable and poison B liquids and hydrogen peroxide solutions. (Modes 1, 2, 3).
9198-N	U.S. Department of the Interior, Boise, ID	49 CFR 175.(a)(2)	To authorize transportation of various hazardous materials in non-DOT specification packaging subject to the Department of Interior's inflight operational controls. (Mode 4).
9199-N	Cape Fear Tank Co., Inc., Wilmington, NC	49 CFR 173.34(L), 173.34(i)	To authorize the repair or rebuilding of DOT Specification 4 series cylinders by a method other than as prescribed. (Modes 1, 2).
9200-N	Pacific Northwest Bell, Seattle, WA	49 CFR 173.304(c)(2)	To ship DOT Specification 4B and 4BA cylinders having water capacity less than 200 pounds, when liquefied petroleum gas content has been verified by fixed length dip tube instead of by weight. (Mode 1).
9201-N	Cyanamid Canada, Inc., East Willowdale, Canada.	49 CFR 173.370	To authorize import shipment of calcium cyanide, solid, class B poison in woven polypropylene bags of 2,204 pound capacity overpacked in corrugated boxes in full freight container loads docking at various U.S. ports. (Mode 3).

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C. on January 4, 1984.

J. R. Grothe,

Chief, Exemptions Branch Office of Hazardous Materials Regulation Materials Transportation Bureau.

[FR Doc. 84-893 Filed 1-12-84; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions for the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes January 26, 1984.

ADDRESS COMMENTS TO: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2732-X	U.S. Department of Energy, Washington, DC.	2732
3549-X	do	3549
3563-X	do	3563
4453-X	Ireco Chemicals, Salt Lake City, UT	4453
4460-X	Ethyl Corp., Baton Rouge, LA	4460
5022-X	National Aeronautics and Space Administration, Washington, DC.	5022
5112-X	Austin Powder Co., Cleveland, OH	5112
5243-X	do	5243
5891-X	U.S. Department of Energy, Washington, DC.	5891
6016-X	Guttman Welding Supply Co., Belle Vernon, PA.	6016
6039-X	Rohm and Haas Co., Philadelphia, PA.	6039
6113-X	Bay State Gas Co., Canton, MA	6113
6113-X	San Diego Gas & Electric Co., San Diego, CA.	6113
6113-X	Commonwealth Gas Co., New Bedford, MA.	6113
6197-X	Philadelphia Gas Works, Philadelphia, PA.	6197
6333-X	Allied Corp., Morristown, NJ	6333
6464-X	Bay State Gas Co., Canton, MA	6464
6464-X	Commonwealth Gas Co., New Bedford, MA.	6464
6530-X	Air Products and Chemicals, Inc., Allentown, PA.	6530
6530-X	Union Carbide Corp., Danbury, CT	6530
6614-X	Hasa Chemicals, Inc., Saugus, CA	6614
6614-X	All Pure Chemical Co., Inc., Tracy, CA.	6614
6691-X	Union Carbide Corp., Danbury, CT	6691
6731-X	U.S. Department of Defense, Washington, DC.	6731
6735-X	Great Lakes Chemical Corp., El Dorado, AR.	6735
6765-X	Airco Industrial Gases, Murray Hill, NJ.	6765
6765-X	Bureau of Mines, Amarillo, TX	6765
6768-X	Van De Mark Chemical Co., Inc., Lockport, NY.	6768
6816-X	General Dyanmics Corp., San Diego, CA.	6816
6861-X	Teledyne McCormick Selph;, Hollister, CA.	6861
6908-X	U.S. Department of Defense, Washington, DC.	6908
6985-X	U.S. Department of Energy, Washington, DC.	6985
6999-X	U.S. Department of Defense, Washington, DC.	6999
7208-X	National Aeronautics and Space Administration, Washington, DC.	7208
7465-X	State of Alaska, Department of Transportation, Juneau, AK.	7465
7542-X	U.S. Cylinders, Inc., Citronelle, AL	7542
7578-X	U.S. Department of Defense, Washington, DC.	7578
7598-X	Pratt & Whitner Aircraft Group, East Hartford, CT.	7598
7607-X	Ecology and Environment, Inc., Buffalo, NY.	7607
7883-X	Ethyl Corp., Baton Rouge, LA	7883
7883-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	7883
7915-X	Department of Defense, Washington, DC.	7915
7943-X	All Pure Chemical Company, Inc., Tracy, CA.	7943
7943-X	Alstar Co., Tracy, CA	7943
7943-X	Georgia-Pacific Corp., Montebello, CA.	7943
7943-X	Hasa Chemicals, Inc., Saugus, CA	7943
7963-X	Stauffer Chemical Co., Westport, CT.	7963
8080-X	Diamond Shamrock Chemicals Co., Irving, TX (see footnote 1).	8080
8081-X	National Aeronautics and Space Administration, Washington, DC.	8081
8264-X	Hercules, Inc., Wilmington, DE	8264
8265-X	Hercules, Inc., Wilmington, DE	8265
8324-X	Rexnord, Inc., Milwaukee, WI	8324
8329-X	Texas Instruments, Inc., Dallas, TX	8329
8339-X	Eastern Steel Barrel Corp., Piscataway, NJ.	8339
8377-X	Teledyne McCormick Selph, Hollister, CA.	8377
8522-X	Taylored Foam Inc., Oakland, CA (see footnote 2).	8522
8525-X	Associated Container Transportation (USA), New York, NY.	8525
8647-X	Marine Technical Services, Inc., Stafford, TX.	8647
8708-X	Trical, INc., Morgan Hill, CA	8708
8770-X	Eastman Kodak Co., Rochester, NY	8770
8772-X	Armak Co., Chicago, IL	8772
8879-X	Temco Engineering, Tulsa, OK (see footnote 3).	8879
8940-X	Syntex Chemicals, Inc., Boulder, CO (see footnote 4).	8940
9104-X	Chemical Waste Management, Inc., Oak Brook, IL.	9104
9116-X	Hoover Universal, Inc., Beatrice, NE (see footnote 5).	9116
9138-X	National Aeronautics and Space Administration, Washington, DC (see footnote 6).	9138

[1] To authorize use of true DOT Specification 111A100-W1 tank cars, for shipment of chromic acid, solid.

[2] To change company name from Foamco to Taylored Foam, Inc. and to authorized an increase in the depth of each cell in the polystyrene shipping case.

[3] To authorize components of cylinder to be made of type 301, 302, 303 and 316 stainless steel in addition to 304 and to increase length of cylinder from 24 inches to not over 29 inches.

[4] To authorize use of thirty DOT Specification 5C containers for shipment of sodium, metal dispersion in organic solvent without being overpacked in DOT Specification 17H drums.

[5] To authorize additional portable tanks of 300 gallon capacity identical (except for size) to the 400 gallon capacity presently authorized.

[6] To authorize highway as an additional mode of transportation

Application No.	Applicant	Parties to exemption
6926-P	Rhone-Poulenc Inc., Monmouth Junction, NJ.	6926
6971-P	Alltech Associates, Inc., Deerfield, IL.	6971
7052-P	Kearney & Trecker Corp., Milwaukee, WI.	7052
7052-P	Moli Energy Ltd., Burnaby, BC	7052
7052-P	McDonnell Douglas Corp., St. Louis, MO.	7052
8129-P	General Foods Corp., Modesto, CA	8129
8129-P	The Sherwin Williams Co., Cleveland, OH.	8129
8129-P	Ecology Chemical & Refining Co., Manor, PA.	8129
8129-P	Northwestern University, Evanston, IL.	8129
8129-P	Waste Technology Services, Inc., Niagara Falls, NY.	8129
8129-P	Purdue University, West Lafayette, IN.	8129
8129-P	Ralston Purina Co., St. Louis, MO	8129
8129-P	Utah State University, Logan, UT	8129
8365-P	Allied Cleaning Specialists, Inc., Los Angeles, CA.	8365
8716-P	GTE Products Corp., Waltham, MA	8716
8901-P	Great Lakes Chemical Corp., West Lafayette, IN.	8901
8901-P	Hopkins Agricultural Chem. Co., Madison, WI.	8901
9081-P	Allied Chemical, Morristown, NJ	9081
9174-P	The National Aeronautics and Space Administration, St. Louis, MO.	9174

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 5, 1984.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84-802 Filed 1-12-84; 8:45 am]

BILLING CODE 4910-60-M

VETERANS ADMINISTRATION

Privacy Act of 1974; New System of Records

The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Accordingly, the Veterans Administration published and adopted a notice of its inventory of personnel records on September 27, 1977 (42 FR 49726).

Notice is hereby given that the Veterans Administration is adding a new system of records entitled "Administrator's Official Correspondence Records" (75VA001B). This system is authorized under 38 U.S.C. Section 210(c).

The purpose of this new system of records is to control, store and identify correspondence that is sent to the Administrator of Veterans Affairs and the documentation of official actions taken by the Office of the Administrator in response to that correspondence. The system contains hard copies of records, materials, information/inquiries (correspondence) sent to the Administrator of Veterans Affairs by individual citizens, (veterans, nonveterans) organizations, agencies of Federal, state and local governments and public officials, etc., and the official record copy of the decisions or responses of the Administrator and the Deputy Administrator. The system also contains automated records on a Correspondence Tracking System. The Correspondence Tracking System contains name, address, subject, etc., pertaining to the correspondence.

This system contains routine uses as defined by the Privacy Act of 1974. (5 U.S.C. 552a(a)(7)). The Veterans Administration has determined that the following releases of data and information, as provided for in the listed routine use statements, are necessary and proper for this system of records: 1. The records of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual; 2. Any information in this system from correspondence or inquiries sent to the Administrator of Veterans Affairs may be disclosed to Federal or state agencies at the request of the correspondent or inquirer in order for those agencies to help the correspondent with his or her problem. The information disclosed may include the name and address of the correspondent or inquirer and details concerning the nature of the problem specified in the correspondence.

Interested persons are invited to submit written comments, suggestions, or objections, regarding this system of records, to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All relevant material received before February 13, 1984 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until February 28, 1984. Any person visiting the above address for the purpose of inspecting any such comments will be received by the VA Central Office Veterans Services Unit in room 132.

Visitors to any VA field station will be informed that the records are available for inspection only in VA Central Office and will be furnished the above address and room number.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by the Veterans Administration, the system of records is effective February 13, 1984.

Approved: December 20, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

75 VA001B

SYSTEM NAME:

Administrator's Official Correspondence Records (75VA001B).

SYSTEM LOCATION:

Records are maintained in the Office of the Administrator, Executive Secretariat (001B), VA Central Office, Washington, D.C. 20420 with copies located in various other offices throughout Veterans Administration Central Office and Veterans Administration field stations. (Address locations are listed in VA Appendix 1 at the end of this document) The Office of Administration, Office Operations Service (03) keeps records on magnetic media.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) may include: (1) Names of individuals (e.g. private citizens, veterans, public officials, organizations); (2) writers' Social Security number and/or veterans' claim number (3) inquiries or correspondence sent to the Administrator of Veterans Affairs by individuals; (4) information pertinent to decisions or responses given by the Administrator or Department or Staff Office Heads; and (5) copies of the decisions or responses of the Administrator, department heads or staff office directors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, 210(c).

ROUTINE USES FOR MAINTENANCE OF THE SYSTEM, INCLUDING CATEGORIES OF USE AND THE PURPOSES OF SUCH USES:

1. The records of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual.

2. Any information in this system from correspondence or inquiries sent to the Administrator of Veterans Affairs may be disclosed to Federal or state agencies at the request of the correspondent or inquirer in order for those agencies to help the correspondent with his or her problem. The information disclosed may include the name and address of the correspondent or inquirer and details concerning the nature of the problem specified in the correspondence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In the Office of the Administrator, records of inquiries and correspondence are maintained on paper documents in individual file folders. These files are maintained in file cabinets. Data files supporting the automated system are stored in a secured area located at the Lafayette Building, 811 Vermont Avenue, NW., Washington, D.C. 20420. The Office of Administration data files are stored on magnetic tape.

RETRIEVABILITY:

Records are maintained in alphabetical order by last name of the individual correspondent. When appropriate, records are also filed alphabetically by name of Member of Congress representing the correspondent. Access to the automated system is via terminals located in the secured area referred in SAFEGUARDS. Standard security precautions are used to prohibit access to only authorized personnel.

SAFEGUARDS:

Records are maintained in a manned room during working hours. During nonworking hours, there is limited access to the building with visitor control by security personnel, and the

room where the records are kept is locked. Access to the records is only authorized to VA personnel on a "need-to-know" basis.

RETENTION AND DISPOSAL:

In the Office of the Administrator, records retrieved by last name of Members of Congress are retained in the Administrator's Office for one current year then retired to inactive storage in VA and Federal Archives and Records Center for ten years. All other records in this system are retained in VA for five years then retired to the Washington National Records Center where they are retained for 20 years. Thereafter, they are offered to National Archives for accessioning. After five years automated files are maintained indefinitely on a history file in the Correspondence Tracking System.

SYSTEM MANAGER AND ADDRESS:

Office of the Administrator, Executive Secretariat (001B), VA Central Office, Washington, D.C. 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained by the Office of the Administrator (001B) under his or her name or other personal identifier or wants to determine the contents of such records should submit a written request or apply in person to Executive Secretariat (001B).

RECORDS ACCESS PROCEDURES:

An individual who seeks access to or wishes to contest records maintained under his or her name or other personal identifier may write or call or visit the Executive Secretariat.

CONTESTING RECORD PROCEDURES:

(See Records Access Procedures above.)

RECORD SOURCE CATEGORIES:

Individuals (veterans, nonveterans,) attorneys, employees, members of Congress, local and state officials and various private and public organizations.

[FR Doc. 84-948 Filed 1-12-84; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Women Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Women Veterans will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC on February 8 through 10, 1984. The purpose of the Advisory Committee on Women Veterans is to advise the Administrator regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Veterans Administration; and the activities of the Veterans Administration designed to meet such needs. The Committee will make recommendations to the Administrator regarding such activities.

The session will convene at 9 a.m. all three days. These sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Program Assistant, Office of the Administrator, Veterans Administration Central Office (phone 202/389-5518), prior to February 6, 1984.

Dated: December 29, 1983.
By direction of the Administrator:

Larry R. Moen,

Deputy Director, Office of Public and Consumer Affairs.

[FR Doc. 84-947 Filed 1-12-84; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER84-154-000]

Allegheny Power Service Corp.; Filing

January 10, 1984.

The filing Company submits the following:

Take notice that on December 13, 1983 Allegheny Power Service Corporation (Allegheny) tendered for filing an Agreement concerning limited term and supplemental power service among Monongahela Power Company (Monongahela), The Potomac Edison Company (Potomac), West Penn Power Company (West Penn) and Pennsylvania Power & Light Company (Buyer).

Allegheny states that the Agreement sets forth terms pursuant to which Monongahela, Potomac and West Penn will deliver to Buyer 224,000 kilowatts of limited term power and energy and 56,000 kilowatts of supplemental power and energy for 1984 or such other amounts as the parties may agree on from time-to-time in 1984 and in future period.

Allegheny requests an effective date of January 1, 1984, 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 January 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-975 Filed 1-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC84-9-000]

Arizona Public Service Co.; Filing

January 10, 1984.

Take notice that on January 4, 1984, Arizona Public Service Company (Arizona) tendered for filing an application for sale of certain electrical facilities, including two 69 kV transmission lines and the Apache substation (excluding transformers and capacitors) and related distribution system to Navopache Electric Cooperative, Inc. ("NEC"). After all requisite approvals are obtained, as a result of the sale, transmission service will no longer be provided to Plains Electric Generation and Transmission Cooperative, Inc. ("Plains"), at three of the existing delivery points.

Copies of the filing were served upon Plains, NEC and the Arizona Corporation 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests

should be filed on or before January 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-973 Filed 1-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-191-000]

Arizona Public Service Co., Filing

January 10, 1984.

The filing Company submits the following:

Take notice that on January 4, 1984, Arizona Public Service Company (Arizona) tendered for filing an Amendment No. 1, dated December 5, 1983, to its Firm Transmission Service Agreement with Southern California Edison Company, FERC Rate Schedule No. 80.

Arizona states that this Amendment provides for an extension of the term of the original Agreement, and also updates the rate level to reflect current factors.

Arizona requests an effective date of June 1, 1984.

Copies of the filing were served upon Southern California Edison and the Arizona Corporation 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 26, 1984. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-974 Filed 1-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-74-000]

Canal Electric Co.; Order Accepting for Filing and Suspending Rates, Noting Intervention, Ordering Summary Disposition, Denying Request for Waiver of Notice, Conditionally Waiving Advance Filing Limitation, and Establishing Hearing Procedures

Issued January 6, 1984.

On November 8, 1983, Canal Electric Company (Canal) tendered for filing, as an initial rate schedule, an executed power contract between itself, Commonwealth Electric Company (Commonwealth), and Cambridge Electric Light Company (Cambridge).[1] The proposed agreement contains a formula rate applicable to the long-term sale of capacity and energy from Canal's joint ownership interest [2] in Seabrook Nuclear Unit Nos. 1 and 2, which are currently under construction and projected to become commercially operational by July 1985 and February 1988, respectively. The formula rate reflects the inclusion in rate base of 50% of Canal's Seabrook-related construction work in progress (CWIP) other than CWIP associated with pollution control and fuel conversion facilities. The contract provides that the proposed formula rate for non-CWIP charges will become effective on the dates that Seabrook Unit Nos. 1 and 2 become commercially operational. With respect to the SWIP-based charges, Canal requests waiver of the notice requirements to allow for a November 1, 1983 effective date.[3]

In addition to the CWIP-related charges, the demand charge component of the proposed cost of service formula rate reflects Canal's proportionate share of the Seabrook units including the cost of capital, fixed costs associated with the income and property taxes, depreciation expense, non-fuel operation and maintenance expense, and an allowance for estimated decommissioning costs. At the beginning of each calendar year, an estimated monthly demand charge is to be calculated, based upon Canal's estimate of the values of the components of the cost of service formula for that year. Within four months after the end of the year, the estimated demand charge is to be adjusted to reflect actual expenditures. Under the energy charge component of the proposed formula rate, Commonwealth and Cambridge are to be billed Canal's proportionate share of the actual fuel costs associated with each of the Seabrook units.

Notice of Canal's filing was published in the **Federal Register**, with comments due on or before December 5, 1983. On December 5, 1983, the Attorney General of the Commonwealth of Massachusetts (Attorney General) filed a protest and motion to intervene, requesting a five month suspension of the instant filing and a hearing. In support of his request, the Attorney General claims that Canal has failed to provide adequate explanation or support for its requested return on equity or the inclusion of CWIP in rate base. The Attorney General also asserts that Canal's proposed CWIP charges associated with both Seabrook units are excessive, particularly in light of the uncertainty as to whether Seabrook Unit No. 2 will ever be placed in service [4] and the fact that Canal's cost projections are based on outdated data.

On December 20, 1983, Canal filed an answer to the Attorney General's pleading. While not objecting to the motion to intervene, Canal opposes the requests for maximum suspension and the initiation of hearing procedures in this docket.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the Attorney General's timely motion to intervene serves to make him a party to this proceeding.

Upon review of Canal's submittal, the Commission finds that summary disposition is appropriate with respect to one issue. We shall require Canal to amend its method for calculating an AFUDC allowance. We note that Canal proposes to calculate AFUDC on a net-of-tax basis. However, the Commission's policy requires that AFUDC be computed using the gross-of-tax method, unless another regulatory agency having retail jurisdiction over the company

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[1] *See* Attachment for rate schedule designation. Canal, Commonwealth, and Cambridge are subsidiary corporations of Commonwealth Energy System, a holding company. Canal is a principal supplier of wholesale power to Commonwealth and Cambridge and serves no retail customers.

[2] Canal states that it owns a 3.5% interest in the Seabrook plant, which represents approximately 40.5 megawatts of capacity from each unit. Under the proposed agreement, Commonwealth and Cambridge are committed to purchase Canal's entire entitlement in the Seabrook units (with Commonwealth purchasing 71.8% and Cambridge purchasing 28.2% of Canal's entitlement in each unit).

[3] In support of its waiver request, Canal states that it had planned to tender the instant submittal for filing in early 1985. However, in light of the Commission's Order No. 298, 48 FR 24,323 (1983), as modified by 25 FERC ¶ 61,023 (October 4, 1983), which allowed for rate base treatment of CWIP, Canal seeks to collect immediately its costs of financing CWIP associated with the Seabrook units.

[4] The Attorney General references a September 30, 1983 statement in *Valueline* which contends that Seabrook Unit No. 2, although currently approximatley 23% completed, will eventually be cancelled.

requires the net-of-tax method.[5] Since Canal serves no retail customers and is, therefore, not subject to any other ratemaking regulatory body, the company must compute AFUDC using the gross-of-tax method.

Another issue raised by Canal's pleading shall be addressed in a subsequent order. Canal characterizes its rate filing as an initial rate filing to which the Commission's 6% CWIP limitation provisions do not apply. *See* 18 CFR 35.26(d)(1) and (3). This characterization raises issues of interpretation which require more time for consideration than is permitted under the statutory time limits for suspension orders. We shall therefore address this question in a subsequent order to be discussed at the Commission meeting scheduled for January 25, 1984. Pending our subsequent order, discussed above, we shall not require Canal to file revised rates to reflect the summary disposition.

Our preliminary review of Canal's submittal and the pleadings indicates that the proposed formula rate has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept Canal's submittal for filing and suspend its operation 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 day where preliminary review indicates that the proposed rates may be unjust and unreasonable but may not generate substantially excessive revenues, as defined in *West Texas*. Our examination of Canal's rates, based on current information, suggests that they may not yield excessive revenues. While we are not prepared to say, in advance of a hearing, that Canal's use of a 15% return on common equity in developing its CWIP-related charges is unreasonable, we believe that it is premature for the Commission to assume that this (or any other) return would be considered reasonable in 1985, when Seabrook Unit No. 1 is expected to become operational, let alone in 1988, when the second unit is scheduled to commence operation. We recognize, however, Canal's motivation in tendering its contract rates at this time in order to recover its construction carrying costs. Thus, we shall permit the company to file the non-CWIP formula rate reflected in its contract more than 120 days in advance of the anticipated commercial operation dates of the Seabrook units (*i.e.*, the effective dates actually intended by the parties for the non-CWIP rates), but only on condition that Canal provide updated support for its requested rate of return in the form of a rate filing, subject to review and suspension, within 120 days of the commercial operation date of each Seabrook unit. In addition, given the advance timing of its submittal, Canal shall make a timely filing pursuant to section 205 of the Federal Power Act prior to initiating any charges reflecting estimated decommissioning costs.[6] With these conditions, we shall permit Canal's non-CWIP charges to become effective, as modified by summary disposition and subject to refund, as of the date that each of the Seabrook units becomes operational. With respect to the CWIP-related portion of its filing, the Commission notes that Canal has not shown good cause for granting waiver of the notice requirements to permit a November 1, 1983 effective date. Therefore, we shall deny the requested waiver and suspend the CWIP-based charges for one day from 60 days after filing, to become effective, on January 9, 1984, subject to refund and to our subsequent order.

The Commission orders:

(A) Summary disposition is hereby ordered, as noted in the body of this order, with respect to Canal's method for computing AFUDC.

(B) Canal's request for waiver of the 60 day notice requirement is hereby denied.

(C) Canal's proposed CWIP-based charges are hereby accepted for filing and suspended for one day, to become effective, subject to our subsequent order and subject to refund, on January 9, 1984; subject to the condition expressed in the body of this order, Canal's formula rate for non-CWIP charges is hereby accepted for filing and suspended, to become effective, as modified by summary disposition and subject to refund, on the dates that Seabrook Unit Nos. 1 and 2 become commercially operational.

(D) 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 Canal's rates.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Such conference shall be held for purposes of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment

Canal Electric Company, Docket No. ER84-74-000, Rate Schedule Designation

Filed: November 8, 1983.

Designation and Description

Rate Schedule FERC No. 22—Power Contract.

[FR Doc. 84-976 Filed 1-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 4354-001, et al.]

Hydroelectric Applications (Owyhee Project Irrigation Districts, et al.); Notices of 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: License (5MW or Less).

b. Project No: 4354-001.

c. Date Filed: April 19, 1983.

d. Applicant: Owyhee Project Irrigation Districts.

e. Name of Project: Owyhee Dam Power Project.

f. Location: On Owyhee River, near Aldrian, on U.S. lands administered by the U.S. Bureau of Reclamation in Malheur county, Oregon.

[5] *See, Kentucky Utilities Company*, Opinion No. 184, 24 FERC ¶61,157 (August 1, 1983); *Southern California Edison Company*, Opinion No. 145, 20 FERC ¶61,301 (September 10, 1982); *New England Power Company*, Docket Nos. ER83-647-000, *et al.*, 24 FERC ¶61,339 (1983).

[6] Of course, any changes in the requested rate of return or the components of the formula rate methodology would require a rate change filing in any event.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. Gene Stunz, Owyhee Project Power Committee, P.O. Box 1565, Nyssa, Oregon 97913.

i. Comment Date: February 24, 1984.

j. Description of Project: The project will utilize the existing 417-foot-high Owyhee Dam owned by the U.S. Bureau of Reclamation. The proposed project would consist of: (1) a 250-foot-long, 84-inch-diameter concrete tunnel located at the end of an existing tunnel; (2) a 150-foot-long, 72-inch-diameter steel penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 3500 kW; (4) a 50-foot-long tailrace; (5) a switchyard; and (6) a 0.5-mile-long, 69-kV transmission line connecting to an existing transmission line. The Applicant estimates that the average annual energy production would be 12.2 million kWh. The cost to construct the project would be $2,936,000 in 1982 dollars.

k. Purpose of Project: The project power will be sold to the Idaho Power Company or to a utility in the Pacific Northwest.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

2a. Type of Applications: Exemption from Licensing (5MW or Less).

b. Project No: 7427–001.

c. Date Filed: September 22, 1983.

d. Applicant: Little Wood River Irrigation District.

e. Name of Project: Little Wood Reservoir.

f. Location: At the Little Wood River Dam and Reservoir, near Carley, in Blaine County, Idaho.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. §§ 2705 and 2708 as amended.

h. Contact Person: Mr. Alton Patterson, President, Little Wood River Irrigation District, Carley, Idaho 83320.

i. Comment Date: February 13, 1984.

j. Description of Project: The proposed project would utilize irrigation releases from the Applicant's existing Little Wood River Dam and Reservoir and would consist of: (1) a concrete intake structure and a fish screen at the existing outlet; (2) a 370-foot-long, 28-inch to 56-inch diameter penstock; (3) a powerhouse containing two generating units having a total installed capacity of 1925 kW; (3) a tailrace; and (4) a 6-mile-long, 34.5-kV transmission line connecting to an existing Idaho Power Company transmission line. The Applicant estimates the average annual energy production at 4.56 million kWh.

An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Project power would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.

3a. Type of Application: Exemption From Licensing (Small Conduit).

b. Project No: 7686–000.

c. Date Filed: October 5, 1983.

d. Applicant: Mutual Energy Company.

e. Name of Project: Jim Knight Hydroelectric Powerplant.

f. Location: On South Gooding Main Canal, near Gooding, in Gooding County, Idaho.

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: Bart M. O'Keefe, President, Mutual Energy Company, 1250 Pine Street, Walnut Creek, California 94596.

i. Comment Date: February 13, 1984.

j. Description of Project: The proposed project would consist of: (1) a 175-foot-long, 4-foot-high concrete overflow weir forming; (2) a forebay at elevation 3665 feet; (3) a semi-underground powerhouse structure containing three submersible turbine/generators at elevation 3643 feet, two having a rated capacity of 120 kW, one with a rated capacity of 75 kW, and a combined annual energy production of 1.59 GWh; (4) a cinderblock control house; (5) a transformer yard; and (6) a 900-foot-long, 43-kV transmission line to an existing Idaho Power Company powerline.

k. *Purpose of Exemption*—An exemption, if issued, gives an 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 : A3, A9, B, C, D3b.

4a. Type of Application: Exemption (5MW or Less).

b. Project No: 5004–001.

c. Date Filed: May 31, 1983.

d. Applicant: Walker River Irrigation District.

e. Name of Project: Bridgeport Reservoir Hydroelectric Project.

f. Location: On Bridgeport Reservoir on East Walker River, in Mono County, California, near the town of Bridgeport, within the Toiyabe National Forest.

g. Filed Pursuant to: Section 408 of the Federal Energy Security Act, 16 U.S.C. §§ 2705 and 2708 *as amended.*

h. Contact Person: Mr. Jim Weishaupt, Manager, Walker River Irrigation District, P.O. Box J, Yerington, Nevada 89477.

i. Comment Date: February 13, 1984.

j. Description of Project: The proposed project would consist of: (1) an existing 63-foot-high, 900-foot-long dam at elevation 6,469 feet msl; (2) an existing reservoir; (3) an existing emergency spillway; (4) an existing 10-foot-high, 17-foot-long, and 17-foot-wide intake structure to be modified; (5) an existing 8-foot-diameter, 150-foot-long intake conduit; (6) an existing 10-foot-diameter, 260-foot-long outlet conduit; (7) two new generating units with a total rated capacity of 960 kW to be installed in the existing intake structure; (8) an extension of the existing gate house bridge; (9) an overflow weir at end of existing outlet conduit; and (10) a one-mile-long 13-kV transmission line, tying into an existing Southern California Edison Company line. The average annual energy output would be 3.1 million kWh.

Purpose of Exemption—An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Project power would be sold to the Southern California Edison Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.

5a. Type of Application: Preliminary Permit.

b. Project No.: 7357–000.

c. Date Filed: June 10, 1983.

d. Applicant: Thistle Lake Hydropower.

e. Name of Project: Thistle Lake Hydropower Project.

f. Location: Spanish Fork River in Utah County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Gregory L. Probst, 10 Exchange Place, Suite 1000, Salt Lake City, Utah 84111.

i. Comment Date: February 10, 1984.

j. Competing Application: Project No. 7316–000, Date Filed May 27, 1983.

k. Project Description: The proposed project would be located at Thistle Lake, which was created by a mud slide that occurred in April 1983. Ownership of the structure and impounded body of water is not clearly defined. It is

anticipated that the structure will be stabilized and that the lake will become permanent. The proposed project would include: (1) the existing 200-foot-high, 800-foot-long dam; (2) an existing 640 acre lake with a capacity of 40,000 acre-feet; (3) an existing 1,500-foot-long, 12-foot-diameter diversion tunnel; (4) a proposed 300-foot-long, 6-foot-diameter steel and concrete penstock; (5) a proposed powerhouse containing one turbine/generator unit with an installed capacity of 950 kW; (6) a proposed 200-foot-long tailrace; (7) a proposed 1,320-foot-long, 138-kV transmission line; and (9) appurtenant facilities. The estimated average annual generation would be 8.3 GWh.

l. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to one of the public or private utility companies operating in the project area.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

n. *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 30 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, a the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $110,000.

6a. Type of Application: Preliminary Permit.

b. Project No: 7394–000.

c. Date Filed: June 23, 1983.

d. Applicant: Lehi City Corporation.

e. Name of Project: Thistle Lake Hydropower Project.

f. Location: Spanish Fork River in Utah County, Utah.

g. Filed Pursuant to: Federal Power Act, 16, U.S.C. §§ 791(a)–825(r).

h. Contact Person: Honorable Garry Sampson, Mayor, Lehi City Corporation, 51 North Center St., Lehi, Utah 84043.

i. Comment Date: February 10, 1984.

j. Competing Application: Project No. 7316–000, Date Filed May 27, 1983.

k. Project Description: The proposed project would be located at Thistle Lake, which was created by a mud slide that occured in April 1983. Ownership of the structure and impounded body of water is not clearly defined. It is anticipated that the structure will be stabilized and that the lake will become permanent. The proposed project would include: (1) the existing 224-foot-high, 800-foot-long dam; (2) an existing 300 acre reservoir; (3) an existing 700-foot-long, 8-foot-diameter steel diversion tunnel; (4) a proposed 900-foot-long, 2-foot-diameter penstock; (5) a proposed power house containing one turbine/generator unit with an installed capacity of 2.0 MW; (6) a proposed 50-foot-long tailrace; (7) a proposed 13-mile-long, 69-kV transmission line; and (8) appurtenant facilities. The estimated average annual generation would be 17.8 GWh.

l. Purpose of Project: The Applicant intends to use the power generated at the site to offset the power needs of its municipal electrical distribution system.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

n. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost for this work would be $220,000.

7a. Type of Application: 5 MW Exemption.

b. Project No.: 4700–002.

c. Date Filed: October 25, 1983.

d. Applicant: Montana Department of Natural Resources and Conservation.

e. Name of Project: Cooney Dam Hydroelectric Project.

f. Location: Red Lodge Creek, Carbon County, Montana.

g. Filed Pursuant to: Section 408 of the energy Security Act of 1980, (16 U.S.C. §§ 2705 and 2708 *as amended*).

h. Contact Person: Mr. Norman Barnard, Montana Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana 59601.

i. Comment Date: February 13, 1984.

j. Description of Project: The proposed project would be located on the Red Lodge Creek at the existing Cooney Dam, which is owned by the Applicant, and would consist of: (1) an existing 1,080 acre reservoir with a storage capacity of 28,500 acre-feet; (2) an 88-foot-high and 2,370-foot-long earthfill dam; (3) the existing outlet works in the right abutment of the dam consisting of a box-type intake structure, gate shaft, gate control, and a 630-foot-long tunnel drilled through the dam; (4) the proposed upgrading of the outlet works tunnel wall downstream of the control gate with the installation of 63-inch-diameter steel pipe, which would extend 80 feet downstream of the outlet portal of the tunnel to the powerhouse; (5) the proposed construction of a powerhouse with the installation of two turbine/generator units with a total installed capacity of 1,000 kW; (6) the proposed construction of a 4,000-foot-long, 7.2 kW transmission line and the upgrading of an existing 7-mile-long distribution line; and (7) appurtenant facilities. The Applicant estimates the average annual energy production to be 4.1 GWh.

k. Purpose of Project: The Applicant intends to sell the energy produced at the proposed project to the Montana 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 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.

8a. Type of Application: Preliminary Permit.

b. Project No: 7830–000.

c. Date Filed: November 14, 1983.

d. Applicant: Florida Water Conservancy District.

e. Name of Project: Lemon Dam Hydro Project.

f. Location: On the Florida River in La Plata County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Loyd N. Hess, P.O. Box 1157, Durango, Colorado 81301.

i. Comment Date: February 13, 1984.

j. Competing Application: Project No. 7515, Date Filed: August 8, 1983, Due Date: November 21, 1983.

k. Description of Project: The proposed project would utilize facilities at the U.S. Bureau of Reclamation's Lemon Dam and Reservoir currently operated by the Florida Water Conservancy District, and would consist of: (1) an existing 8-inch outlet pipe capable of releasing 12 cfs to generate power; (2) a proposed power plant with an installed capacity of 119 kW; (3) transmission lines; and (4) appurtenant facilities. Applicant estimates that the average annual energy generation would be 750 MWh. All power generated would be sold to Colorado Ute Electric Association.

1. 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 U.S. Bureau of Reclamation 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 $11,000.

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.

a. Type of Application: 5 MW Exemption.

b. Project No.: 5735–001.

c. Date Filed: November 29, 1983.

d. Applicant: The Town of Hopkinton.

e. Name of Project: Hopkinton Project.

f. Location: On the Contoocook River in Hillsborough County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: John R. Spencer, Dufresne-Henry, Inc., Precision Park, North Spring Field, Vermont 05150.

i. Comment Date: February 10, 1984.

j. Description of Project: The proposed project would consist of: (1) an existing 325-foot-long and 11-foot-high dam; (2) a reservoir with negligible storage capacity; (3) new intake structures at the northern side of the dam; (4) a new powerhouse with an installed capacity of 249 kW; (5) a new tailrace; (6) a new 100-foot-long transmission line; and (7) other appurtenances. Applicant owns all existing facilities. It estimates an average annual generation of 1,300,000 kWh.

k. Purpose of Project: Project energy would be sold to the Public Service Company of New Hampshire.

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 Exemption priority of control, development, and operation of the project under the terms of the exemption from licensing, and projects the Exemptee from permit or license Applicant that would seek to take or develop the project.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5 MW 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 hudroelectric 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 5 MW 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 the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary 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 C.F.R. §§ 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined

to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's 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 requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: January 10, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-981 Filed 1-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2085-000]

William A. Lockwood; Application and Motion for Confidential Treatment

January 10, 1984.

The filing individual submits the following:

Take notice that on December 30, 1983, William A. Lockwood filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, Citibank, N.A.

Director, Central Louisiana Electric Company.

In addition, Mr. Lockwood has requested confidential treatment be given his compensation by Citibank.

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 January 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-960 Filed 1-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-121-000, CP84-130-000, CP84-149-000]

Michigan Wisconsin Pipe Line Co., et al; Requests Under Blanket Authorizations

January 9, 1984.

Take notice that on December 9, 1983, Michigan Wisconsin Pipe Line Company (Mich Wisc) [1], One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP84-121-000, on December 13, 1983, as supplemented January 6, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-130-000 and on December 23, 1983, as supplemented January 4, 1984, Northern Natural Gas Company, Division of InterNorth, Inc., (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-149-000, requests pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Mich Wisc, Panhandle and Northern (jointly referred to as Companies) propose to transport natural gas on behalf of Gulf States Utilities Company (Gulf States) under the authorizations issued in Docket Nos. CP82-480-000 (Mich Wisc), CP83-83-000 (Panhandle), and CP82-401-000 (Northern), pursuant to Section 7 of the Natural Gas Act, all as more fully described in the requests on file with the Commission and open to public inspection.

The Companies indicate that Gulf States has entered into two gas purchase contracts dated August 12, 1983, and August 25, 1983, with Funk Exploration, Inc., (Funk) to acquire up to 7,650,000 Mcf of gas per contract year, which would be used by Gulf States for the generation of electricity at its Willow Glen facility near Baton Rouge, Louisiana. It is further indicated by Panhandle that the gas to be sold to Gulf States by Funk would be produced from various wells located in Texas and Beaver Counties, Oklahoma. In order that Gulf States may receive its gas, the Companies state that Gulf States has entered into separate gas transportation contracts with each of them.

Specifically, Panhandle proposes to transport 37,500 Mcf of gas on an average day and 40,000 Mcf of gas on a peak day for Gulf States for a term of 120 days effective the date of the contract and from month thereafter ending the earlier of (1) December 31, 1984; (2) the issuance or denial of a certificate by the Commission under Section 7(c) of the Natural Gas Act; or (3) upon one month's written notice from one party to the other cancelling the contract. It is indicated that the gas to be purchased by Gulf States may be gas released by Panhandle and that such supplies would be subject to Section 102 of the Natural Gas Policy Act of 1978. Panhandle indicates that it would receive Gulf States' gas from Funk at various wells located in Texas and Beaver Counties and redeliver the gas on behalf of Gulf States to either Funk Fuels Corporation (FFC) in Texas County or to Mich Wisc at the outlet of Phillips Pipeline Company's (Phillips) plant in Hansford County, Oklahoma, where Panhandle would cause the gas to be delivered to Mich Wisc. It is stated that Panhandle would charge 15 cents per Mcf for the volumes of gas redelivered to FFC and 19.01 cents per Mcf for the volumes of gas redelivered to Mich Wisc. The transportation charges for this service is based upon Panhandle's IT tariff on file with the Commission, it is explanined.

Mich Wisc proposes to transport volumes of gas not to exceed 50,000 Mcf of gas per day on a peak and average day on behalf of Gulf States for an initial term ending June 30, 1985. It is stated that Gulf States would cause Funk through FFC or Panhandle to tender the purchased volumes to Mich Wisc for further transportation to Northern. Mich Wisc states that its system is proposed to be interconnected with the tailgate of Phillips' plant in Hansford County, where Panhandle would cause Phillips to deliver gas to Mich Wisc for Gulf States' account. It is stated that a hot tap to establish an interconnection between Mich Wisc and

[1] It is noted that Mich Wisc changed its name to ANR Pipeline Company after the subject request was filed.

FFC would be constructed in Texas County and that Funk would bear the cost of the facilities. Mich Wisc proposes to deliver equivalent volumes of gas to Northern at an interconnection of the pipeline systems of Northern and Mich Wisc in Kiowa County, Kansas. For this transportation service, Mich Wisc would charge 9.1 cents per dt equivalent for gas received from FFC in Texas County and 12.9 cents per dt for gas received from Phillips in Hansford County and redelivered to Northern, it is stated. In addition, Mich Wisc states that it would charge an AIC not to exceed 5.0 cents and that these rates are based on existing rate schedules of Mich Wisc's FERC Tariff.

Northern proposes to transport and exchange 50,000 Mcf of gas on an average and peak day for the account of Gulf States to a common point on Northern's system in Pecos County, Texas, at which point title of the gas would transfer to Northern and an exchange service would commence, it is submitted. Northern further proposes to cause equivalent thermal quantities of gas to be delivered for the account of Gulf States at the existing facilities of Mich Wisc in St. Mary Parish, Louisiana. It is further proposed that Northern would charge Gulf States 13.0 cents per Mcf which is Northern's backhaul rate on its Kermit to Beaver Line. Northern states that its rates for this transportation are derived from Rate Schedule EUT–1 of its FERC Tariff.

Mich Wisc further states that Northern would direct Mich Wisc to divert quantities of gas currently deliverable to United Gas Pipe Line Company (United) from United to Sugar Bowl Gas Corporation (Sugar Bowl)[2] in St. Mary Parish, Louisiana, at the existing interconnection of Mich Wisc's and Sugar Bowl's facilities. It is indicated that Mich Wisc would charge 1.8 cents per dt equivalent of gas delivered by Mich Wisc to Sugar Bowl for the account of Gulf States plus the reimbursement to Mich Wisc for Sugar Bowl's transportation charges. Pursuant to the terms of a transportation agreement between Mich Wisc and Sugar Bowl, Sugar Bowl would transport gas from Mich Wisc to Gulf States' Willow Glen Station in Iberville Parish, Louisiana. It is further indicated that Mich Wisc would pay Sugar Bowl 15.5 cents per dt equivalent for all gas delivered to Gulf States' Willow Glen Station and that Mich Wisc would be reimbursed for the 15.5 cents per Mcf.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the requests. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–977 Filed 1–12–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–189–000]

Northern States Power Co.; Filing

January 10, 1984.

The filing Company submits the following:

Take notice that on January 3, 1984, Northern States Power Company (NSP) tendered for filing Supplement No. 2 to the Transmission Service Agreement between Northern States Power Company (Minnesota), Otter Tail Power Company and United Power Association.

NSP states that the Supplement, dated September 12, 1983, recognizes changes in interconnection facilities between Northern States Power Company and United Power Association that have resulted from load growth, and changing investment obligations under the Transmission Service Agreement dated August 17, 1964. The Transmission Service Agreement is on file with the Commission and designated as FERC Rate Schedule No. 309.

NSP requests an effective date of March 5, 1984.

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 January 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–978 Filed 1–12–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–190–000]

Pacific Power & Light Co.; Filing

January 10, 1984.

The filing Company submits the following:

Take notice that on January 3, 1983, Pacific Power & Light Company (PP&L) tendered for filing PP&L's Revised Appendix 1 for the state of Montana. The Revised Appendix 1 calculates an average system cost for the state of Montana applicable to the exchange of power between Bonneville Power Administration (Bonneville) and Pacific.

PP&L requests an effective date of August 3, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Bonneville, the Public Service Commission of the State of Montana and Bonneville's Direct Service Industrial Customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–979 Filed 1–12–84; 8:45 am]

BILLING CODE 6717–01–M

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[2] It is noted that Sugar Bowl changed its name to Acadian Pipeline Corporation after the subject request was filed.

Office of Conservation and Renewable Energy

[F-012]

Energy Conservation Program for Consumer Products; Petition for Waiver of Furnace Test Procedures from The Catalyte Energy Corporation

AGENCY: Conservation and Renewable Energy Office, Department of Energy.

SUMMARY: Today's notice publishes a "Petition for Waiver" from The Catalyte Energy Corporation (Catalyte) a division of MTD Products Inc. of Cleveland, Ohio, requesting a waiver from the existing Department of Energy (DOE) test procedures for furnaces. Catalyte manufactures residential and commercial heating appliances. The firm has developed a line of high efficiency, gas-fired furnaces and boilers that will recover latent heat by condensing water vapor in the products of combustion before they exit the furnace. The petition requests DOE to grant relief from the test procedure requirements relating to the efficiency attributable to the condensing of flue gases. Catalyte seeks to use a National Bureau of Standards (NBS) condensate test method for determining Annual Fuel Utilization Efficiency (AFUE) and steady-state efficiency instead of the present DOE test procedures which base condensation calculations on the average flue gas temperature. DOE is soliciting comments, data, and information respecting the petition.

DATE: DOE will accept comments, data and information not later than February 13, 1984.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-012, Mail Stop CE-112.2, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-112.1, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9127;

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-33, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9513.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3266, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27, Petitions for Waiver, to allow the Assistant Secretary for Conservation and Renewable Energy temporarily to waive test procedures for a particular basic model. 45 FR 64108 (September 26, 1980). Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedures or lead to results so unrepresentative of the model's true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Catalyte's petition seeks a waiver from the DOE test method basing condensation calculations on the average flue gas temperature. Instead, Catalyte requests the use of the condensate measuring method as set forth in Appendix C of National Bureau of Standards' Interagency Report 80-2210, "Recommended Testing and Calculation Procedures for Estimating the Seasonal Performance of Residential Condensing Furnaces and Boilers," dated April 1980, to determine the efficiency of its condensing furnace.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, D.C., January 9, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

November 11, 1983.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy,

Department of Energy, Forrestal Bldg., 1000 Independence Avenue, SW., Washington, D.C. 20585.

Gentlemen:

1. Petition for Waiver—This is a petition for waiver from the Department of Energy test procedure specified in 10 CFR Part 430, Subpart B, Appendix N, amended August 12, 1980. Catalyte Energy Corporation has developed and will be marketing a line of gas fired, forced air condensing furnaces and gas fired, hot water condensing boilers that are required to be tested to the procedures under 10 CFR Part 430, Appendix N, and the Appendix N tests do not fully account for latent heat recovery; therefore, we submit this petition.

2. Petitioners Business—Catalyte Energy Corporation, an MTD Company, is a manufacturer of residential high efficiency gas fired warm air furnaces and gas fired boilers that recover latent heat by condensing the water vapor in the products of combustion. These furnaces and boilers will be manufactured in five sizes ranging from 40,000 BTUH to 120,000 BTUH input. Model numbers are UF series furnaces and GB series boilers.

3. Furnace/Boiler Design Principles—Furnace and boiler models are designed with a primary finned heat exchanger with water as the heat transfer fluid, and a regenerative type blower that pre-mixes gas and air to a unique radiant type burner to obtain higher efficiencies. Condensation of water vapor from the products of combustion occurs in the primary heat exchanger.

4. Current DOE Test Does not Accurately Measure Condensate—10 CFR Part 430, amended August 12, 1980, accounts for condensation of water vapor in the combustion products based on the average flue gas temperature whereas the Catalyte Energy Corporation models UF and GB series condense more water vapor due to film condensing than the present DOE test method predicts. This difference is as high as two percentage points.

5. DOE Test is Unfair to the General Public and Petitioner—For the consumer to justify spending additional dollars for a high efficiency furnace instead of a less efficient, less expensive furnace, Catalyte Energy Corporation believes it is highly important to accurately represent the full energy efficiency of our UF series furnace and GB series boiler. High efficiency furnaces will play a major role in reduced fuel usage and operating costs which will motivate the purchase of this type of furnace. If Catalyte Energy Corporation cannot accurately represent the full energy efficiency of our UF series furnaces and GB series boilers, we will be placed at a marketing disadvantage; and it would be difficult economically to recover high development costs incurred. Failure to grant this petition would also tend to discourage all future development by furnace manufacturers of high efficiency furnaces.

6. Proposed Alternate Test Method—The recommended procedure outlined in Appendix C of Natural Bureau of Standards Publication No. NBSIR 80-2110, April 1981, will more accurately measure the efficiency of condensing furnaces or boilers; and this

petitioner requests that Catalyte Energy Corporation be granted the option to use the procedure as outlined in NBSIR 80–2110. Petitioner also requests, as in the case of Lennox, Arkla, and Heil-Quaker petitions, in-house testing by manufacturers be permitted when manufacturers have their own test facilities.

7. Public Policy—The granting of this petition will advance the nation's energy conservation policy by encouraging the consumer to purchase and use more efficient appliances and by encouraging manufacturers to continue development of high efficiency heating appliances.

8. Other Manufacturers—To our knowledge, there are five other manufacturers in the United States that market furnaces or boilers operating in the condensing mode. Also, to our knowledge, these manufacturers have submitted petitions for waiver. These manufacturers are:

a. Hydrotherm, Inc., Rockland Avenue, Northville, New Jersey, 07647; Boiler Manufacturer

b. Amana Refrigeration, Inc., Main Street, Amana, Iowa, 52204; Furnace Manufacturer

c. Lennox Industries, Inc., Dallas, Texas; Furnace Manufacturer

d. Arkla Industries, Inc., Evansville, Indiana, 47704; Furnace Manufacturer

e. Heil-Quaker Corporation, Nashville, Tennessee, 37204; Furnace Manufacturer

If additional information is required, please contact Harry Ihlenfield, Catalyte Energy Corporation.

Respectfully,

Harry L. Ihlenfield,

Chief Engineer, Catalyte Energy Corporation.

[FR Doc. 84–935 Filed 1–12–84; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board Technical Panel on Magnetic Fusion; Cancellation of Meeting

This notice is given to advise of the cancellation of the meeting of the Technical Panel on Magnetic Fusion (January 17, 1984) of the Energy Research Advisory Board as published in the issue of December 16, 1983 (48 FR 55905).

Issued at Washington, D.C. on January 12, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84–1144 Filed 1–12–84; 11:29 am]

BILLING CODE 6450–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 9
Friday, January 13, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CIVIL AERONAUTICS BOARD

[M-397 Amdt. 2, 1/6/84]

Notice of deletion of Item 2 from the January 10, 1984 meeting.

TIME AND DATE: 10:00 a.m., January 10, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

2. Docket 40201, *Employee Protection Program, Application on Behalf of Employees of Mackey International Airlines for determination of qualifying dislocation;* Order Denying Motion to Make Audit Reports Public. (Memo 501-I, OGC, BCAA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673-5068.

[S-84-995 Filed 1-10-84; 4:01 am]

BILLING CODE 6320-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, January 17, 1984, 9:30 a.m. (Eastern Time).

PLACE: Commission Conference Room No. 2001-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes.
2. A Report on Commission Operations (Optional).
3. Freedom of Information Act Appeal Request No. 83-10-FOIA-62-BA, concerning a request for a Title VII case file.
4. Freedom of Information Act Appeal No. 83-10-FOIA-135-CL, concerning a request for a closed ADEA file.
5. Management Directive 404: "Theories of discrimination to be Used in Investigating and Making Decisions in Federal Sector EEO Complaints Processing."
6. Request for Commission Approval to Contract for FY 1984 Advanced Management Skills Training.

Closed

1. Litigation Authorization; General Counsel Recommendations.
2. Proposed Withdrawal of Commissioner Charges.
3. Consideration of Certain Commissioner Charges.
4. Consideration of Certain ORA Decisions.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission also provides recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634-6748.

This notice issued January 10, 1984.

Dated: January 10, 1984.

Andrelia James,

Assistant Executive Secretary to the Commission.

[S-84-1039 Filed 1-11-84; 12:45 pm]

BILLING CODE 6750-06-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, January 9, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Scottsbluff National Bank and Trust Company, Scottsbluff, Nebraska, for consent to merge, under its charter and title, with Scotts Bluff Savings Company, Scottsbluff, Nebraska, a noninsured industrial loan and investment company.

Application of York State Bank and Trust Company, York, Nebraska, an insured State nonmember bank, for consent to merge, under its charter and title, with First York Savings Company, York, Nebraska, a noninsured industrial loan and investment company, and for consent to establish the sole office of First York Savings Company as a branch of the resultant bank.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: January 9, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-84-1006 Filed 1-10-84; 4:13 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, January 9, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,870 Reserves for Losses 170 Open Liquidation Cases

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed

meeting by authority of subsections (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(9)(B), and (c)(10)).

Dated: January 9, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-84-1007 Filed 1-10-84; 4:13 pm]

BILLING CODE 6714-01-M

5

FEDERAL RESERVE SYSTEM: (BOARD OF GOVERNORS)

TIME AND DATE: 10:00 a.m., Wednesday, January 18, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on December 22, 1983.)
2. Review of procedures for safeguarding documents containing national security information while those documents are in the Federal Reserve's custody.
3. Personnel actions (appointments, promotions, asisgnments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 10, 1984.

James McAfee,

Associate Secretary of the Board.

[S-84-1022 Filed 1-11-84; 9:41 am]

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Friday
January 13, 1984

Part II

Nuclear Regulatory Commission

State of Utah; Staff Assessment of Proposed Agreement Between the NRC and the State of Utah; Notice

NUCLEAR REGULATORY COMMISSION

State of Utah; Staff Assessment of Proposed Agreement Between the NRC and the State of Utah

Note.—This document was originally published on Friday, December 30, 1983 at 48 FR 57674. It is reprinted at the request of the Nuclear Regulatory Commission.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Proposed Agreement with State of Utah.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission is publishing for public comment the NRC staff assessment of a proposed agreement received from the Governor of the State of Utah for the assumption of certain of the Commission's regulatory authority pursuant to Section 274 of the Atomic Energy Act of 1954, as amended.

A staff assessment of the State's proposed program for control over sources of radiation is set forth below as supplementary information to this notice. A copy of the program narrative, including the referenced appendices, appropriate State legislation and Utah regulations, is available for public inspection in the Commission's public document room at 1717 H Street, NW., Washington, D.C. Exemptions from the Commission's regulatory authority, which would implement this proposed agreement, have been published in the **Federal Register** and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

DATE: Comments must be received on or before January 30, 1984.

ADDRESSES: All interested persons desiring to submit comments and suggestions for consideration by the Commission in connection with the proposed agreement should send them to the Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: John R. McGrath, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone: 301–492–9889, or Robert J. Doda, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas, 76011, telephone 817–860–8139.

SUPPLEMENTARY INFORMATION: Assessment of Proposed Utah Program to Regulate Certain Radioactive Materials Pursuant to Section 274 of the Atomic Energy Act of 1954, as amended.

The Commission has received a proposal from the Governor of Utah for the State to enter into an agreement with the NRC whereby the NRC would relinquish and the State would assume certain regulatory authority pursuant to Section 274 of the Atomic Energy Act of 1954, as amended.

Section 274e of the Atomic Energy Act of 1954, as amended, requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the **Federal Register.**

I. Background

A. Section 274 of the Atomic Energy Act of 1954, as amended, provides a mechanism whereby the NRC may transfer to the States certain regulator authority over agreement materials [1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, Section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

B. In a letter dated November 14, 1983, Governor Scott M. Matheson of the State of Utah requested that the Commission enter into an agreement with the State pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, and proposed that the agreement become effective on April 1, 1984. The Governor certified that the State of Utah has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State of Utah desires to assume regulatory responsibility for such materials. The text of the proposed agreement is shown in Appendix A and the narrative portion of the program description is shown in Appendix B.

The specific authority requested is for (1) byproduct material as defined in Section 11e(1) of the Act, (2) source material and (3) special nuclear material in quantities not sufficient to form a critical mass. The State does not wish to assume authority over uranium milling activities nor the commercial disposal of low-level radioactive waste. The State, however, reserves the right to apply at a future date to NRC for an amended agreement to assume authority in these areas. The nine articles of the proposed agreement cover the following areas:

I. Lists the materials covered by the agreement.
II. Lists the Commission's continue authority and responsibility for certain activities.
III. Allows for future amendment of the agreement.
IV. Allows for certain regulatory changes by the Commission.
V. References the continued authority of the Commission for common defense and security for safeguards purposes.
VI. Pledges the best efforts of the Commission and the State to achieve coordinated and compatible programs.
VII. Recognizes reciprocity of licenses issued by the respective agencies.
VIII. Sets forth criteria for termination or suspension of the agreement.
IX. Specifies the effective date of the agreement.

C. Utah Code Annotated 26–1–27 through 26–1–29 authorizes the State Department of Health to issue licenses to, and perform inspections of, users of radioactive materials under the proposed agreement and otherwise carry out a total radiation control program. Utah Radiation Control Regulations URC–10 through URC–80 adopted November 8, 1982 under authority of 26–1–27 through 26–1–29 Utah Code annotated 1953, as amended, provides standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. Pursuant to URC–12–165, the regulations are not applicable to agreement materials until the effective date of the agreement. Since January 1, 1983, the State has been licensing and inspecting users of naturally occurring and accelerator produced radioactive materials.

D. The environmental radiation issues with which the Department has been involved include: monitoring assessment of the impact of radioactive fallout from nuclear weapons testing at the Nevada Test Site; monitoring uranium mill tailings, particularly at the Vitro uranium mill; and monitoring indoor radon in Salt Lake County.

[1] A. Byproduct materials as defined in 11e(1);
B. Byproduct materials as defined in 11e(2);
C. Source materials; and
D. Special nuclear materials in quantities not sufficient to form a critical mass.

The Department has also been involved in inspections of x-ray users since 1961 including involvement in the U.S. FDA studies Nationwide Evaluation of X-Ray Trends (NEXT) and Dental Exposure Normalization Technique (DENT).

II. NRC Staff Assessment of Proposed Utah Program for Control of Agreement Materials

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[2]

Objectives

1. *Protection.* A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.

Based upon the analysis of the State's proposed regulatory program the staff believes the Utah proposed regulatory program for agreement materials is adequately designed to protect the health and safety of the public against radiation hazards.

Radiation Protection Standards

2. *Standards.* The State regulatory program shall adopt a set of standards for protection against radiation which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

Statutory authority to formulate and promulgate rules for controlling exposure to sources of radiation is contained in Utah Code Annotated 26–1–5 and 26–1–27. In accordance with that authority, the State has adopted Radiation Control Regulations on November 8, 1982 which include radiation protection standards which would apply to by product, source and special nuclear naterials in quantities not sufficient to form a critical mass upon the effective date of an agreement between the State and the Commission pursuant to Section 274b of the Atomic Energy Act of 1954 as amended.

Reference: Utah Radiation Control Regulations URC–10 through 80.

3. *Uniformity in Radiation Standards.* It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and level of radiation and concentrations of radioactivity, as fixed by 10 CFR Part 20 of the NRC regulations based on officially approved radiation protection guides.

Technical definitions and terminology contained in the Utah Radiation Control Regulations including those related to units of measurement and radiation doses are uniform with those contained in 10 CFR Part 20, except that the definition of byproduct material conforms to that contained in the Atomic Energy Act prior to enactment by Congress of Pub. L. 95–604, 92 Stat. 3021 et seq., November 8, 1978, the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). In view of the fact that the State does not wish to assume authority over uranium milling activities pursuant to UMTRCA the absence of a definition of byproduct material conforming to that contained in Section 11e(2) of the Atomic Energy Act of 1954, as amended, is not viewed as a significant departure and should not be considered an impediment towards signing of a Section 274b agreement for the materials requested.

Reference: URC–12, 24.

4. *Total Occupational Radiation Exposure.* The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.

The Utah regulations cover all sources of radiation within the State's jurisdiction and provide for consideration of the total radiation exposure of individuals from all sources of radiation in the possession of a licensee or registrant.

Reference: URC–24–010,020.

5. *Surveys, Monitoring.* Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

The Utah requirements for surveys to evaluate potential exposure from sources of radiation and the personnel monitoring requirements are uniform with those contained in 10 CFR Part 20.

References: URC–12–050 (36) and (62), URC–12–100, URC–24–070, and URC–24–085.

6. *Labels, Signs, Symbols.* It is desirable to achieve uniformity in labels, signs, and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

The prescribed radiation labels, signs, and symbols are uniform with those contained in 10 CFR Parts 20, 30 thru 32 and 34. The Utah posting requirements are also uniform with those of Part 20.

References: URC–22–110, URC–24–090, URC–24–095, and URC–48–020.

7. *Instruction.* Persons working in or frequenting restricted areas shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, Section 19.16 and to be represented during inspections as specified in Section 19.14 of 10 CFR 19.

The Utah regulations contain requirements for instructions and notices to workers that are uniform with those of 10 CFR Part 19.

Reference: URC–48.

8. *Storage.* Licensed radioactive material in storage shall be secured against unauthorized removal.

The Utah regulations contain a requirement for security of stored radioactive material.

Reference: URC–24–120.

9. *Radioactive Waste Disposal.* (a) Waste disposal by material users. The standards for the disposal of radioactive material into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR Part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR 20.

The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR Part 61.

(b) Land Disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR Part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and

[2] NRC Statement of Policy published in the Federal Register January 23, 1981 (46 FR 7540–7546), and revision of Criterion 9 published in the Federal Register July 21, 1983 (48 FR 33376).

stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (Section 151(a)(2), Pub. L. 97–425).

Utah Radiation Control Regulations contain provisions relating to the disposal of radioactive materials into the air, water and sewer and burial in soil which are uniform with those of 10 CFR Part 20. The current Utah regulations were adopted prior to the publication of 10 CFR Part 61 and the corresponding changes to § 20.311 of Part 20. The Utah regulations, therefore, have no equivalent to § 20.311 or the waste classification system included in Part 61. Governor Matheson's letter of November 14, 1983 indicated that the State's radiation control regulations will be revised through standard rulemaking procedures to conform to the Federal standard regarding the radioactive waste manifest system and the waste classification system.

Since the waste manifest system does not become effective until December 27, 1983 and Agreement States are normally given three years to formally adopt significant changes to NRC regulations, the absence of these provisions in Utah regulations is not viewed as a significant deficiency at this time and should not be considered an impediment to the proposed agreement. The waste manifest system will be implemented by amendments to the site operator licenses. Utah, as well as other Agreement State, licensees will be required to meet the provisions of the site operator's license if they wish to use the site after December 27, 1983.

References: URC–24–130, 135, 140, 145, 150 and 160.

10. *Regulation Governing Shipment of Radioactive Materials.* The State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.

The Utah regulations conform to those contained in NRC regulations prior to the recent (August 5, 1983) publication of a final rule amending Part 71 to achieve compatibility with the transport regulations of the International Atomic Energy Agency (IAEA). The Agreement States have been notified that these changes are considered matters of compatibility. Utah, as well as the other Agreement States, will need to make corresponding changes to their regulations. The lack of these provisions in the current Utah regulations is not viewed as a significant departure at this time since Agreement States are normally given three years to adopt important NRC rule changes, and should not be considered an impediment to the proposed agreement.

References: URC–12-Appendix A and Appendix B; URC–19-400, 500 and 510.

11. *Records and Reports.* The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) unform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

The Utah regulations require the following records and reports by licensees and registrants:

(a) Records covering personnel radiation exposures, radiation surveys, and disposals of materials.

Reference: URC–24–170.

(b) Records of receipt and transfer of materials.

Reference: URC–12–080.

(c) Reports concerning incidents involving radioactive materials.

Reference: URC–24–180, 190, 200, and 205.

(d) Reports to former employees of their radiation exposure.

Reference: URC–48–040(3).

(e) Reports to employees of their annual radiation exposure.

Reference: URC–48–040(2).

(f) Reports to employees of radiation exposure in excess of prescribed limits.

Reference: URC–48–040(4).

12. *Additional Requirements and Exemptions.* Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

The Utah Bureau of Radiation Control is authorized to impose upon any licensee or registrant, by rule, regulation, or order such requirements in addition to those established in the regulations as it deems appropriate or necessary to minimize danger to public health and safety or property.

Reference: URC–12–100(2).

The Bureau may also grant such exemptions from the requirements of the regulations as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

Reference: URC–12–125(1).

Prior Evaluation of Uses of Radioactive Materials

13. *Prior Evaluation of Hazards and Uses, Exceptions.* In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

Prior to the issuance of a specific license for the use of radioactive materials, the Utah Bureau of Radiation Control will require the submission of information on, and will make an evaluation of, the potential hazards of such uses, and the capability of the applicant.

References: URC–19–220 and URC–22–020. Utah Program Description Section III.F.

Provision is made for the issuance of general licenses for byproduct, source and special nuclear materials in situations where prior evaluation of the licensee's qualifications, facilities, equipment and procedures is not required. The regulations grant general licenses under the same circumstances as those under which general licenses are granted in the Commission's regulations.

References: URC–19–220 and URC–21.

14. *Evaluation Criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

In evaluating a proposal to use agreement materials, the Utah Bureau of Radiation Control will determine that:

(1) The applicant is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with the regulations in such a manner as to minimize danger to public health and safety or property;

(2) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property; and

(3) The issuance of the license will not be inimical to the health and safety of the public.

Other special requirements for the issuance of specific licenses are contained in the regulations.

References: URC–22–040, 070, 090, and 110.

15. *Human Use.* The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.

The Utah regulations require that the use of radioactive material (including sealed sources) on or in humans shall be by a physician having substantial experience in the handling and administration of radioactive material and, where applicable, the clinical management of radioactive patients.

Reference: URC–22–070

Inspection

16. *Purpose, Frequency.* The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

Utah materials licensees will be subject to inspection by the Bureau of Radiation Control. Upon instruction from the Bureau, licensees shall perform or permit the Bureau to perform such reasonable tests and surveys as the Bureau deems appropriate or necessary. The frequency of inspections is dependent upon the type and scope of the licensed activities and will be at least as frequent, and in most cases more frequent, as inspections of similar licenses by NRC.

References: URC–12–090 and 100; URC–48–050–060–070 and 080; Utah Program Description Section III.G

17. *Inspections Compulsory.* Licensees shall be under obligation by law to provide access to inspectors. **Folios** 807–809 %118.0

Utah regulations state that licensees shall afford the Bureau at all reasonable times opportunity to inspect sources of radiation and the premises and facilities wherein such sources of radiation are used or stored.

Reference: URC–12–090.

18. *Notification of Results of Inspection.* Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

Following Bureau inspections, each licensee will be notified by letter of the results of the inspection. The letters indicate if the licensee is in compliance and if not, list the areas of noncompliance.

Reference: Utah Program Description Section III.H.

Enforcement

19. *Enforcement.* Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.

The Bureau of Radiation Control is equipped with the necessary powers for prompt enforcement of the regulations. Where conditions exist that create a clear presence of a hazard to the public health that requires immediate action to protect human health and safety, the Bureau may issue orders to reduce, discontinue or eliminate such conditions. Such orders may be a written directive to modify, suspend or revoke a license, to cease and desist from a given practice or activity, or to take such other action as may be appropriate. License modification orders will be issued when some change in licensee equipment, procedures, or management controls is necessary. Suspension orders will be used to remove an immediate threat to the public health or when a licensee has not responded adequately to other enforcement action. Revocation orders will be used when a licensee is unable or unwilling to comply with Bureau requirements. Cease and desist orders will be used to stop an unauthorized activity that has continued despite notification by the Bureau that such activity is unauthorized. In addition, the State will request from the legislature authority to impose civil penalties for violation of the Utah Radiation Control Regulations.

References: URC–12–130 and 140, Utah Program Description Section III.H., and Governor Matheson's letter dated November 14, 1983.

Personnel

20. *Qualifications of Regulatory and Inspection Personnel.* The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. The person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear

material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These people should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, the trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories, proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

a. *Number of Personnel.* There are approximately 150 NRC specific licenses in the State of Utah. Under the proposed agreement, the State would assume responsibility for about 135 of these licenses. The Bureau of Radiation Control is currently staffed with five professional persons. In addition, there is currently one vacancy in the program. Two individuals will be assigned full time to the materials program. Three others will be trained to provide backup. We estimate the State will need to apply a minimum of 1.4 to 2.0 staff-years of effort to the program. The present personnel together with their assigned responsibilities are as follows:

Larry F. Anderson: Director, Bureau of Radiation Control. Responsible for administration of Bureau programs. Estimated 0.2 staff-year in materials program.

Blaine Howard: Health Physicist. Responsible for licensing and inspection in materials program. Estimated 1.0 staff-year in materials program.

Arnold J. Peart: Radiation Specialist 23. Responsible for licensing and inspection in materials program. Estimated 1.0 staff-year in materials program.

Donald G. Mitchell: Health Physicist. Responsibilities primarily in x-ray program. Will receive training in licensing and inspection in materials program. Estimated 0.1 staff-year in materials program.

Gerald R. Ripley: Health Physicist. Responsibilities primarily in x-ray program. Will receive training in licensing and inspection in materials program. Estimated 0.1 staff-year in materials program.

b. *Training.* The academic and specialized short course training for those persons involved in the administration, licensing and inspection of radioactive materials is shown below.

Larry F. Anderson—B.S. Chemistry, MPA (Health), Brigham Young University.

NIOSH Course 549, *Recognition, Evaluation, and Control of Occupational Hazards.* October, 1972.

NIOSH Course 582, *Sampling and Evaluating Airborne Asbestos Dust.* April 10–12, 1973.

Utah State Division of Health, *Visible Emissions Evaluation Course.* June 19, 1973.

American Industrial Hygiene Association, *Industrial Toxicology Seminar.* A 24-hour course ending April 30, 1975.

OSHA, *Fundamentals of Occupational Injury Investigation.* Short course ending April 1, 1977.

United States Nuclear Regulatory Commission, *Radiological Emergency Response Operations Training Course.* A 64-hour course ending January 27, 1978.

U.S. Environmental Protection Agency, *Grants Administration Seminar.* A 16-hour course ending May 16, 1979.

Safety International Training Center, *Hydrogen Sulfide and Equipment for Instructors.* A 12-hour course ending June 19, 1979.

Rocky Mountain Center for Occupational and Environmental Health, University of Utah, *Health and Exposures in the Smelter Environment.* A 20-hour course ending March 29, 1980.

Blaine Howard—B.S. Math and Physics, Ricks College. M.S. Radiological Health, New York University. M.S. Physics and Math, Brigham Young University.

Medical X-Ray Protection—BRH Rockville, MD.—October 30–Nov. 10, 1972.

Radiological Emergency Response Operations (REPR), Las Vegas and Nevada Test Site, 1978.

"States Role in Radioactive Material Management." The National Legislative Conference, Las Vegas, Dec. 9–11, 1974.

Drinking Water Regulations and Radioanalytical workshop EPA, Denver, Jan. 10–12, 1978.

X-Ray Workshop, Richfield, Utah, Mar. 14–15, 1979.

Actinides in Man and Animals—Workshop, Snowbird, UT., Oct. 15–17, 1979.

Nuclear Medicine—NRC New York City, Sept. 8–12, 1980.

NWTS Annual Information Meeting—Columbus, Ohio, Dec. 8–10, 1980.

Waste Management 1981—American Nuclear Society, Tucson, AR, Feb. 23–27, 1981.

Orientation Course in "Licensing Practices and Procedures"—NRC, Silver Spring, MD., Sept. 14–25, 1981.

Inspection Procedures Course—NRC, Atlanta, GA, July 26–30, 1982.

Arnold J. Peart—B.S. Education, Utah State University (minor—chemistry and math).

Nuclear Regulatory Commission—Orientation Course in licensing practices and procedures, 1982.

Nuclear Regulatory Commission—Medical Use of Radionuclides, 1982.

Federal Emergency Management Agency—Radiological Emergency Response Course, 1982.

Nuclear Regulatory Commission—Radiochemistry for State Regulatory Personnel, 1983.

Dept. of Health and Human Services—Basic Course for Investigators, Diagnostic X-Ray Survey, 1983.

Nuclear Regulatory Commission—Safety Aspects of Industrial Radiography, 1983.

Donald G. Mitchell—B.A. Chemistry and Physics, Brigham Young University. M.S. Physics and Math, University of Wisconsin.

Oak Ridge Assoc. Univ.—Health Physics (10 weeks) 1976.

Reynolds Electrical and Engineering—Rad. Emergency Response, 1978.

Food and Drug Administration—Diagnostic X-Ray Survey, 1979.

U.S. Nuclear Regulatory Commission—Industrial Radiography, 1982.

Eastman Kodak Company—Radiological Imaging, 1982.

Gerald R. Ripley—B.S. Biology, University of Utah. B.S. Pharmacy, University of Utah.

c. *Experience.* Mr. Anderson has been with the Bureau since 1972 and has had supervisory and administration responsibilities since 1978. Mr. Howard has been a health physicist with the State since 1972 and has had experience in health physics since 1954. Mr. Howard was certified by the American

Board of Health Physics in 1978. Mr Peart has been employed by the State since 1975, from 1975 to 1982 as an industrial hygienist and from 1982 as a radiation specialist. Messrs. Howard and Peart have accompanied NRC inspectors on materials inspections in the State of Utah. Mr. Mitchell has been a health physicist with the State since 1975. Prior to 1975 Mr. Mitchell had experience as a radiochemist and a teacher of chemistry and physics. Mr. Ripley has been a health physicist and industrial hygienist with the State since 1979. Mr. Ripley has prior experience as a radiochemist and pharmacist.

Reference: Utah Program Description Section IV and Appendix B.

21. *Conditions Applicable to Special Nuclear Materials, Source Material and Tritium.* Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms (1) transfers of special nuclear material, source material and tritium and (2) periodic inventory data.

The State's regulations do not prohibit or interfere with the duties imposed by the NRC on holders of special nuclear material owned by the U.S. Department of Energy or licensed by NRC, such as the responsibility of licensees to supply to the NRC reports of transfer and inventory.

Reference: URC–12–040 and 125.

22. *Special Nuclear Material Defined.* The definition of special nuclear material in quantities not sufficient to form a critical mass, as contained in the Utah Radiation Control Regulations, is uniform with the definition in 10 CFR Part 150.

Reference URC–12–050, Definition (60).

Administration

23. *Fair and Impartial Administration.* The Utah Health Code provides for administrative and judicial review of actions taken by the Department of Health. Any person may, upon written request, be given an opportunity for an informal hearing before the Department. If the matter cannot be resolved at the informal hearing, the person may then request a hearing before an impartial hearing officer. The person may then file in the district court for judicial review of a final determination of the executive director of the Department.

Reference: Utah Health Code Section 26–23–2.

24. *State Agency Designation.* The Utah Department of Health has been designated as the State's radiation control agency.

References: Utah Health Code 26–1–28. Governor's Matheson's letter dated November 14, 1983.

25. *Existing NRC Licenses and Pending Applications.* The Bureau has made provision to continue NRC licenses in effect temporarily after the transfer of jurisdiction. Such licenses will expire either 90 days after receipt from the Bureau of a notice of expiration or on the date of expiration specified in the federal license, whichever is earlier.

Reference: URC–12–165.

26. *Relations With Federal Government and Other States.* There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

The proposed agreement declares that the State will use its best efforts to cooperate with the NRC and other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of like materials.

Reference: Governor Matheson's letter dated November 14, 1983, Proposed Agreement Between the State of Utah and the Nuclear Regulatory Commission, Article VI.

27. *Coverage, Amendments, Reciprocity.* The proposed Utah agreement provides for the assumption of regulatory authority under the following categories of materials within the State:

(a) Byproduct materials, as defined by Section 11e(1) of the Atomic Energy Act, as amended.

(b) Source materials.

(c) Special nuclear materials in quantities not sufficient to form a critical mass.

Reference: Proposed Agreement, Article I.

Provision has been made by Utah for the reciprocal recognition of licenses to permit activities within Utah of persons licensed by other jurisdictions. This reciprocity is like that granted under 10 CFR Part 150.

Reference: URC–19–250.

28. *NRC and Department of Energy Contractors.* The State's regulations provide that certain NRC and DOE contractors or subcontractors are exempt from the State's requirements for licensing and registration of sources of radiation which such persons receive, possess, use, transfer, or acquire.

Reference: URC–12–125(2).

III. Staff Conclusion

Section 274d of the Atomic Energy Act of 1954, as amended, states: The Commission shall enter into an agreement under subsection b of this section with any State if:

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) The Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects compatiable with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed amendment.

The staff has concluded that the State of Utah meets the requirements of Section 274 of the Act. The State's statutes, regulations, personnel, licensing, inspection and administrative procedures are compatible with those of the Commission and adequate to protect the public health and safety with respect to the materials covered by the proposed agreement. Since the State is not seeking authority over uranium milling activities subsection o. is not applicable to the proposed Utah agreement.

Dated at Bethesda, Maryland, this 20th day of December 1983.

For the U.S. Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

Appendix A—Proposed Agreement Between the United States Nuclear Regulatory Commission and the State of Utah for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, As Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to by-product materials as defined in sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, The Governor of the State of Utah is authorized under Utah Code Annotated 26–1–29 to enter into this Agreement with the Commission; and

Whereas, The Governor of the State of Utah certified on November 14, 1983 that the State of Utah (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the

materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and

Whereas, The Commission found on ———, that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in section 11e.(1) of the Act;

B. Source materials; and

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission;

E. The land disposal of source, byproduct and special nuclear material received from other persons; and

F. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area(s) specified in Article II, paragraph E or F, whereby the State can exert regulatory control over the materials stated therein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j. of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act.

Article IX

This Agreement shall become effective on ———, 1984, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Salt Lake City, Utah, in triplicate, this ——— day of ———, 1984.

For the United States Nuclear Regulatory Commission.

Nunzio J. Palladino,

Chairman.

For the State of Utah.

Scott M. Matheson,

Governor.

Appendix B—Narrative Portion of Program Description

State of Utah Bureau of Radiation Control Radiation Regulatory Program

I. Foreword

The 1967 Utah Legislature passed the "Radiation Protection Act" which authorized the State Board of Health to require the registration of ionizing radiation sources and to adopt the necessary rules and regulations for controlling exposure to harmful ionizing radiation (26–1–27). The State Department of Health was designated to establish, carry out and enforce a radiation control program. (26–1–28). The governor was authorized to enter into agreements with the federal government to assume certain responsibilities with respect to sources of ionizing radiation. (26–1–29).

Upon a decision by the Utah Attorney General's office that the 1967 legislation was not sufficient to carry out these functions, the 1981 legislature passed a revised version which overcame the deficiencies by adding authority to license.

Copies of this legislation are enclosed as Appendix A. The Bureau of Radiation Control is now aggressively pursuing Agreement status.

II. History

Previous to 1961, radiation problems received limited attention. During this time attention was called to a proposal to use radioactive tailings from the Vitro uranium mill as fill material in the construction of an interstate highway. The Department of Health maintained its position which had been established earlier in refusing permission to move any of the material for any purpose. This position has continued as Utah sought help from federal agencies to

define the problems associated with uranium mill tailings.

In 1961, a chemist was added and assigned to work ¼ time in radiation related matters. He received training in x-ray from the U.S. Public Health Service and attended a 10 week course in Health Physics at Oak Ridge, Tennessee. He accompanied AEC inspectors as they visited licensees in Utah and inspected x-ray facilities upon request. In 1962 the U.S. Public Health Service assigned one of their staff to survey the x-ray facilities in Utah. He spent just over a year and surveyed all the x-ray facilities in Utah.

In 1962 high levels of radioactive contamination from the Sedan Atomic test at the Nevada Test Site were found in Utah milk. The Health Department diverted the most highly contaminated milk from human use until the Iodine-131 could decay. This called attention to the need for a radiological laboratory in Utah. With the assistance of the U.S. Public Health Service a laboratory was established in 1964 with both wet chemistry and instrumental analysis. The laboratory has been continually upgraded. A lithium drifted germanuim detector with computer electronics was added and, at present, the laboratory has provisional interim certification for drinking water analysis for gross alpha, gross beta, radium-226, radium-228 and tritium.

As a result of the Sedan contamination problem, a milk sampling network was established and weekly samples were analyzed for contamination until well after atmospheric testing was discontinued at the Nevada Test Site. Until 1972 medical and dental x-ray facilities were surveyed upon request and some industrial x-ray facilities were looked at.

In 1972, the Radiation and Occupational Health Section of the Division of Environmental Health was expanded by addition of three more professionals, one a full-time health physicist. Efforts were made to establish radiation control regulations but opposition was encountered and these efforts were unsuccessful. Inspections of x-ray facilities were performed using NCRP Recommendations as a standard. Letters were sent to the facilities specifying items of deficiency. The majority of the installations complied voluntarily with the recommendations. Bureau staff members have accompanied AEC (NRC) inspectors on numerous inspections of Utah licensees, contributing to the inspection report by invitation.

In 1972, Bureau staff assisted the Environmental Protection Agency in sampling for radon and radon daughters on and near the Vitro uranium mill site. A network of samplers was set up and serviced by Radiation and Occupational Health personnel. In 1973, Utah cooperated with the Bureau of Radiological Health in its Nationwide Evaluations of X-ray Trends (NEXT) to gather statistical data about x-ray exposure to the public. This study (NEXT) was continued for a number of years.

In 1975, a second professional health physicist was employed full time in radiological health. With this additional help a dental x-ray program, Dental Exposure Normalization Technique (DENT) was carried out to reduce exposure to patients from dental x-rays. The new techniques which were selected by the dentists reflect a 49% reduction in dental x-ray exposure. Programs were conducted with practitioners of various disciplines to improve radiographic quality while reducing patient exposure. In 1978, radon daughter concentrations were measured in some Salt Lake County businesses which were more than 5 times the maximum continuous levels allowed in uranium mines. This gave additional impetus to bills being introduced into Congress by the Utah delegates which asked for federal assistance for the clean up of uranium mill tailings. These efforts and the efforts of other states culminated in the passage of Pub. L. 95–604 "The Uranium Mill Tailings Radiation Control Act of 1978".

In 1972, an E.P.A. study identified many locations throughout much of Utah where the use of uranium mill tailings as fill material was indicated. Beginning in 1978, indoor radon measurements were made by the Bureau of Radiation Control at those locations in Salt Lake County where uranium mill tailings were used near or under habitable buildings. Through the cooperation of the U.S. Department of Energy, aerial surveys were made to complete the identification of sites where tailings were used in a large part of Salt Lake County and other Utah communities. Some additional businesses were found with high radon concentrations.

In 1979, a third full time health physicist was added to the staff to work with uranium mill tailings remedial action and assist with a new contract with the Bureau of Radiological Health to make compliance surveys of new diagnostic x-ray machines.

In 1980, a fourth full time health physicist was added to the staff to provide technical support for the governor's "High Level Nuclear Waste Task Force". This task force was appointed on June 2, 1980 to oversee the U.S. DOE's field operations in Utah, make recommendations to the governor and communicate information to the people of Utah.

In 1981, a contract was signed with Mound Laboratory for the State to monitor properties near the Vitro Uranium mill. A health physics technician was added to the staff to fill the Mound contract requirements.

In July 1981, the occupational health functions were transferred to the Industrial Commission and the Bureau was renamed the Bureau of Radiation.

In January 1982, the Bureau of Radiation was divided to form the Bureau of Uranium Mill Tailings Management and the Bureau of Radiation Control. The Bureau of Radiation Control under a new director was given the task of preparing a complete radiation control program in preparation for entering an agreement with the U.S. Nuclear Regulatory Commission.

In December 1982, the Bureau of Uranium Mill Tailings Management was combined with the Bureau of Radiation Control with the new organization as indicated on the Function Chart in Appendix B.

The Utah Radiation Control Regulations were formally adopted and became effective on January 1, 1983. Since that date, the Bureau has been licensing and inspecting users of naturally occurring and accelerator produced radioactive materials (NARM). The regulations provide for a "Radiation Technical Advisory Committee" of eight (8) members to advise, comment and provide technical assistance to the Bureau Director.

III. Administrative Policy and Procedures

A. *Introduction and Purpose.* The following procedures are to assure uniformity, continuity and appropriate treatment in all licensing, registration and regulatory practices and to maintain radiation exposures to all persons in the State as low as is reasonably possible.

Procedures are also to assure that emergency response to radiological incidents is correlated with the appropriate government agencies and that the proper information is provided to the public.

Procedures shall also provide for feedback to the Bureau director from the staff on the status of activities in regard to regulatory actions, problem cases, inquiries and need for regulation revisions.

B. *Priority of Responsibilities.* The responsibilities for Radiation Control, after the program is established, shall be given priority in the following order:

1. Emergency response to radiological incidents.
2. Respond to request by workers for inspection.
3. Routine inspection of radiation sources.
4. Reinspection of non-compliant facility and enforcement procedures.
5. Registration or licensing of radiation sources.
6. Review plans as submitted under URC–28–032.
7. Assist licensee in developing program under URC–24–015.

C. *Emergency Response Procedures.* Emergency response to radiological incidents will take precedence over other duties and will require immediate response by one or more technical staff.

1. Names of emergency response team members will be left with the department operator during off duty hours.
2. Emergency response kits will be kept in the office ready for immediate response.
3. When an emergency situation is reported the following information will be obtained.
   a. Name and telephone number of caller.
   b. Alternate contact and telephone number.
   c. Company or agency of caller.
   d. Location of incident.
   e. Type and amount of radioactive material.
   f. Detailed account of the problem.
   g. Shipper address and telephone number.
   h. Consignee address and telephone number.
   i. Who has been called in.
4. The leader of the emergency response team will have successfully completed the NRC Radiological emergency response training course.
5. All questions by the news media will be referred to the Bureau Director.

D. *Procedure for Response to Workers Request for Inspection.* 1. The request for inspection shall be in writing and outline the alleged violations.

2. The request shall be reviewed by bureau personnel and compared to past inspection reports.

3. A copy of the alleged violations will be delivered to the licensee at the time of the inspection.

4. Response to the request by workers that an inspection be performed under URC–48–070 shall be made as soon as practicable, preferably no later than 7 working days from receipt of written request.

5. Following the inspection a written report will be furnished to the complianant of any violations of the Bureau of Radiation Control Regulations.

6. The identity of the individuals requesting the inspection shall be protected as provided for in URC–48–070.

E. *Procedure for Registration of Ionizing Radiation Machines.** The following outline describes the procedures for keeping track of the registration and survey program. In all cases, the registrant should submit a completed BRC Form 10 along with the registrant's signature. Once the secretary has received this application, a registration certificate will be typed on BRC Form 11 and issued to the applicant.

1. Registration.

a. On receipt of an application:

(1) Check to assure that applicant has not previously been registered.

(2) If not registered, obtain new registration number, county-discipline-sequential.

(3) Note if the appropriate fee is enclosed. If any discrepancies are noted, registration and fee is returned for corrective actions by registrant.

b. Initiate folder.

(1) Place application form and a copy of the registration certificate in the folder. Add any other correspondence concerning this registration.

(2) Original copy of registration certificate is sent to the registrant for his files.

c. Registrant's name, address, registration number, inspection due date, and inspection information will be entered on to the word processor.

d. Mail the original certificate to the registrant. If a new registrant, the following will be included with this certificate:

(1) Notice to Employee, BRC Form 4.

(2) Copy of those sections of the Bureau of Radiation Control Regulations that apply.

2. Change in Registration.

a. Address Change.

Change all registration sheets and update word processor and indicate date.

b. Equipment Change.

Change all registration sheets and update word processor and indicate date.

c. Deaths.

(1) Mark all registration sheets accordingly.

(2) Mark manila folder "inactive", only if (4) is completed.

(3) Do not re-issue number.

(4) Locate and maintain surveillance on equipment until it is properly disposed of.

d. Retirements.

(1) Mark all registration sheets accordingly.

(2) Mark manila folder "inactive", if (4) is completed.

(3) Do not re-issue number.

4. Make sure machine is properly disposed of.

3. Procedures for Handling Completed Survey Reports:

After an x-ray unit has been registered, staff members will perform a radiation survey to determine if the registrant meets the Bureau of Radiation Control regulations. During this survey, the staff member(s) will place data on "survey reports". All reporting documents will be held in registrant's file. A letter to the registrant will be issued from the Bureau informing him if he is in compliance or explain items of non-compliance.

a. File result sheet in manila folder. The letter indicating compliance or listing items of non-compliance will be issued within 15 days after completion of inspections. A copy of this will be filed with the survey result sheet in the manila folder.

b. Non-Compliance Survey Reports.

The non-compliance survey reports will be filed on the word processor, 30-day action is required.

4. Follow-up Procedure.

a. Pull non-compliant registrants from word processor on a monthly basis for follow-up. If installation becomes "in compliance" the data on the word processor will be corrected, if non-compliance continues further action will be taken.

b. Send follow-up letters to all appropriate registrants with non-compliances, note issuance of follow-up letter on word processor.

c. If answer is not received during second 30 day period, an additional 15-day notice will be written.

d. If answer is not received during 15-day period, file will be referred to the Attorney General's office for appropriate action.

5. Procedures When "Non-Compliance" Items are corrected.

a. We will accept a written notice with signature that items of non-compliance have been corrected.

b. Upon receiving such information the following will be done:

(1) The compliance action notice from the responsible person will be placed in the manila folder for future inspection and a corrective action letter will be issued by the Bureau.

(2) Result sheet will be marked compliance by indicating date information was received and by what route. The information will be left in the manila folder.

F. *Procedures for Licensing Radioactive Material:* The specific material to be licensed by the State will be: (a) By-product material (as defined under 11(a) of the Atomic Energy Act of 1954 as amended), (b) Source Material, (c) Special nuclear material in quantities not sufficient to form a critical mass. The United States Nuclear Regulatory Commission Guides will be used for evaluation of all radioactive material applications.

1. All applicants must submit a completed state form (e.g., BRC–01 or BRC—02) along with the application fee. Once the application is received, a file folder will be created and a sequence number given.

2. Applications will be reviewed in sequence by assigned staff. Staff reviewing license applications will have completed the NRC course on licensing practices and procedures.

3. Reviewing staff will determine if application is for a new license, renewal or an amended license. Renewal and amended license applications will be referred to the original file.

4. The reviewer shall determine if all requested material has been submitted and fees paid. If material is not complete or if fees have not been paid, the applicant will be notified that no processing of the application will take place until those items are rectified.

5. If the application is in order and fees paid, it will be reviewed using the following guide lines:

a. Does the application meet the requirements of the BRC regulations?

b. Is the applicant qualified by reasons of training and experience?

c. Are the facilites adequate to carry out the proposed activity? (This may include onsite inspections.)

6. If the application meets all the requirements a license will be issued using form BRC–03 and listing any special conditions or limitations which are applicable.

a. Included with the license mailed to the licensee will be a copy of "Notice to Employees" BRC Form–04 and a copy of Bureau of Radiation Control regulations that apply.

b. A copy of the license and the application will be placed in the applicants permanent file.

c. One file on the word processor will be completed for each license, including the name and address of applicant, the license number, the inspection due date, completed inspection date and remarks.

7. If the application does not meet the requirements, the applicant will be notified by letter of any deficiencies, or any additional information and changes which may be necessary.

G. *Inspection priority.*

Priority	Type of license or facility	Inspection frequency	
		Initial (months)	Routine (months)
I	Reserved		
II	Radiography (field), Medical-Broad, Academic Type A, Uranium-By-product.	6	10
III	Hospital x-ray, Orthopedic x-ray Clinics, Radiology x-ray Clinics, Therapeutic x-ray, Accelerators, Radiography (in-house).	6	12
IV	Waste collection, (prepackaged waste only) Industrial, Industrial type B Broad.	6	15
V	Industrial Limited, Academic, Civil Defense, Soil Moisture and Density Gauges, Chiropractic x-ray, other medical x-ray.	6	16–24
VI	Medical limited, Eye Applicator, Gauge Repair, Gauge Use, Chromatography, Light Sources, Leak Test Services, Calibration Sources, Dental X-Ray.	6	12–36
VII	Veterinary x-ray	12	48
VIII	Teletherapy	6	24
IX	Walk-In Type Irradiater	6	12

*Note.—See Definition URC–12–050(43) in Utah Radiation Control Regulations.

*Note.—Other medical x-ray includes all diagnostic x-ray except hospitals, radiology clinics, orthopedic clinics, dental and veterinary x-ray.

H. *Enforcement Procedures.* The United States Nuclear Regulatory Commission Inspection Guides will be used to establish format for inspection procedures.

1. Following an inspection, the licensee will be notified by letter of (a) compliance including the results of the inspection, or (b) the areas of non-compliance and requesting written notification within 30-days* describing:

a. Corrective steps which have been taken by the licensee and the results achieved.

b. Corrective steps which will be taken to prevent recurrence; and

c. The date when full compliance will be achieved.

2. If response in not received in 30 days, a second letter will be sent requiring response within 15 days to avoid issuance of an order or other legal proceedings.

3. An order is a written directive to modify, suspend or revoke a license; to cease and desist from a given practice or activity, or to take such other action as may be appropriate.

a. License modification order will be issued when some change in licensee equipment, procedures, or management controls is necessary.

b. Suspension Orders will be used:

(1) To remove a threat to the public health.

(2) When licensee has not responded adequately to other enforcement action.

(3) When the licensee interfers with the conduct of an inspection; or

(4) For any reason not mentioned above for which license revocation is legally authorized.

c. Revocation Orders will be used:

(1) When a licensee is unable or unwilling to comply with bureau requirements;

(2) When a licensee has refused to correct a violation;

(3) When a licensee does not pay a fee required by the bureau.

d. Cease and desist orders are used to stop an unauthorized activity that has continued despite notification by the Bureau that such activity is unauthorized.

e. Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the modification is afforded.

4. If repetitive serious violations occur, BRC will consider issuing orders in conjunction with other enforcement actions to achieve immediate corrective actions and to deter further recurrence of serious violations.

5. Related administrative actions.

a. In addition to the formal enforcement mechanisms of notice of violation and orders, BRC will also use conferences, bulletins, circulars, information notices, notices of deviation, confirmatory action letters, defined as follows:

(1) Enforcement conferences are meetings held with licensee management to discuss safety, health and compliance with regulatory requirements.

(2) Bulletins, circulars and information notices are written notices to groups of licensees identifying specific problems and calling for or recommending specific actions on their part.

(3) Notice of Deviation are written notices describing a licensees failure to satisfy a commitment.

(4) Confirmatory action letters are letters confirming a licensee's agreement to take certain actions.

I. *Policy For Review of Plans Submitted Under URC-28-032 (Preconstruction Review of Shielding Plans).* 1. Plans should be submitted a minimum of 30 days before anticipated construction.

2. If it appears that additional shielding would be adviseable, this recommendation would be made in writing to those submitting the plans within 30 days of receiving the plans for review.

J. *Policy for Staff Assistance in Developing ALARA Programs in Accordance with URC-24-015 (This Section Requires Implementation of ALARA Programs and Offers Assistance by the Bureau When Requested).* 1. ALARA programs submitted to the Bureau shall be reviewed by the Staff. If the program is deficient, recommendations will be made to upgrade the program.

2. During each inspection, the ALARA program will be reviewed with the registrant or licensee.

3. A list of successful methods will be made and given to those requesting assistance.

K. *Staff Training Policy.* 1. Update training will be conducted on a regular basis to enhance technical proficiency. The goal of in-house training will be to maintain a basic understanding of the following topics:

a. Atomic structure and natural radioactivity.

b. Properties of Alpha and Beta Particles, Gamma Rays, X-Ray and Neutrons.

c. Radiation units and external dose determinations.

d. Biological effects of radiation.

e. Shielding.

f. Operation and calibrations of instruments for measurements of ionizing radiation.

g. Inspection procedures.

h. Special topics as needed.

2. The staff will be sent to national courses in all aspects of Radiation Control as federal or state funds are available.

3. Each staff member will be encouraged to devote some time to personal study and be working toward certification as a health physicist.

L. *Media Relations.* Media relations and the Bureau of Radiation Control can be divided into two general categories: the regular release of information and the information release following an incident involving radioactive material.

Regular Information Release. All information released to the media is to go through the Department of Health's public information officer. The policy for the Division of Environment Health has been to have the draft press release prepared by the bureau and then approved by the divisions director. This is then sent to the public information officer for release.

Telephone press inquiries are generally handled by the bureau director who then briefs the public information officer on the interview. Requests for television interviews are relayed to the public information officer with background as to the reason for the request.

The bureau director is to keep the public information officer current on any aspects of his programs which may attract media attention. This includes briefings on *potentially significant new stories.* The bureau director will also work with the public information officer on specific issues which could or should be brought up in the press. Such briefings are important to keep the public information officer current on concerns and programs of the bureau to give him the necessary background on the bureau's activities. The public information officer will make such arrangements as feature stories, interviews, press conference or other means best suited to the material to be disseminated. The spokesman for the Bureau of Radiation Control is the bureau director or the public information officer.

It is imperative in such situations that timely, accurate and current notices to the public through the press be maintained. Special attention is to be paid to stopping rumors, correcting misinformation and presenting an accurate assessment of the situation which the public can understand. Ignorance and fear can lead to panic. The press can be of great help in preventing panic and in helping make people aware of the real dangers involved, need to evacuate, etc.

A single spokesman for the Department of Health is to be established. Unless otherwise indicated by the Executive Director, Utah Department of Health, this spokesman is the public information officer. He will work closely with the bureau director and division director in his dealings with the press. There should be no unauthorized interviews by staff or others speaking for the Department of Health. Requests for statements or interviews should be directed to the public information officer, division director or bureau director.

The Media and "Incident" Coverage. The public information officer for the Department of Health should be notified immediately of any incident related to radioactivity which is a threat to the public health. Depending on the nature and extent of the incident, his activities will be coordinated with the Division of Comprehensive Emergency Management.

It is advantageous to establish a central press room if the scene of the incident is not accessible. This will make it possible for regular and timely updates.

Statements made on the scene of the incident should be limited to the known facts and not conjecture or possibilities. The press should be referred to the public information officer or bureau director by staff when they are approached by the press for interviews or comments.

IV. Organization, Staff and Equipment

The "Utah Health Code" adopted by the 1981 Utah Legislature created a "Department of Health" from the "Division of Health" of the Department of Social Services. The code gave unto the Department of Health authority to require the registration and licensing of hazardous sources of radiation and to adopt

necessary rules for controlling radiation exposure to such sources. The code also directed the Department of Health to establish, carry out, and enforce a radiation control program pursuant to the adopted rules and any federal-state agreement (The 1981 "Utah Health Code" is contained in Appendix A with pertinent statutes).

The Department of Health is divided into four Divisions. (1) The Division of Health Planning and Facilities; (2) The Division of Environmental Health; (3) The Division of Community Health Services; and (4) The Division of Family Health Services. The Division of Environmental Health is divided into six (6) Bureaus including the Bureau of Radiation Control which includes the functions of the Bureau of Uranium Mill Tailings Management. The Bureau is only concerned with title I UMTRPA activities. A chart showing the organization of the Department of Health and a function chart of the Bureau of Radiation Control are contained in Appendix B. Since this chart was drawn, a recombination of the Bureau of Radiation Control and the Bureau of Uranium Mill Tailings Management was effected with the structure as indicated in the function chart also included in Appendix B. The current staff includes one (1) health physicist certified by the American Board of Health Physics, two (2) health physicists one with extensive experience, and one (1) other staff member undergoing in-house training and attending NRC training courses.

Personnel working in Radioactive Materials Program:

Name	Time (percent)	Responsibilities
Larry F. Anderson	20	Administrative.
Blaine Howard	100	Licensing and Inspections.
Arnold J. Peart	100	Licensing and Inspections.
Donald G. Mitchell	10	Training in Licensing and Inspection.
Gerald R. Ripley	10	Training in Licensing and Inspection.
New Hire	10	Training in Licensing and Inspection.

Resume's of the current staff are included in Appendix B. The five categories of job descriptions included in the appendix will all be necessary to allow for promotion incentives for the in-house training program. This will allow hiring of individuals with limited experience and involving them in our training program with advancement available when training and experience requirements are reached.

Standard letters, standard forms, and license conditions have been prepared. Copies of the most recent versions of these materials have been included in Appendix C.

The Bureau has on hand sufficient equipment and instrumentation for the adequate conduct of the present Radiation Control Program. An inventory of this equipment is included in Appendix D.

The Utah Legislature has authorized appropriations to carry out the regulatory functions of the Bureau.

V. Emergency Response

All of the current technical staff have attended the training course in Radiological Emergency Response Operations for Radiological Emergency Response Teams of State and local governments formally sponsored by the Office of State Programs, U.S. Nuclear Regulatory Commission. The Bureau has developed a radiological comprehensive emergency management section with the Utah Highway Patrol.

[FR Doc. 83-34511 Filed 12-29-83; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
January 13, 1984

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notices

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedes Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modification to General Wage Determination Decisions

The numbers of the decisioins being modified and their dates of publication in the **Federal Register** are listed with each State.

Connecticut: CT83-3021	June 3, 1983.
Iowa:	
IA83-4050	July 15, 1983.
IA83-4056:	July 29, 1983.
Maryland:	
MD81-3031	May 15, 1981.
MD80-3047	Aug. 29, 1980.
Montana: MT83-5126	Dec. 9, 1983.
New York:	
NY81-3018	Mar. 27, 1981.
NY83-3044	Aug. 26, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Arkansas:	
AR83-4038 (AR84-4090)	May 13, 1983.
AR83-4039 (AR84-4091)	Do.
AR83-4049 (AR 84-4092)	July 15, 1983.
AR83-4069 (AR 84-4093)	Sept. 16, 1983.
Missouri:	
MO82-4069 (MO84-4095)	Dec. 17, 1982.
MO82-4067 (MO84-4096)	Dec. 27, 1982.
Nebraska: NE83-4062 (NE84-4094)	Sept. 2, 1983.
Pennsylvania: PA83-3002 (PA84-3000)	Sept. 9, 1983.

Signed at Washington, D.C., this 6th day of January 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATION

DECISION #CT83-3021-MOD#10 (48 FR 25090-June 3,1983) STATEWIDE, CONNECTICUT	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters, Millwrights, Piledrivermen, Resilient Floor Layers:		
Building Construction:		
AREA 5:	$14.65	$2.90

DECISION NO. IA83-4050 - MOD. #4 (48 FR 32455 - 7/15/83) Woodbury County, Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Boilermakers	$17.345	3.00
Electricians	13.34	2.07+ 3-3/4%
Line construction:		
Group 1	16.09	1.00+b+ 7-1/2%
Group 2	13.35	"
Group 3	12.87	"
Group 4	10.46	"
Group 5	10.62	"
Group 6	10.30	"
Group 7	12.39	"

DECISION NO. IA83-4056 - MOD. #10 (48 FR 34611 - 7/29/83) Black Hawk,Cerro Gordo, Clinton,Des Moines, Dubuque,Johnson,Linn & Polk Cos., Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Line construction (excluding Zones 3 & 5)		
Group 1	16.09	1.00+c+ 7-1/2%
Group 2	12.87	"
Group 3	13.35	"
Group 4	10.46	"
Group 5	10.62	"
Group 6	10.30	"
Group 7	12.39	"

DECISION NO. MD81-3031 - Mod. #11 (46 FR 27051 - May 15, 1981) ALLEGANY & GARRETT CITYS, MD.	Basic Hourly Rates	Fringe Benefits
CHANGE: Change Modification #9 published on December 16, 1983 to read Modification #10		

DECISION NO. MD80-3047 - Mod. #14 (45 FR 57922 - August 29, 1980) ALLEGANY & GARRETT CITYS, MD.	Basic Hourly Rates	Fringe Benefits
CHANGE: Change Modification #12 published on December 16, 1983 to read Modification #13		

DECISION NO. MT83-5126 - Mod. #1 (48 FR 55254 - December 9 1983) Statewide, Montana	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS:		
Carpenter	$12.53	2.61
Millwrights	13.53	2.61
Piledrivermen	12.78	2.61
ELECTRICIANS:		
Area 2:		
Electrician	18.05	2.05+ 3-1/8%
Cable Splicers	18.95	2.05+ 3-1/8%

MODIFICATION

DECISION NO. NY81-3018 Mod. #8 (46 FR 19174- March 27, 1981) ALBANY, RENSSELAER, SARATOGA, & SCHENECTADY COUNTIES, NEW YORK	Basic Hourly Rates	Fringe Benefits
CHANGE:		
SCHEDULE #4		
BOILERMAKERS:	$18.16	3.381
BRICKLAYERS:		
CLASS A	14.70	3.01
CLASS B	11.03	3.01
CARPENTERS:		
CLASS A	15.22	2.07
CLASS B	15.72	2.07
CLASS C	17.66	6.685
CLASS D	13.92	2.075+a
CLASS E	11.42	2.07
CLASS F	20.87	6.685
CLASS G	16.27	6.685
CEMENT MASONS:		
(Heavy & Highway)	13.01	2.55
ELECTRICIANS		
CLASS A	15.70	3.50+3%
CLASS B	16.70	3.50+3%
ELEVATOR CONSTRUCTORS	14.89	3.00 +b+c
ELEVATOR CONSTRUCTORS HELPERS	10.42	3.00 +b+c
ELEVATOR PROBATIONARY	7.445	
IRON WORKERS		
CLASS A	13.90	3.99
CLASS B	14.15	3.99
CLASS C	14.025	3.99
LABORERS		
CLASS A		
GROUP 1	12.65	2.42
GROUP 2	12.80	2.42
GROUP 3	12.825	2.42
GROUP 4	12.875	2.42
GROUP 5	12.925	2.42
GROUP 6	12.90	2.42
GROUP 7	13.125	2.42
CLASS B		
GROUP 1	9.49	2.42
GROUP 2	9.64	2.42
GROUP 3	9.665	2.42
GROUP 4	9.715	2.42
GROUP 5	9.765	2.42
GROUP 6	9.74	2.42
GROUP 7	9.965	2.42

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
(HEAVY & HIGHWAY)		
CLASS A	$11.69	2.40+d
CLASS B	11.89	2.40+d
CLASS C	12.09	2.40+d
CLASS D	12.29	2.40+d
MARBLE, TILE,		
TERRAZZO WORKER:	13.40	2.35
PLUMBERS:	17.10	2.50
POWER EQUIMPMENT OPERATORS:		
BUILDING CONSTRUCTION		
CLASS A		
CLASS 1	14.66	3.50+g
CLASS 2	15.55	3.50+g
CLASS 3	16.06	3.50+g
CLASS 4	16.25	3.50+g
CLASS B		
CLASS 1	11.00	3.50+g
CLASS 2	11.66	3.50+g
CLASS 3	12.05	3.50+g
CLASS 4	12.53	3.50+g
ROOFERS:		
Roofers	13.50	3.07
PITCH & ASBESTOS	14.00	3.07
SHEET METAL WORKERS:	15.37	1.04
SPRINKLER FITTERS:	16.92	3.23

MODIFICATION

DECISION No. NY83-3044
Mod #2
(48 FR 38963 - August 26,1983)
Steuben County, New York

CHANGE:
CARPENTERS
Area 1

	Basic Hourly Rates	Fringe Benefits
Carpenters	$13.26	3.035
Millwright & pile-drivers	13.36	3.035

Carpenters:

Area 1: Townships of Prattsburg and Pulteney, Village of Hammondsport.

Area 2: Townships of Troupsburg, Hartsville, Frement, Wayland, Jasper, Hornellsville, Avoca, Cohocton, Counsiteo, Howard, Pansville, Wheeler, Cameron, Greenwood, West Union, and Bath, West of a line drawn from the Bath-Cameron Road (Route #10) Then West on Turnpike Road to Shannon Road, North on Shannon Road to Knight Settlement Road, South on Knight Settelment Road to Cochrane Road, West on Conchrean Road to Campbell-Creek Road to Route 53, North on Route 53 to the Wheeler Township Line.

Area 3: Remainder of the County

SUPERSEDEAS DECISION

STATE: ARKANSAS COUNTY: GARLAND, CLARK, HOT SPRING
DECISION NO. AR84-4090 DATE: Date of Publication
SUPERSEDES DECISION NO. AR83-4038 dated May 13, 1983 in 48 FR 21775
DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$15.78	2.27
BOILERMAKERS	16.40	2.465
BRICKLAYERS-STONEMASONS		
Clark & Garland Cos.	12.75	.60
Hot Spring County	12.10	.79
CARPENTERS:		
Carpenters	12.50	1.44
Millwrights-Piledrivermen	13.00	1.46
CEMENT MASONS	12.75	.63
ELECTRICIANS:		
Electricians	13.17	3%+1.80
Cable Splicers	13.295	3%+1.80
ELEVATOR CONSTRUCTORS:		
Journeymen	13.19	2.69+A
Helpers	70%JR	2.69+A
Probationary Helpers	50%JR	
IRONWORKERS	13.40	2.46
LABORERS:		
Group 1	8.80	1.45
Group 2	9.05	1.45
Group 3	9.20	1.45
Group 4	9.30	1.45
Group 5	9.45	1.45
Group 6	9.70	1.45
Group 7	9.60	1.45
LINE CONSTRUCTION:		
Lineman	13.17	B
Cable Splicers	13.295	B
Groundman	64%JR	B
Truck Drivers with winch	80%JR	B
Truck Drivers (flat bed)	64%JR	B

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Brush and roller	$ 9.50	
Paperhanging	10.00	
Sheet rock (tape and float only)	10.00	
Stage and Steel	11.50	
Spray & Sandblasting	12.75	
Painting operating any kind of taping or floating machine	13.25	
PLASTERERS	12.85	
PLUMBERS-PIPEFITTERS:		
Within 10 miles of Garland Co. Courthouse	13.07	1.98
10 miles and over from Garland Co. Courthouse	13.97	1.98
POWER EQUIPMENT OPERS.:		
Group 1	14.09	1.40
Group 2	12.76	1.40
Group 3	12.16	1.40
Group 4	9.99	1.40
ROOFERS	11.91	.30
SHEET METAL WORKERS	12.58	3%+2.02
SPRINKLER FITTERS	14.57	3.23
TILE LAYERS (Garland & Clark Counties)	12.75	.60

FOOTNOTES:

A- 6 months to 5 years - 6%; over 5 years - 8% of basic hourly rate plus 7 paid holidays.

PAID HOLIDAYS:
New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day, Day after Thanksgivings Day; and Christmas Day.

B- 3-3/4% + $1.80

WELDERS: receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii).

DECISION NO. AR84-4090

LABORERS CLASSIFICATION DEFINITIONS

GROUP I - Construction laborer-concrete, wrecking, carpenters, drywall, mechanics, excavating, plumbers and electricians laborers, green cutter, blow pipe, and crete pump hose placer

GROUP II - Semi-skilled labor - pipelayers, concrete, clay and mechanical tool, cement mixer, wet or dry finishers and plasterers, mason tenders, mortar mixers, asphalt rakers and shovelers, creosote wood handlers, chuck tender

GROUP III - Skilled "A" - Steelform setters, curb and gutters, grout and cement muckers

GROUP IV - Skilled "B" - Swinging scaffold, barco, 90lb pavement breakers and burners

GROUP V - Nozzleman (gunite, grout, and sandblasters); concrete pump (nozzel placer)

GROUP VI - Powderman and blaster GROUP VII - Wagon drill

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I - Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, blacksmith, mechanics

GROUP II - Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturers, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swinging boom attachments, gradalls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size

GROUP III - HEAVY EQUIPMENT OPERATORS: All bulldozers, all front end loaders, all sidebooms, skytracks, all push tractors, all pull scrapers, all motor graders, all trenching machines, regardless of size or motive power, all back fillers, central mixing plants, 10S and larger, finishing machines, all boiler firemen high or low pressure, all asphalt spreaders, hydro truck crane, multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless of size, regardless of motive power and dredge tender operator

GROUP IV - LIGHT EQUIPMENT OPERATORS: Oilerdriver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material. Lad-A-Vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, end dump Euclid, pumpcrete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines light plants, pumps, all well point system de-watering and protable pumps, space heater, irrespective of size, and motive power, equipment greaser, oiler, asphalt distributor, and like equipment, safety boat operator and deckhand.

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

UNLISTED classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

SUPERSEDEAS DECISION

STATE: Arkansas COUNTY: Union and Ouachita
DECISION NO. AR84-4091 DATE: Date of Publication
Supersedes Decision No. AR83-4039 dated May 13, 1983 in 48 FR 21774.
DESCRIPTION OF WORK: Building projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$15.78	2.27
BOILERMAKERS	16.60	2.645
BRICKLAYERS	12.25	.75
CARPENTERS:		
Carpenters	12.50	1.44
Millwrights, Piledrivermen	13.00	1.46
CEMENT MASONS	12.75	.63
ELECTRICIANS:		
Electricalcontracts $20,000 or less:		
Electricians	15.09	3%%
Cable Splicers	15.39	3%%
Electrical contracts over $20,000:		
Electricians	15.88	3%%
Cable Splicers	16.18	3%%
IRONWORKERS:		
Ouachita County - excluding the Southeastern portion	13.65	2.21
Union County and Southeastern portion of Ouachita County	14.55	2.21
LABORERS:		
Group I	8.80	1.45
Group II	9.05	1.45
Group III	9.20	1.45
Group IV	9.30	1.45
Group V	9.45	1.45
Group VI	9.70	1.45
Group VII	9.60	1.45
LINE CONSTRUCTION:		
Electrical contracts $20,000 or less:		
Linemen, Operators	15.09	3%%
Cable Splicers	15.39	3%%
Electrical contracts over $20,000:		
Linemen, Operators	15.88	3%%
Cable Splicers	16.18	3%%
Electrical contracts $20,000 or less and over $20,000:		
Groundman	65%JR	3%%
Truck Drivers	70%JR	3%%
Winch operator	80%JR	3%%

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Brush, Roller, Sheet Rock Work and Paperhanging	$9.00	
Spray and Sandblasting	9.875	
PLASTERERS	12.85	.64
PLUMBERS, PIPEFITTERS	14.75	1.65
POWER EQUIPMENT OPERATORS:		
Group I	14.09	1.40
Group II	12.76	1.40
Group III	12.16	1.40
Group IV	9.99	1.40
ROOFERS	11.91	.30
SHEET METAL WORKERS	12.58	3%+ 2.02
SPRINKLER FITTERS	14.57	3.23
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).		

DECISION NO. AR84-4091

LABORERS CLASSIFICATION DEFINITIONS

GROUP I - Construction laborer-concrete, wrecking, carpenters, drywall, mechanics, excavating, plumbers and electricians laborers, green cutter, blow pipe, and crete pump hose placer

GROUP II - Semi-skilled labor - pipelayers, concrete, clay and mechanical tool, cement mixer, wet or dry finishers and plasterers, mason tenders, mortar mixers, asphalt rakers and shovelers, creosote wood handlers, chuck tender

GROUP III - Skilled "A" - Steelform setters, curb and gutters, grout and cement muckers

GROUP IV - Skilled "B" - Swinging scaffold, barco, 90lb pavement breakers and burners

GROUP V - Nozzleman (gunite, grout, and sandblasters); concrete pump (nozzel placer)

GROUP VI - Powderman and blaster GROUP VII - Wagon drill

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I - Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, blacksmith, mechanics

GROUP II - Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturers, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swinging boom attachments, gradalls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size

GROUP III - HEAVY EQUIPMENT OPERATORS: All bulldozers, all front end loaders, all sidebooms, skytracks, all push tractors, all pull scrapers, all motor graders, all trenching machines, regardless of size or motive power, all back fillers, central mixing plants, 10S and larger, finishing machines, all boiler firemen high or low pressure, all asphalt spreaders, hydro truck crane, multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless of size, regardless of motive power and dredge tender operator

GROUP IV - LIGHT EQUIPMENT OPERATORS: Oilerdriver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material. Lad-A-Vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, end dump Euclid, pumpcrete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines light plants, pumps, all well point system de-watering and protable pumps, space heater, irrespective of size, and motive power, equipment greaser, oiler, asphalt distributor, and like equipment, safety boat operator and deckhand.

WELDERS—receive rate prescribed for craft performing operation to which welding is incidental.

UNLISTED classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

SUPERSEDEAS DECISION

STATE: Arkansas

COUNTIES: Sebastian, Crawford & Washington

DECISION NO. AR84-4092

DATE: Date of Publication

Supersedes Decision No. AR83-4049 dated July 15, 1983 in 48 FR 42350.

DESCRIPTION OF WORK: Building projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
SEBASTIAN AND CRAWFORD COS.		
ASBESTOS WORKERS	$15.78	2.27
BOILERMAKERS	16.40	2.645
BRICKLAYERS, STONEMASONS	12.00	.69
CARPENTERS:		
Carpenters	11.54	1.54
Millwrights, Piledrivermen	12.29	1.54
CEMENT MASONS	12.75	.63
ELECTRICIANS:		
Electricians	14.79	8-3/4% +.80
Cable Splicers	15.04	8-3/4% +.80
IRONWORKERS	13.40	2.46
LINE CONSTRUCTION:		
Linemen, Operator	14.54	9-3/4% +.80
Cable Splicers	14.79	9-3/4% +.80
Powderman	90%JR	9-3/4% +.80
Truck Driver	75%JR	9-3/4% +.80
Groundman	65%JR	9-3/4% +.80
MARBLE MASONS, TILE LAYERS & TERRAZZO WORKERS	12.00	
PAINTERS:		
Roller work, sheetwork, finishing by machinery	9.15	
Brush	8.65	
Spray	9.65	
Swing Stage Work	99.15	
Sandblasting, steam cleaning	9.65	
PLASTERERS	12.95	
PLUMBERS, STEAMFITTERS	13.56	1.34
ROOFERS	11.91	.30
SHEET METAL WORKERS	12.58	3%+ +2.02
SPRINKLER FITTERS	14.57	3.23

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Group 1	$8.80	1.45
Group II	9.05	1.45
Group III	9.20	1.45
Group IV	9.30	1.45
Group V	9.45	1.45
Group VI	9.70	1.45
Group VII	9.60	1.45
POWER EQUIPMENT OPERATORS:		
Group I	14.09	1.40
Group II	12.76	1.40
Group III	12.16	1.40
Group IV	9.99	1.40
WASHINGTON COUNTY:		
BRICKLAYERS	9.00	
CARPENTERS	7.92	
CEMENT MASONS	7.67	
ELECTRICIANS	9.51	
GLAZIERS	7.60	
IRONWORKERS	6.87	
LABORERS:		
Common	5.23	
Mason Tenders	5.67	
Plasterers Tender	7.45	
PAINTERS	8.00	
PLASTERERS	11.22	
PLUMBERS, PIPEFITTERS	11.46	1.14
ROOFERS	7.50	
SHEET METAL WORKERS	7.51	
TILE SETTERS	10.00	
TRUCK DRIVERS	6.05	12%
POWER EQUIPMENT OPERATORS:		
Asphalt Finishing	6.15	12%
Asphalt Pavers	6.05	12%
Asphalt Rakers	6.39	
Asphalt Dist. Operators	5.82	11%
Bulldozers	5.95	16%
Backhoe	6.65	
Cranes	6.87	
Rollers	6.52	
Motor patrol Operator	6.88	
Foundation Drill Operator	7.29	
Scrapers	5.75	15%

DECISION NO. AR84-4092

LABORERS CLASSIFICATION DEFINITIONS

GROUP I - Construction laborer-concrete, wrecking, carpenters, drywall, mechanics, excavating, plumbers and electricians laborers, green cutter, blow pipe, and crete pump hose placer

GROUP II - Semi-skilled labor - pipelayers, concrete, clay and mechanical tool, cement mixer, wet or dry finishers and plasterers, mason tenders, mortar mixers, asphalt rakers and shovelers, creosote wood handlers, chuck tender

GROUP III - Skilled "A" - Steelform setters, curb and gutters, grout and cement muckers

GROUP IV - Skilled "B" - Swinging scaffold, barco, 90lb pavement breakers and burners

GROUP V - Nozzleman (gunite, grout, and sandblasters); concrete pump (nozzel placer)

GROUP VI - Powderman and blaster GROUP VII - Wagon drill

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I - Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, blacksmith, mechanics

GROUP II - Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturers, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swinging boom attachments, gradalls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size

GROUP III - HEAVY EQUIPMENT OPERATORS: All bulldozers, all front end loaders, all sidebooms, skytracks, all push tractors, all pull scrapers, all motor graders, all trenching machines, regardless of size or motive power, all back fillers, central mixing plants, 10S and larger, finishing machines, all boiler firemen high or low pressure, all asphalt spreaders, hydro truck crane, multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless of size, regardless of motive power and dredge tender operator

GROUP IV - LIGHT EQUIPMENT OPERATORS: Oilerdriver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material. Lad-A-Vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, end dump Euclid, pumpcrete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines light plants, pumps, all well point system de-watering and protable pumps, space heater, irrespective of size, and motive power, equipment greaser, oiler, asphalt distributor, and like equipment, safety boat operator and deckhand.

WELDERS—receive rate prescribed for craft performing operation to which welding is incidental.

UNLISTED classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

SUPERSEDEAS DECISION

STATE: ARKANSAS COUNTY: PULASKI & JEFFERSON
DECISION NO. AR84-4093 DATE: Date of Publication
SUPERSEDES DECISION NO. AR83-4069 dated September 16, 1983 in 48 FR 41695
DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$15.78	$2.27
BOILERMAKERS	16.40	2.645
BRICKLAYERS-STONEMASONS	12.00	1.89
CARPENTERS:		
Carpenters	12.50	1.44
Millwrights-Piledrivermen	13.00	1.46
CEMENT MASONS	12.75	.63
ELECTRICIANS:		
Electricians	14.70	3%+2.90
Cable Splicers	14.825	3%+2.90
ELEVATOR CONSTRUCTORS:		
Journeyman	13.19	2.69+A
Helpers	70%JR	2.69+A
Probationary Helpers	50%JR	
GLAZIERS	9.70	.50
IRONWORKERS	13.40	2.46
LABORERS:		
Group 1	8.80	1.45
Group 2	9.05	1.45
Group 3	9.20	1.45
Group 4	9.30	1.45
Group 5	9.45	1.45
Group 6	9.70	1.45
Group 7	9.60	1.45
LINE CONSTRUCTION:		
Lineman-Operators	14.85	B
Cable Splicers	14.975	B
Groundman	9.65	B
Winch Equipment	10.84	B
MARBLE, TILE, & TERRAZZO WORKERS	11.35	.80
PAINTERS:		
Painters, paperhangers, steam cleaners, sheetrock finishers and wall cover hangers	11.25	.63
Spray gun operators and sandblasters	11.85	.63
All skeleton steel and all work on stage, structural steel over 30 feet high	11.50	.63
PLASTERERS	12.85	.64
ROOFERS	11.91	.30
SPRINKLER FITTERS	14.57	3.23
POWER EQUIPMENT OPERATORS:		
Group 1	$14.09	$1.40
Group 2	12.76	1.40
Group 3	12.16	1.40
Group 4	9.99	1.40
PLUMBERS-PIPEFITTERS:		
(including the setting & erecting of all piping in heating-ventilating & air conditioning systems):		
Jefferson County	14.67	1.98
Pulaski County:		
Within 10 miles radius of Pulaski Co. Courthouse	14.30	2.05
Over 10 miles from Pulaski Co. Courthouse	14.60	2.05
SHEET METAL WORKERS:		
(including the installation, dismantling, conditioning, adjustment, alteration, repairing, & servicing of all air-veyor and air handling systems, testing and balancing of all air handling equipment and duct work)	12.58	2.02

FOOTNOTES:

A- 6 mos. to 5 yrs.-6%; over 5 yrs. 8% of basic hourly rate; plus seven paid holidays.

PAID HOLIDAYS: NewYears Day;Memorial Day;Independence Day;Labor Day; Thanksgiving Day;Day after Thanksgiving Day; and Christmas Day.

B- 3-3/4% + $2.20

WELDERS: receive rate prescribed for craft performing operation to which welding is incidental.

DECISION NO. AR84-4093

LABORERS CLASSIFICATION DEFINITIONS

GROUP I - Construction laborer-concrete, wrecking, carpenters, drywall, mechanics, excavating, plumbers and electricians laborers, green cutter, blow pipe, and crete pump hose placer

GROUP II - Semi-skilled labor - pipelayers, concrete, clay and mechanical tool, cement mixer, wet or dry finishers and plasterers, mason tenders, mortar mixers, asphalt rakers and shovelers, creosote wood handlers, chuck tender

GROUP III - Skilled "A" - Steelform setters, curb and gutters, grout and cement muckers

GROUP IV - Skilled "B" - Swinging scaffold, barco, 90lb pavement breakers and burners

GROUP V - Nozzleman (gunite, grout, and sandblasters); concrete pump (nozzel placer)

GROUP VI - Powderman and blaster GROUP VII - Wagon drill

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I - Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, blacksmith, mechanics

GROUP II - Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturers, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swinging boom attachments, gradalls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size

GROUP III - HEAVY EQUIPMENT OPERATORS: All bulldozers, all front end loaders, all sidebooms, skytracks, all push tractors, all pull scrapers, all motor graders, all trenching machines, regardless of size or motive power, all back fillers, central mixing plants, 10S and larger, finishing machines, all boiler firemen high or low pressure, all asphalt spreaders, hydro truck crane, multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless of size, regardless of motive power and dredge tender operator

GROUP IV - LIGHT EQUIPMENT OPERATORS: Oilerdriver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material. Lad-A-Vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, end dump Euclid, pumpcrete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines light plants, pumps, all well point system de-watering and protable pumps, space heater, irrespective of size, and motive power, equipment greaser, oiler, asphalt distributor, and like equipment, safety boat operator and deckhand.

WELDERS—receive rate prescribed for craft performing operation to which welding is incidental.

UNLISTED classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii).

SUPERSEDEAS DECISION

STATE: Missouri COUNTIES: Pettis and Saline
DECISION NO.: MO84-4095 DATE: Date of Publication
Supersedes Decision NO. MO82-4069 dated December 17, 1982 in 47 FR 56603.
DESCRIPTION OF WORK: Building projects, (excluding single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.29	4.35
BOILERMAKERS	17.345	3.00
BRICKLAYERS, STONEMASONS, TILE LAYERS	14.00	.50
CARPENTERS (PETTIS COUNTY):		
Carpenters & Lathers	12.75	1.03
Millwrights	13.25	1.03
Piledrivers	12.875	1.03
CARPENTERS (SALINE COUNTY):		
Carpenters & Lathers	13.55	2.07
Millwrights & Piledrivermen	15.05	2.07
CEMENT MASONS	13.98	
ELECTRICIANS (PETTIS CO.):		
Contracts not exceeding 2000 man hours	15.18	2.51+ 10%
Contracts exceeding 2000 man hours	16.18	2.51+ 10%
ELECTRICIANS (SALINE CO.):		
Contracts not exceeding 2000 man hours	14.58	2.51+ 10%
Contracts exceeding 2000 man hours	16.18	2.51+ 10%
ELEVATOR CONSTRUCTORS:		
Elevator Constructors	16.53	2.465+ a
Elevator Constructors' Helpers	70%JR	2.465+ a
Elevator Constructors' Helpers (Prob.)	50%JR	
GLAZIERS	14.72	2.66+ 15.48%
IRONWORKERS	16.25	4.25
PAINTERS:		
Brush	14.25	
Spray; Sandblasting	15.25	
Machine taping; outside work on swing stages, window jacks, with belts or boatswain's chair	14.75	
PIPEFITTERS	$17.44	3.22
PLASTERERS	13.66	
PLUMBERS	17.96	2.70
ROOFERS	16.48	2.71
SHEET METAL WORKERS	16.75	2.78
SOFT FLOOR LAYERS	11.21	1.95+ 11%
MARBLE & TILE SETTERS	17.02	6%+ 1.02
TILE SETTERS FINISHERS	14.40	
TERRAZZO WORKERS	15.31	9.25%
TERRAZZO FINISHERS	13.58	
TERRAZZO BASE MACHINE OP.	13.93	
LABORERS (PETTIS CO.):		
GROUP 1	9.575	2.75
GROUP 2	9.675	2.75
GROUP 3	9.90	2.75
LABORERS (SALINE CO.):		
GROUP 1	10.95	1.85
GROUP 2	11.10	1.85
GROUP 3	11.25	1.85
POWER EQUIPMENT OPERATORS:		
Building Construction		
GROUP 1	15.46	3.75
GROUP 2	15.11	3.75
GROUP 3:		
(a)	10.05	3.75
(b)	13.21	3.75
(c)	10.85	3.75
(d)	13.46	3.75
GROUP 4	15.71	3.75
GROUP 5	15.36	3.75
GROUP 6	15.96	3.75
GROUP 7:		
(a)	15.21	3.75
(b)	14.96	3.75
(c)	12.96	3.75
GROUP 8	16.46	3.75
GROUP 9	15.96	3.75

LABORERS CLASSIFICATION DEFINITIONS PETTIS COUNTY

GROUP 1 - Carpenter tenders; track men; wreckers (alterations or entire project); reinforcing rod carriers; all other general laborers
GROUP 2 - Plumber laborers; stonemasons tenders; air tool operators; sewer work; water lines; conduit pipe; drain tile & duct lines; batter board man or pipe & ditch work; pier hole men working below ground; vibrator man; scaleman; jackhammer; chipping hammer operators; material batch hopper man; spreader or screed man on asphalt machine; brush feeders on pulverizers; swinging scaffold; cement handlers (bulk or sack); laser beam man; chain or concrete saw
GROUP 3 - Plaster tenders; hod carriers; brick tenders; cutting torch & burner men; asphalt rakers; barco tamper; jackson or any similar tamps; power buggy operator; powderman; mastic kettlemen; sandblasting & gunnite nozzleman; head pipe layer on sewer work; men working in tunnels; head formsetters & stringline men; hot tar applicator

LABORES CLASSIFICATION DEFINTIONS SALINE COUNTY

GROUP 1 - Common labor; wire mesh handlers or setters, carpenter tender; trackmen; flagmen; signalmen; salamander tenders; floor cleaners; landscape men; sod layers; wreckers (for alteration or entire projects)
GROUP 2 - Plumber laborers (conduit pipe, sewer work, drain tile & duct lines, digging & back filling); power tool operators; pier hole diggers (over 10 ft.); vibrator, jackhemmer & chipping hammer operators; chain saw operators, concrete saw operators; brush feeders on pulverizers; reinforcing steel handlers; air tamp operators; ditch witch operators; swinging scaffolds; cutting torch or burner men; georgia buggies (self-propelled); fork lift, hoseman; insulation me
Group 3 - Fork lift (masonry); brick tenders; plasterer tenders; stone mason tenders; barco, Jackson or similar tamp operators; asphalt raker; powdermen; mastic hot kettlemen; sandblasting & gunite nozzle men; wagon & churn drill operators

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS
GROUP I - Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; back fillers; backhoe; barber-greene loader; blade-power; boats-power; boilers (2); boring machines; cableways; cherry pickers; chip spreader; concrete ready-mixed plant, portable (job site); concrete mixer paver; crane-overhead; crusher, rock; derricks and derricks cars (power operated); ditching machines; dozers; dredges - any type power; grade-all - similar type; hoist, endless chain-power operated with power travel; loaders; mechanic and welder; mucking machine; orange peels; pumps - material; push cats; scoops; self-propelled rotary drill; shovel, power; side boom; skimmer scoop; testhole machine; throttle man
GROUP II - Boilers (1); Brooms - power operated; chip spreader (front man); clef plane operator; compressors (1) 125' or over; concrete saws, self-propelled); crab - power operated; curb finishing machine; firemen on rigs; flex plane; floating machine; form grader; greaser; hoist, endless chain - power operated; hopper - power operated; hydra hammer; lad-a-vator - similar type; rollers; siphons, jets, and jennies; sub-grader; tractors over 50 h.p.; compressors (2) 125' ft. or over not more than 20' apart; compressors-tandem; compressors single, truck mounted; elevator; finishing machine
GROUP III:
(a) Oilers
(b) Fork lift-masonry
(c) Oiler driver
(d) A-frame trucks; fork lift-all types (except masonry); mixers (w/side loaders); pumps (w/well points) dewatering systems, test or pressure pumps; tractors (except when hauling material) less than-50 h.. p.
GROUP IV
Clamshells, 80 ft. of boom or over (inc. jib); crane or rigs, 80 ft. of boom or over (inc. jib); draglines, 80 ft. of boom or over (inc. jib); pile drivers, 80 ft. of boom or over (incl. jib)
GROUP V
Hoists-each additional drum over 1 drum
GROUP VI
Crane or rigs, over 200 ft. of boom
GROUP VII
Ready Mixed Concrete Plants:
(a) Crane operator
(b) Loader operator & plant man
(c) Conveyor operator
GROUP VIII
Master Mechanic
GROUP IX
Crane-tower or climbing

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)".

SUPERSEDEAS DECISION

STATE: Missouri

COUNTIES: Jasper, McDonald and Newton

DECISION NUMBER: MO84-4096

DATE: Date of Publication

Supersedes Decision No. 82-4067 dated December 27, 1982, in 47 FR 57618.

DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$16.92	$2.25
BOILERMAKERS	17.345	3.00
BRICKLAYERS; STONEMASONS	13.00	1.45
CARPENTERS:		
Carpenters and Lathers	12.27	1.50
Millwrights and Pile-drivermen	12.52	1.50
ELECTRICIANS	13.09	1.67+8%
ELEVATOR CONSTRUCTORS:		
Mechanics	16.53	2.465+a
Helpers	70%JR	2.465+a
Probationary Helpers	50%JR	
GLAZIERS	15.04	.25
IRONWORKERS	14.60	2.37
LINE CONSTRUCTION:		
Lineman	17.03	.65+8½%
Linemen Operators	16.24	.65+8½%
Groundman	11.03	.65+8½%
Groundman, Powderman	11.91	.65+8½%
PAINTERS:		
Brush, Roller, Tapers, Floor Tile and Carpet Layers, Paperhangers	12.72	.60
Spray	13.22	.60
PLASTERERS	13.05	
PLUMBERS and PIPEFITTERS	13.72	2.13
ROOFERS	12.00	.66
SHEET METAL WORKERS	16.18	1.95
LABORERS:		
General Laborers	10.05	1.65
Mason & Plaster Tenders & Powderman	10.45	1.65
POWER EQUIPMENT OPERATORS:		
Group 1	$13.63	$2.10
Group 2	13.15	2.10
Group 3	12.55	2.10
Group 4	11.95	2.10

DECISION NO. MO84-4096

FOOTNOTE

a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit, also 7 Paid Holidays.

LABORERS CLASSIFICATIONS

Group 1: General Laborers, Carpenter Tenders, Trackmen, Wreckers handling and carrying of reinforced steel

Group 2: Pipelayers (conduit pipe, sewer tile, drain tile, duct line with mains); Air Tool Operators; Pier Hole Diggers (over 10'); Vibrators; Jackhammer; Chipping Hammer Operator (air or electric); Asphalt Rakers; Mastic Kettlemen; Sandblasting; Gunnite Nozzlemen; Cutting Torch and Welders; Barco; Jackson or similar Tamp Operators; Powderman

Group 3: Plasterers and Mason Tenders

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

Group 1: Crane; Dragline; Derrick; Drum or Tower Hoist (2 drum); Power Shovel or Back Hoe (on tracks); Piledriver; Power Blade; Motor Patrol; Mechanic; Hydraulic, self-propelled Crane; Stringer or Cherry Picker Crane

Group 2: Bulldozer; Dirt Scoop or Pan; Elevating Grader; Drum or Tower Hoist (1 drum); Loader (track or rubber tire); Tractor, Pusher Roller (asphalt); Tractor or Back Hoe (on rubber tires); Tractor (Compaction Roller or Pull Blade Track)

Group 3: Fork Lift; Roller; Industrial Tractor; Tractor (Compaction Roller or Pull Blade, rubber tire); Distributor (Bituminous); Finishing Machine (concrete paving); Concrete Saw (self-propelled); Air Compressor (600 cu. ft. or over)

Group 4: Oiler; Oiler, driver

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))

SUPERSEDEAS DECISION

STATE: Nebraska

COUNTIES: Cass, Douglas, Sarpy, Washington, and that portion of Saunders Co. East of Highway #109

DECISION NO.: NE84-4094

DATE: Date of Publication

Supersedes Decision No. NE83-4062, dated September 2, 1983 in 48 FR 40095.

DESCRIPTION OF WORK: Heavy construction (excluding Washington County and that portion of Saunders County east of Highway #109) and Highway construction (excluding bridges across navigable waterways) in all counties.

	Basic Hourly Rates	Fringe Benefits
CARPENTERS:		
Carpenters	$13.33	2.10
Sawmen & Piledriver	13.455	2.10
Creosote	13.58	2.10
Douglas & Sarpy Co.:		
Cement Mason	12.17	2.45
IRONWORKERS:		
Reinforcing & Structural	14.10	2.90
LABORERS: (Douglas, Sarpy & Cass Counties):		
Class 1 - General Laborers	9.70	1.80
Class 2 - Towboats & Dredge Deckhands	9.82	1.80
Class 3 - Rakers & Screedman on Asphalt; Mortar Mixer Concrete Saw Operator	10.05	1.80
Pipelayer & Chain Saw Operator	9.99	1.80
Class 4 - Laborer, Welder	10.10	1.80
Class 5 - Form Setters & Precast Manhole Setter, Inlet Builders	10.43	1.80
Class 6 - Tunnelers, Free Air	10.28	1.80
LINE CONSTRUCTION		
Linemen	15.37	3⅛% +.65
Cable Splicers	16.51	3⅛% +.65
Equipment Operator	13.83	3⅛% +.65
Truck Driver	11.10	3⅛% +.65
Groundmen	10.03	3⅛% +.65
TRUCK DRIVERS:		
Douglas & Sarpy Cos.:		
Single Axle, Jack & Spreader, Tandem Axle Euclid Trucks, Power Lift Form Trucks & Jack & Spreader Trucks, Lowboys, Tractor Trailer Water Pulls, Tandem Dump w/auxiliary End, Dump Trailer	10.27	1.75
Water Pulls	10.62	1.75
Lumber Carrier	$10.82	1.75
POWER EQUIPMENT OPERATORS:		
Group 1:		
Oilers, Greasers	8.31	2.00
Group 2:		
Oiler, Driver	8.40	2.00
Group 3:		
Tractors under 35 h.p., Air Compressors, Pumps, Welding Machine, Spray Machine, Form Trenchers, Belt Machine	10.69	1.40
Group 4:		
Concrete Mixer, Forklift Operator, Hydro-hammer	11.13	1.40
Group 5:		
Spreader Oiler	12.17	1.40
Group 6:		
Concrete Spreader, Concrete Finishing Machine, Concrete Pump Operator, Bulldozer, Roller, Traxcavator, 1 Drum Hoist, Oiler Distributor, Asphalt Roller, 1 Drum Winch Truck	12.42	1.40
Group 7:		
Blade (Patrol), Scraper	12.82	1.35
Group 8:		
Hoist, 2 Drums; Trenching Machine; Paving Mixer; Piledriver; Heavy Duty Mechanic & Welder; Shovel; Dragline; Clamshell; Orange Peel; Backhoe; Derrick; Crane; Locomotive; Fireman on Boiler; Laydown Machine; Two Drum Winch Truck; Side Boom Cat; Pug Mill Operator on Asphalt Plant; Leverman on Dredge; Engineer on Dredge; Tugboat Operator; Gradall Operator; Rotary Well Drilling Operator; Hydrocrane; Cleveland Type Backfiller; Self-Propelled Spreader Vibrator; Slip Form Paver	13.01	1.35

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Pennsylvania

COUNTIES: Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington, Westmoreland

DECISION NUMBER: PA84-3000

DATE: Date of Publication

Supersedes Decision No. PA83-3002 dated September 9, 1983 in 48 FR 40841.

DESCRIPTION OF WORK: Heavy and Highway Construction, excluding Sewage and Water Treatment Plant Projects

HEAVY & HIGHWAY	Basic Hourly Rates	Fringe Benefits
CARPENTERS		
ZONE I	$14.31	30%
ZONE II	14.12	30%*
CARPENTER _ WELDER		
ZONE I	14.69	30%
ZONE II	14.50	30%
CARPENTER - BURNER		
ZONE I	14.50	30%
ZONE II	14.31	30%
CEMENT MASONS	14.76	3.84
PILEDRIVERMEN	15.15	30%
PILEDRIVERMEN - WELDER	15.38	30%
IRONWORKERS:		
Reinforcing		
ZONE 1	11.31	3.19
Structural, Ornamental & Reinforcing		
ZONE 2	17.265	3.745
ZONE 3	16.37	4.95
LABORERS		
CLASS I		
ZONE I	12.13	23%
ZONE II	12.02	23%
CLASS II		
ZONE I	12.28	23%
ZONE II	12.19	23%
CLASS III		
ZONE I	12.70	23%
ZONE II	12.70	23%
CLASS IV		
ZONE I	13.63	23%
ZONE II	13.63	23%
LANDSCAPING		
ZONE 1		
CLASS 1		
Landscape laborer to include general landscaping work and the driving of trucks for the distributing of materials on the job site but not to include dump trucks used to transport supplies to the job	10.30	22%
CLASS 2		
Landscape tractor operator to operate small industrial rubber tire tractor equipped with front end loader and back hoe attachment used for the sole purpose of landscape work including soil spreading, but not for heavy and highway work	10.72	22%
ZONE 2		
CLASS 1		
Landscape laborer to include general landscaping work and the driving of trucks for the distributing of materials on the job site but not to include dump trucks used to transport supplies to the job	12.00	20%
LINE CONSTRUCTION:		
ZONE 1		
Linemen	18.06	.80+ 3 3/8%
Winch Truck Op.	12.59	.80+ 3 3/8%
Truck Driver	11.68	.80+ 3 3/8%
Groundman	10.76	.80+ 3 3/8%
ZONE 2		
Lineman	14.74	.60+ 3 3/8%
Winch Truck Op.	10.26	.60+ 3 3/8%
Truck Driver	9.52	.60+ 3 3/8%
Groundman	8.77	.60+ 3 3/8%

DECISION NO. PA84-3000	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (CONT'D)		
ZONE 3		
Lineman, Dynamite Man, Heavy Equipment Operator	15.64	.65+ 3 3/8%
Winch Truck Op.	10.94	.65+ 3 3/8%
Truck Driver	10.72	.65+ 3 3/8%
Groundman	10.46	.65+ 3 3/8%
LINE CONSTRUCTION (RAILROAD ONLY)		
Armstrong, Bedford, Blair, Cambria, Centre, Clarion, Clearfield, Fayette, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Somerset, Washington, Westmoreland Counties:		
Linemen	12.34	.60+ 6%+a
"A" Equipment Operator	12.34	.60+ 6%+a
"B" Equipment Operator	10.78	.60+ 6%+a
PLUMBERS (Bridge - drain Pipe)		
Allegheny, Washington, Greene, Armstrong Counties	16.40	4.34
POWER EQUIPMENT OPERATPRS:		
HEAVY & HIGHWAY CONSTRUCTION		
CLASS I		
ZONE I	16.01	23.17%
ZONE II	15.78	23.17%
CLASS II		
ZONE I	15.80	23.17%
ZONE II	15.55	23.17%
CLASS III		
ZONE I	12.83	23.17%
ZONE II	12.59	23.17%
CLASS IV		
ZONE I	12.46	23.17%
ZONE II	12.19	23.17%
CLASS V		
ZONE I	12.26	23.17%
ZONE II	12.02	23.17%
TRUCK DRIVERS:		
HEAVY & HIGHWAY CONSTRUCTION		
CLASS I		
ZONE 1	13.19	19%
ZONE 2	12.96	19%
CLASS 2		
ZONE 1	13.33	19%
ZONE 2	13.14	19%
CLASS 3		
ZONE 1	13.40	19%
ZONE 2	13.24	19%
CLASS 4		
ZONE 1	13.40	19%
ZONE 2	13.24	19%
CLASS 5		
ZONE 1	13.49	19%
ZONE 2	13.33	19%
CLASS 6		
ZONE 1	13.49	19%
ZONE 2	13.33	19%
CLASS 7		
ZONE 1	13.48	19%
ZONE 2	13.29	19%
CLASS 8		
ZONE 1	13.24	19%
ZONE 2	12.99	19%
CLASS 9		
ZONE 1	13.33	19%
ZONE 2	13.10	19%
ZONE 10		
ZONE 1	13.40	19%
ZONE 2	13.24	19%
CLASS 11		
ZONE 1	13.33	19%
ZONE 2	13.14	19%
CLASS 12		
ZONE 1	13.28	19%
ZONE 2	13.10	19%

DECISION NO. PA84-3000

AREA COVERED BY CARPENTERS ZONES

ZONE I - Allegheny, Armstrong, Beaver, Butler, Erie, Fayette, Greene, Lawrence, Mercer, Washington and Westmoreland

ZONE II - Bedford, Blair, Cambria, Cameron, Centre, Clarion, Clinton, Clearfield, Crawford, Elk, Forest, Franklin, Fulton, Huntingdon, Indiana, Jefferson, McKean, Mifflin, Potter, Seomerset, Venango and Warren

AREA COVERED BY IRONWORKERS ZONES

ZONE 1 - Butler, Cambria, Erie, Fayette, Mercer, Washington, Westmoreland, Lawrence, Somerset, Allegheny, Beaver, Armstrong, Blair, Cameron, Centre, Clarion, Clearfield, Crawford, Forest, Greene, Indiana, McKean, Venango, Warren, Bedford, Jefferson, Clinton, Elk, Fulton and Potter Counties

ZONE 2 - Franklin, Huntingdon and Mifflin Counties

ZONE 3 - Allegheny, Armstrong, Beaver, Butler, Cambria, Clarion, Fayette, Indiana, Washington & Westmoreland Counties

AREA COVERED BY LABORERS ZONES

ZONE I - Allegheny, Armstrong, Beaver, Blair, Butler, Cambria, Clarion, Clearfield, Elk, Erie, Fayette, Greene, Indiana, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, Westmoreland

ZONE II - Bedford, Cameron, Centre, Clinton, Crawford, Forest, Franklin, Fulton, Huntingdon, Jefferson, Mifflin, Potter

LABORERS CLASSIFICATION DEFINITIONS

CLASS I - Heavy & Highway Construction Laborers (Including Craft Tenders, handling Salamanders L. P. Gas Heaters or similar etc.); Asphalt Curb Sealer; Asphalt Tamper; Batchman (weigh); Blaster's Helper; Boatman; Brakeman; Change House Attendant; Coffer Dam; Concrete Curing Pitman; Puddler; Drill Runner's Helper, (Including Drill Mounted on Truck, Track, or similar and Davey Drill - Spots-clean-up & Helps to maintain); Electric Brush and or Grinder; Fence Construction (including Fence Machine Operator); Form Stripper and Mover; Gabion (Erectors and Placers); Hydro Jet Claster Nozzlemen; Manually moved Emulsion Sprayer; Radio Actuated Traffic Control Operator; Rip Rap Work, Scaffolds and Runways; Sheeters and Shorers; Structural Concrete Top Surfacer; Walk Behind Street Sweeper; Welder's Helper (pipeline); Wood Chipper

LABORERS (CONT'D)

CLASS II - Air Tool Operator (all types); Asphalt, Batch & Concrete Plant Operator (manually operated) asphalt Rakers; Burner; Caisson Men (open air); Carryable Pumps; Chain Saw Operator (Including attachments); Cribbing (Concrete or steel); Curb Machine Operator (asphalt or concrete - walk behind); Diamond Head Core Driller; Drill Runner's Helper (Tunnel); Fork Lift (walk behind); Form Setter (Road Forms Line Man); Highway Slab Reinforcement Placers (Including Joint and Basket Setters); Hydraulic Pipe Pusher; Liner Plates (Tile or Vitrified Clay); Mechanical Compacting Equipment Operators; Mechanical Joint Sealer, Dope Pot and Tar Kettle; Mortar Mixer (hand or machine); Muckers, Brakemen & All Other Labor (Includes installation of Utility Lines); Pipe Layers (Regardless of material); Portable Single Unit Conveyor; Post Hole Auger (2 or 4 cycle-hand operated); Power Wheelbarrows and Buggies; Rail Porter or Similar; Sand Blaster; Vibrator Operator, All Rail Road Track Work to Include The Following: Adzing Machine, Ballast Router; Bolting Machine; Power Jacks; Rail Drill; Railroad Brakeman; Rail Saw; Spike Drivers (Manually or handheld tool); Spike Pullers; Tamping Machine; Thermitweld

CLASS III - Blacksmith, blaster, brick stone and block pavers and block cutters (wood, belgian and asphalt), cement mortar lining car pusher, cement mortar mixer (pipe relining), cement mortar pipe reliners, concrete saw operator (walk behind), curb cutters and setters, elevated roadway drainage construction, form setter (road forms-lead man), grout machine operator, gunite or dry pack gun (nozzle and machine man), manhole or catch basin (brick, block, concrete or any prefabrication), Miners and drillers (including lining, supporting and form workmen, setting of shields, miscellaneous equipment and jumbos), multi-plate pipe (aligning and securing), placing wire mesh on gunite projects reinforcing steel placers (bending, aligning and securing and cad weld), wagon drill operators (air track or similar), walk behind ditching machine (trencher or similar), welder

CLASS IV - Welder (pipeline); High Burner (any burning not done from deck)

DECISION NO. PA84-3000

AREA COVERED BY LANDSCAPE
LABORERS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Butler, Clarion, Crawford, Fayette, Greene, Indiana, Jefferson, Lawrence, Mercer, Venango, Washington, Westmoreland, Bedford, Blair, Cambria, Centre, Clearfield, Clinton, Erie, Franklin, Fulton, Huntingdon, Mifflin, Somerset

ZONE 2 - Cameron, Elk, Forest, McKean, Potter, Warren

AREA COVERED BY LINE CONSTRUCTION ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Bedford, Blair, Cambria, Centre, Clarion, Clearfield, Fayette, Fulton, Greene, Huntingdon, Indiana, Jefferson, Somerset, Washington & Westmoreland Counties

ZONE 2 - Franklin & Mifflin Counties

ZONE 3 - Butler, Cameron, Clinton, Crawford, Elk, Erie, Forest, Lawrence, McKean, Mercer, Venango, Warren & Potter Counties

FOOTNOTE:
a. Paid Holidays: New Year's Day; Declaration Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day and Good Friday.

CLASSIFICATION DEFINITIONS FOR LINE CONSTRUCTION (RAILROAD ONLY)

"A" Equipment Operators:

1. Hoisting equipment - when erecting complete towers, erecting framed structures, erecting steel transmission poles, erecting railroad pole extensions and crossbeams and when operating personnel lift baskets.

2. Tension pulling equipment under energized conditions - paralled with other energized circuits or above energized circuits on the same structure, not to include crossovers. Bunled consuctor stringing, including static conductors on bundled conductor lines.

3. Excavating augures 36" inches in diameter or larger, 5/8 cubic yard backhoe and larger, trencher over four feet in depth, bulldozer D-6 (caterpillar) or larger, and blade on finish grade work

"B" Equipment Operators:
Operators of all other equipment

AREA COVERED BY POWER EQUIPMENT OPERATORS ZONES

ZONE I - Allegheny, Armstrong, Beaver, Blair, Butler, Cambria, Clarion, Centre, Clearfield, Crawford, Erie, Elk, Fayette, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington & Westmoreland Counties

ZONE II - Bedford, Cameron, Clinton, Forest, Franklin, Fulton, Huntingdon, Mifflin, Potter

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

CLASS I - Autograde (C.M.I. & similar); Backfiller; Backhoe - 360° Swing; Cableway; Caisson Drill (similar to Hugh Williams); Central Mix Plant; Cooling Plant; Concrete Paving Mixer; Concrete Pump (self-propelled); Cranes; Cranes (Boom or mast 101 ft. or over up to & including 150 ft. inclusive of job + $.25; Boom or mast over 150 ft. up to & including 200 ft. inclusive of jib + $.50; Boom or mast over 200 ft. inclusive of jib + $.75; Tower-Stationary-Climbing Tower Crane); Derrick; Derrick Boat; Dozer (D-6 & over); Dragline; Dredge; Dredge Hydraulic; Elevating Grader; Franki Pile Machine; Gradall (Remote control or other-wise); Grader (Power-Fine Grade); Helicopter; Hilift (4 cy. and over); Hoist 2 Drums or more (in one unit); Hydraulic Boom TRuck (with pivotal cab) (single motor-Pitman or similar): Kocal; Locomotive (std. Gauge); Metro-chip Harvester or similar; Milling Machine (Roto Mill or Similar); Mix Mobile; Mucking Machine (Tunnel); Pile Driver Machine; Pipe Extrusion Machine; Prespliter Drill (Self contained); Refrigeration Plant (Soil Stabilization) Rough Terrain Crane; Scrapers; Shovel-Power; SliP Form Paver (C.M.I. and similar); Trenching Machine; Tunnel Machine (Mark XXI Jarva or similar) 1 Whirley

CLASS II - Asphalt paving machines (spreader), asphalt plant operator, auger (tractor mtd.), auger (truck mtd.), backhoe (rear pivotal swing) (180 swing), belt loader (euclid or similar), boring machine, cable placer or layer, compactor with blade, concrete batch plant (electronically synchronized), concrete belt placer (C.M.I. and similar), concrete finishing machine and spreader concrete mixer (over 1 cy.), concrete pump (stationary), core drill (truck or skid mtd. - similar to Pen drill), dozer (under D-6), force feedloader, fork lift (lull or similar), grader - power, grease unit operator (head), guard rail post driver (truck mounted), guard rail post driver (skid type), hi-lift (under 4 cy.) hydraulic boom truck (Non-Pivotal cab), job work boat (powered) when assistance is required it shall be a deckhand), jumbo operator, locomotive (narrow guage), mechanic, minor equipment operator (accumulative four units), mucking machine, multi-head saw (groover), overhead crane, roller - power-asphalt, ross carrier, side boom or tractor mounted boom, stone cursher, (screening-washing plants), stone spreader (self-propelled) truck mounted drill (davey or similar), welder and repairman, well point pump operator

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CLASSIFICATION DEFINITIONS
FOR ALL ZONES CONT'D

CLASS III - Broom Finisher (C.M.I. or similar); Compactors/Rollers (Static or Vibratory (Self-propelled); Curb Builder; Minor Equipment Operator (two to three units); Multi-head Tie Tamper, Pavement Breaker (Self-Propelled or ridden); Soil Stabilizer Machine; Tire Repairman; Tractor (Snaking and hauling); Well Driller and Horizontal; Winch or "A" Frame Truck (when hoisting and lowering)

CLASS IV - Ballast Regulator, Compressor, Concrete Mixer (1 cy. & under with skip), Concrete Saw (Ridden or self-propelled), Conveyor, Elevator (Material hauling only), Fork-lift (Ridden or self-propelled), Form Line Machine, Generator, Groute Pump, Heater (Mechanical), Hoist (Single Drum), Ladavator Light Plant, Mulching Machine, Spray Cure Machine (powered Driven), Subgrader, Tie Puller, Tugger and welding Machine (Gas or Diesel)

CLASS V - Deck Hand, Farm Tractor; Fireman on Boiler; Mechanic's Helper; Oiler, Power Broom, Side Delivery Shoulder Spreader

TRUCK DRIVER CLASSIFICATION DEFINITIONS

CLASS 1 - Trucks under 33,000 lbs. gross load category (including all types of trucks such as fuel, dump, flat bottom, pickup and similar equipment. Also parts man and warehouseman)

CLASS 2 - Truck over 33,000 lbs. gross load category (including all types of trucks such as fuel, dump (tandem), flat, bottom, scissors and combination fuel and fuel and grease)

CLASS 3 - Tri-axle Trucks

CLASS 4 - Heavy equipment whose capacity exceeds that for which state licenses are issued - specifically refers to units in excess of 8 feet, width (such as euclids, Athey Wagon, Payloader, Tournawagons and similar equipment when not self-loaded rated under forty-five tons

CLASS 5 - Heavy off-the-road equipment (rated at forty-five tons or over)

CLASS 6 - Bottom or Belly-dump Trucks

CLASS 7 - Heavy Duty Trailer, such as Low Boy, Hi-Boy, Dump Trailer, Pole Trailer A-Frames (when used for transporting materials), Dumpseters, Ross Carriers, Form Trucks, Dual-purpose Trucks (when load has been loaded or unloaded with truck winch, loading, hauling and unloading), Mechanical Tailgate Truck, Bucket Selfloading Trucks, Farm Tractor (when pulling and hauling), Fork Lift Trucks (in storage areas and warehouses), Tar and Asphalt Distributint Trucks, Tar and Asphalt Trailer Trucks, mobile mixer and slurry seal truck

CLASS 8 - Single-axle Ready Mixed Concrete Trucks (such as agitators barrel, redimix concrete trucks, etc.

CLASS 9 - Tandem-axle Ready-mixed Concrete Trucks (such as agitators, barrel, redi-mix concrete trucks, etc.

CLASS 10 - Tri-Axle Ready-Mixed Concrete Trucks (such as agitators, barrel, redi-mix concrete trucks, etc.

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TRUCK DRIVER CLASSIFICATION DEFINITIONS CONT'D

CLASS 11 - Liquid Tank Trucks - Straight and Semi (including water, sprinkler, oil trucks, etc.)

CLASS 12 - Trucks with Dolly or Trailer

AREA COVERED BY TRUCK DRIVERS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Blair, Butler, Cambria, Centre, Clearfield, Crawford, Erie, Fayette, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, Westmoreland

ZONE 2 - Bedford, Cameron, Clarion, Clinton, Elk, Forest, Franklin, Fulton, Huntingdon, Mifflin, Potter

Welders - Rate for craft

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))."

federal register

Friday
January 13, 1984

Part IV

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978; Notice

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Volume 1037]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: January 9, 1984.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF)

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal, Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservior
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb

Secretary.

NOTICE OF DETERMINATIONS
ISSUED JANUARY 9, 1984

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
CALIFORNIA DEPARTMENT OF CONSERVATION									
-AMERADA HESS CORPORATION				RECEIVED:	12/08/83	JA: CA			
8411024	82-6-0060	0406700113		108		RIO VISTA GAS UNIT #113	RIO VISTA GAS	6.3	PACIFIC GAS & ELE
-ARKOMA PRODUCTION CO				RECEIVED:	12/08/83	JA: CA			
8411025	83-6-0061	0401320207		102-4		STOLICH 7-3	EAST BRENTWOOD	500.0	
8411026	83-6-0070	0401120239		102-4		TORRES 24-1	BOUNDE CREEK	500.0	
-ARMSTRONG PETROLEUM CORP				RECEIVED:	12/08/83	JA: CA			
8411027	83-6-0071	0401120252		102-4		SOUTH SYCAMORE #9-2	GRIMES	100.0	PACIFIC GAS & ELE
-CHEVRON U S A INC				RECEIVED:	12/08/83	JA: CA			
8411029	83-5-0007	0403120250		102-2		SALYER 645X	TULARE LAKE	730.0	HUSKY OIL & GAS C
-HILLIARD OIL & GAS INC				RECEIVED:	12/08/83	JA: CA			
8411023	83-6-0076	0409520588		102-4		SCHROEDER UNIT #1	PUTAH	114.0	PACIFIC GAS & ELE
-HUSKY OIL COMPANY				RECEIVED:	12/08/83	JA: CA			
8411028	83-5-0006	0403120249		102-2		KCDC 81-7	TULARE LAKE	300.0	PACIFIC GAS & ELE
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	12/08/83	JA: CA			
8411030	83-4-0274	0402967936		103		MCKITTRICK FEE #55	CYMRIC	3.0	
-TXO PRODUCTION CORP				RECEIVED:	12/08/83	JA: CA			
8411019	83-6-0075	0410120218		103		BIHLMAN 19-1	SUTTER GAS FIELD	100.0	PACIFIC GAS & ELE
8411020	83-6-0077	0411320759		103		BRANDENBURGER 10-2	TODHUNTERS LAKE GAS	100.0	PACIFIC GAS & ELE
8411015	83-6-0064	0409520611		102-4		BRIGANTINO 14-1	MILLAR GAS	100.0	PACIFIC GAS & ELE
8411017	83-6-0066	0411320241		102-4		CHRISTIAN 4-1	MALTON BLACK BUTTE	100.0	PACIFIC GAS & ELE
8411021	83-6-0078	0410320147		102-4		COWLEY 36-1	SOUTH CORNING GAS FIE	100.0	PACIFIC GAS & ELE
8411016	83-6-0065	0406720213		102-4		GOMES 2-1	RIO VISTA GAS	100.0	PACIFIC GAS & ELE
8411018	83-6-0072	0401120251		102-4		MATHEWS 4-1	ARBUCKLE GAS FIELD	100.0	PACIFIC GAS & ELE
8411022	83-6-0079	0410320153		102-4		SEARS ET AL 20-1		100.0	PACIFIC GAS & ELE
LOUISIANA OFFICE OF CONSERVATION									
-CARUTHERS PRODUCING CO INC				RECEIVED:	12/05/83	JA: LA			
8410956	83-1168	1701725150		102-4		CADDO PARISH SCH BD #1 SLI RC SU120	CADDO-PINE ISLAND	36.5	
-EXCHANGE OIL & GAS CORPORATION				RECEIVED:	12/05/83	JA: LA			
8410959	83-1172	1705520231		102-4		HOMER MOUTON #1	NORTH MAURICE	2155.0	LOUISIANA INTRAST
-HAMMAN OIL & REFINING CO				RECEIVED:	12/05/83	JA: LA			
8410958	83-1166	1705520785		102-4		HELEN E PINE #1	CHINA	146.0	LOUISIANA GAS SYS
-SHELL OFFSHORE INC				RECEIVED:	12/05/83	JA: LA			
8410957	83-1167	1770920216		102-4		SL 1536 #29 EI 18 AA RB SU	EUGENE ISLAND BLOCK 1	2320.0	MID-LOUISIANA GAS
8410955	83-1169	1770920221		102-5		SL 1666 #4 EI 18 S2 RC SU	EUGENE ISLAND BLOCK 1	0.0	MID-LOUISIANA GAS
OKLAHOMA CORPORATION COMMISSION									
-AMERICAN NAT GAS PROD CO				RECEIVED:	12/05/83	JA: OK			
8410937	26155	3505120681		107-DP		BROWN #1-1	WEST BRADLEY	40.0	MOBIL OIL CORP
8410954	23469	3513920883		108-SA		MENDENHALL #1	WEST DOMBEY	10.0	MICHIGAN WISCONSI
8410901	23467	3513920989		108-PB		VAN HYNING #1-21	WEST DOMBEY	7.0	MICHIGAN WISCONSI
-ANADARKO PRODUCTION COMPANY				RECEIVED:	12/05/83	JA: OK			
8410890	24695	3513921679		103		CITIES SERVICE A-7	HOUGH SOUTH	9.0	PHILLIPS PETROLEU
-ANADARKO RESOURCES CORP				RECEIVED:	12/05/83	JA: OK			

JD NO	DA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8410860	24844	3500920540		103		KNOX #2 ARC	S E ERICK	365.0	NORTH BLOOMINGTON
-ARCO OIL AND GAS COMPANY				RECEIVED:	12/05/83	JA: OK			
8410932	19470	3506100000		108-PB		A H COX UNIT WELL #1	KINTA	25.5	OKLAHOMA GAS & EL
8410903	13470	3502700000		108-PB		JENNINGS - BRYAN #1	NORTH NORMAN	18.3	NORTHWEST CENTRAL
-ARKOMA PRODUCTION CO				RECEIVED:	12/05/83	JA: OK			
8410891	24859	3507920493		103		ANDEE GIST #1-C	KINTA	50.0	ARKANSAS LOUISIAN
-ARRINGTON PROPERTIES INC				RECEIVED:	12/05/83	JA: OK			
8410839	21676	3511900410		102-4		BERRY #1	LAKE BLACKWELL EAST	10.0	ARCO OIL & GAS CO
8410837	21681	3511900000		102-4		HARDY #1	LAKE BLACKWELL EAST	10.0	ARCO OIL & GAS CO
8410838	21680	3511900448		102-4		HESS #1	LAKE BLACKWELL EAST	10.0	ARCO OIL & GAS CO
-ATKINSON J V				RECEIVED:	12/05/83	JA: OK			
8410845	23753	3510521297		108		AUSTIN BILLUPS #1		15.0	REH INDUSTRIES IN
8410847	23756	3510500000		108		C R DICKINSON #12		9.0	REH INDUSTRIES IN
8410848	23757	3510500000		108		C R DICKINSON #15		9.0	REH INDUSTRIES IN
8410846	23754	3510500000		108		HEARLD ROBINSON #2		12.0	REH INDUSTRIES IN
-AUTUMN ENERGY CORP				RECEIVED:	12/05/83	JA: OK			
8410849	24758	3503724830		103		GRACE #3	KELLYVILLE	250.0	GOLDEN ARROW GAS
-BEASLEY OIL CO				RECEIVED:	12/05/83	JA: OK			
8410888	24770	3501121805		103		FISHER #1	NORTHWEST OMEGA	100.0	WARREN PETROLEUM
-BLUE QUAIL ENERGY INC				RECEIVED:	12/05/83	JA: OK			
8410862	24814	3501722476		103		IVAN #1	E MUSIANG	64.8	PHILLIPS PETROLEU
-BRACKEN EXPLORATION CO				RECEIVED:	12/05/83	JA: OK			
8410940	24787	3502520531		103		MILLER #1-20	GRIGGS	11.0	PHILLIPS PETROLEU
-BROOKS B B				RECEIVED:	12/05/83	JA: OK			
8410830	24645	3511122268		108		WILLIAMS #2	YOUNGSTOWN	11.0	PHILLIPS PETROLEU
-BRUNAR EXPLORATION CO				RECEIVED:	12/05/83	JA: OK			
8410904	25179	3504700000		102-4		BEEBY #1	N E ELKHORN	146.0	EASON OIL CO
8410906	25177	3504700000		102-4		BEEBY #1-34	N E ELKHORN	146.0	EASON OIL CO
8410907	25176	3504700000		102-4		TOWELL #1	N E ELKHORN	100.0	EASON OIL CO
8410905	25178	3504700000		102-4		TOWELL #2	N E ELKHORN	146.0	EASON OIL CO
8410908	25175	3504700000		102-4		TOWELL #3	N E ELKHORN	200.0	EASON OIL CO
-CANADIAN EXPLORATION CORP				RECEIVED:	12/05/83	JA: OK			
8410863	24800	3501722546		103		ABEL #29-2	RICHLAND	90.0	PHILLIPS PETROLEU
-CLARK RESOURCES INC				RECEIVED:	12/05/83	JA: OK			
8410928	23445	3507323679		102-4		POST 22-1 (SKINNER)	SOONER TREND	195.0	CONOCO INC
-COQUINA OIL CORPORATION				RECEIVED:	12/05/83	JA: OK			
8410953	22802	3500920538		102-2		WALTER #1	N W CARTER	1095.0	
-COTTON PETROLEUM CORPORATION				RECEIVED:	12/05/83	JA: OK			
8410952	22759	3513921665		102-2		HOUSTON "A" #1	DOMBEY WEST-CHESTER	0.0	
-CRASCO OIL CO				RECEIVED:	12/05/83	JA: OK			
8410876	24052	3503722178		108		GREEN LEASE #3 03722178	PICKETT PRAIRIE	0.0	PHILLIPS PETROLEU
-DAVIS OIL COMPANY				RECEIVED:	12/05/83	JA: OK			
8410861	24822	3508720894		103		BROOKS FARMS #1		64.6	
8410859	24864	3501121826		103		FRIESEN #1		766.5	DELHI GAS PIPELIN
-DAWN ENERGY CO				RECEIVED:	12/05/83	JA: OK			
8410833	24627	3515321425		103		LAND COMMISSIONERS #2-13	SOUTHWEST SHARON	250.0	PHILLIPS PETROLEU
-DEVON ENERGY CORPORATION				RECEIVED:	12/05/83	JA: OK			
8410943	20230	3505121293		102-4	103	THOMAS #1-7	CHICKASHA	700.0	ARKANSAS LOUISIAN
-DYNE EXPLORATION CO				RECEIVED:	12/05/83	JA: OK			
8410920	24656	3510721526		103		ARTUSSEE 1-12	SOUTHEAST BRYANT	150.0	PHILLIPS PETROLEU
-EAGLE MINERALS & OIL PROPERTIES INC				RECEIVED:	12/05/83	JA: OK			
8410924	24611	3513723413		103		JOHN V GENTRY 1-A	SHO-VEL-TUM	0.0	GETTY OIL CO
-EARLSBORO OIL AND GAS CO INC				RECEIVED:	12/05/83	JA: OK			
8410895	24635	3509322707		103		CR #1-5	RINGWOOD	0.0	
8410832	24636	3509322703		103		HILLABOLT #2-4	RINGWOOD	0.0	UNION TEXAS PETRO
-EL DORADO DRILLING INC				RECEIVED:	12/05/83	JA: OK			
8410930	22725	3509201180		102-2	103	HARRISON #1		476.7	EL PASO NATURAL G
8410944	22724	3507122557		102-2	103	ROLLY #16		20.1	SUN EXPLORATION &
8410929	22726	3507122634		102-2	103	ROLLY #17		21.9	SUN GAS CO
-EXXON CORPORATION				RECEIVED:	12/05/83	JA: OK			
8410938	24826	3500722373		103		CAMRICK UNIT #2975	CAMRICK	10.0	PHILLIPS PETROLEU
-FRENCH PETROLEUM CORP				RECEIVED:	12/05/83	JA: OK			
8410942	24769	3504321730		103		POLLOCK #1	WEST CANTON	250.0	PHILLIPS PETROLEU
-FUNK EXPLORATION INC				RECEIVED:	12/05/83	JA: OK			
8410945	22741	3500722371		102-4		BEAVER RIVER #1-2	CAMRIC GAS AREA	330.0	PANHANDLE EASTERN
8410948	22745	3513921674		102-4		CAIN #1-29	TYRONE	350.0	NORTHWEST PIPELIN
8410840	20051	3500721171		102-4		CLAPP #1	DOMBEY	35.0	PANHANDLE EASTERN
8410947	22743	3513921664		102-4		OGLETREE "B" #1	EAST LORENA	547.0	NORTHWEST PIPELIN
8410946	22742	3513921669		102-4		YOUNG "B" #1	EAST LORENA	365.0	NORTHWEST PIPELIN
-GREAT SOUTHWESTERN EXPLORATION INC				RECEIVED:	12/05/83	JA: OK			
8410841	15406	3511921386		102-4		BOTTS #1	MARKHAM	1.0	PARKS ENERGY INVE
-GUNDY OIL CO				RECEIVED:	12/05/83	JA: OK			
8410868	22637	3508322114		102-2		ARMSTRONG #1 OTC #083-77872	SOUTH GUTHRIE	10.0	BUCKEYE NATURAL G
-H G & G INC				RECEIVED:	12/05/83	JA: OK			
8410865	22319	3507323631		102-4		ANNUSCHAT #1		0.0	PHILLIPS PETROLEU
-HELMERICH & PAYNE INC				RECEIVED:	12/05/83	JA: OK			
8410877	24457	3513723363		103		HANSON UNIT #2	SHO-VEL-TUM	0.0	MOBIL OIL CORP
-HOLD OIL CORP				RECEIVED:	12/05/83	JA: OK			
8410909	24890	3506321773		103		COLLINS #1-12	SHADY GROVE	125.0	HILL TOP INVESTME
-HUMPHREY JOE ED				RECEIVED:	12/05/83	JA: OK			
8410873	24330	3511122895		103		HUMPHREY #1	MORRIS	8.4	PHILLIPS PETROLEU
-INCA OIL CO				RECEIVED:	12/05/83	JA: OK			
8410887	24766	3510321614		103		HILDRETH #2-A		7.3	EASON OIL CO
8410853	24768	3510321848		103		HILDRETH #3-A		7.3	EASON OIL CO
8410886	24767	3510321896		103		HILDRETH #4-A		7.3	EASON OIL CO
-INEXCO OIL COMPANY				RECEIVED:	12/05/83	JA: OK			
8410950	22751	3503920836		102-2		ARTHUR NEWCOMB #1-13	N W BUTLER	328.0	
8410951	22752	3503920856		102-2		KELLY #1-14	N W HAMMON	500.0	TRANSWESTERN PIPE
-JET OIL COMPANY				RECEIVED:	12/05/83	JA: OK			
8410858	24865	3504723294		103		CLINE "D" #1		4.0	EASON OIL CO
-JIM L HANNA DBA HANNA OIL AND GAS C				RECEIVED:	12/05/83	JA: OK			
8410899	22486	3504723153		102-4		BRAINARD #1		0.0	PANHANDLE EASTERN
8410866	22484	3506120572		102-2		DENNY #1		0.0	
8410898	22485	3504723168		102-4		MOURER #1		0.0	UNION TEXAS PETRO
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	12/05/83	JA: OK			
8410892	22649	3505121396		102-4	103	MCVEY #1-20	N E VERDEN DEEP	2000.0	
-KEITH F WALKER				RECEIVED:	12/05/83	JA: OK			
8410896	22136	3509955614		103		MONTGOMERY #2		1.5	AMINOIL USA INC
-KELLEY OIL CO				RECEIVED:	12/05/83	JA: OK			
8410939	24779	3508100000		103		MATTIE V #1	MATTIE	18.0	MERIDIAN ENERGY I
-LANGFORD ENERGY INC				RECEIVED:	12/05/83	JA: OK			
8410880	24728	3509322589		103		KOEHN 27-1		83.4	PANHANDLE EASTERN
8410881	24729	3509322232		103		LAWRENCE 20-1		124.6	AMINOIL USA INC
-LATCO ENERGY INC				RECEIVED:	12/05/83	JA: OK			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8410900	22605	3507323718		102-4		LONG #2	SOONER TREND	1.0	PHILLIPS PETROLEU
-LEEDE OIL & GAS INC				RECEIVED:	12/05/83	JA: OK			
8410936	26159	3514920313		107-DP		ANTELOPE UNIT #1		912.5	OKLAHOMA GAS & EL
-MEGA II ENERGY & INVESTMENT CORP				RECEIVED:	12/05/83	JA: OK			
8410925	24601	3505321097		103		NBC #1	MAYFLOWER	150.0	HIGHT SERVICE CO
-MOBIL OIL CORP				RECEIVED:	12/05/83	JA: OK			
8410935	6856	3503900000		108-PB		JONES HUNTON UNIT #1	NORTH CUSTER CITY	11.0	NATURAL GAS PIPEL
-MONSANTO COMPANY				RECEIVED:	12/05/83	JA: OK			
8410922	24644	3505321025		103		WALD #3	EAST LAMONT	100.0	FARMLAND INDUSTRI
8410911	24902	3505321168		103		WALD #4	EAST LAMONT	100.0	FARMLAND INDUSTRI
-NONDORF OIL & GAS INC				RECEIVED:	12/05/83	JA: OK			
8410831	24642	3510321944		103		MAX BAETZ #1-31	NW LONE ELM	1.0	
-OFS-TULSA CORP				RECEIVED:	12/05/83	JA: OK			
8410834	23906	3507323655		103		ANITA #1-16	SOONER TREND	90.0	PHILLIPS PETROLEU
-OXLEY PETROLEUM CO				RECEIVED:	12/05/83	JA: OK			
8410915	24785	3505121381		103		HARRIS #3		839.5	MOBIL OIL CORP
8410941	24784	3513500000		103		KELLEY #3		252.9	ARKANSAS LOUISIAN
8410916	24783	3512100000		103		LUCY MAE SMITH #1		22.6	SWAB CORP
-PERKINS ENERGY CO				RECEIVED:	12/05/83	JA: OK			
8410854	24889	3511721795		103		LLOYD 5-21	MARAMEC	16.0	PHILLIPS PETROLEU
8410855	24888	3511721656		103		RICKS "A" #1	MARAMEC	6.0	PHILLIPS PETROLEU
-PETRO-ENERGY EXPLORATION INC				RECEIVED:	12/05/83	JA: OK			
8410844	24752	3504723175		103		WILLIAMS #1-5	SOUTH DOUGLAS FIELD	100.0	EASON OIL CO
-PETRO-LEWIS CORPORATION				RECEIVED:	12/05/83	JA: OK			
8410882	24735	3501700000		108		MEIVES 13-1 WELL ID #5079801	SOONER TREND	8.3	PHILLIPS PETROLEU
8410883	24743	3507300000		108		PRIBYL 4-2	SOONER TREND	7.5	EXXON CORP
-PETROLIA CORP				RECEIVED:	12/05/83	JA: OK			
8410914	24819	3501121786		103		GYPSUM #3-1	CARLTON	0.0	
-PHILCO ENERGY INC				RECEIVED:	12/05/83	JA: OK			
8410894	24631	3511124480		103		INBODY #1	BEGGS DISTRICT	155.0	PHILLIPS PETROLEU
8410864	24632	3511124163		103		SHELTON #1	BRINTON	54.0	SWAB CORP
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	12/05/83	JA: OK			
8410934	9514	3501720806		108-PB		MATTHIES "A" #1		0.0	TRANSOK PIPELINE
-PRODUCERS 88 OIL CORP				RECEIVED:	12/05/83	JA: OK			
8410869	22804	3510721481		102-4		GLEN NORTON -M#1	SOUTH CLEARVIEW	180.0	PHILLIPS PETROLEU
-QUAL OIL CO INC				RECEIVED:	12/05/83	JA: OK			
8410913	24846	3505321071		103		SAWYER TRUST #1	WAKITA	128.0	SUN GAS CO
-QUANTUM RESOURCES CORP				RECEIVED:	12/05/83	JA: OK			
8410910	24870	3507323039		103		MCCLELLAND #12-1	SOONER TREND	77.0	CITIES SERVICE OI
-QUASIUS DAVID				RECEIVED:	12/05/83	JA: OK			
8410927	23775	3511100000		108		REDO #3	REDO #3	16.8	PHILLIPS PETROLEU
-RED ROCK EXPLORATION INC				RECEIVED:	12/05/83	JA: OK			
8410835	22614	3505121276		102-4		DRR #1-27	NORTHEAST AMBER	73.0	OKLAHOMA GAS & EL
-RESOURCES INVESTMENT CORPORATION				RECEIVED:	12/05/83	JA: OK			
8410917	24782	3504521133		103		JENKINS #9		75.0	PHILLIPS PETROLEU
-REYNOLDS EXPLORATION CO				RECEIVED:	12/05/83	JA: OK			
8410878	24711	3507323728		103		CRONKITE #2	SOONER TREND	0.0	COMOCO INC
8410879	24712	3507323740		103		FOX #2	SOONER TREND	0.0	CITIES SERVICE CO
8410842	24713	3507323522		103		ROSEMARY #1	SOONER TREND	0.0	CITIES SERVICE CO
-RICHARDSON CONSTRUCTION				RECEIVED:	12/05/83	JA: OK			
8410921	24651	3511100000		103		STORCK #1	OKMULGEE	2.7	PHILLIPS PETROLEU
-RICHARDSON WILLIAM S				RECEIVED:	12/05/83	JA: OK			
8410926	24494	3504900000		108		GRIMES #2	KATIE	18.5	LONE STAR GAS CO
-RICK BUCK OIL & GAS CORP				RECEIVED:	12/05/83	JA: OK			
8410884	24750	3501722509		103		DOROTHY-GRACE #1-28	RICHLAND	50.0	PHILLIPS PETROLEU
-RICKS EXPLORATION CO				RECEIVED:	12/05/83	JA: OK			
8410918	24660	3504321667		103		IRVIN #10-A	WILDCAT	900.0	NATURAL GAS PIPE
8410919	24659	3505121473		103		NITA #32-A		102.0	
-SAMEDAN OIL CORPORATION				RECEIVED:	12/05/83	JA: OK			
8410836	22571	3501722425		102-4		SPEAR #2-8	NO NAME	36.5	PHILLIPS PETROLEU
-SAMSON RESOURCES COMPANY				RECEIVED:	12/05/83	JA: OK			
8410902	16880	3504321389		102-4		LOUISE #1	EAST PUTNAM	46.0	HYDROCARBON SERVI
-SANTA FE-ANDOVER OIL CO				RECEIVED:	12/05/83	JA: OK			
8410885	24761	3501121862		103		WYMER #29-3		135.0	OKLAHOMA GAS PIPE
-SENECA OIL COMPANY				RECEIVED:	12/05/83	JA: OK			
8410931	19955	3509322547		103		VOTH #1-19		61.0	PAN HANDLE EASTER
-SOUTHLAND ROYALTY CO				RECEIVED:	12/05/83	JA: OK			
8410933	19495	3513900377		108-PB		ELMORE #1	EAST HOOKER	21.5	NORTHERN NATURAL
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	12/05/83	JA: OK			
8410912	24856	3504722540		103		BRAKAGE L UNIT #2	ENID N E	237.0	ARKANSAS LOUISIAN
8410897	22161	3507700000		108-ER		W A BRATTON JR #1		0.0	OKLAHOMA GAS & EL
-TENNECO OIL COMPANY				RECEIVED:	12/05/83	JA: OK			
8410852	24765	3500720936		108		BECKER #1-24	LIBERAL S E	7.0	MICHIGAN-WISCONSI
8410850	24763	3514300000		108		C B THRASHER #1	GUYMON-HUGOTON GAS AR	7.0	NORTHWEST CENTRAL
8410851	24764	3514300000		108		CECIL #1	GUYMON-HUGOTON GAS AR	5.0	NORTHWEST CENTRAL
8410923	24612	3510321974		103		SOUTH LONE ELM CLEVELAND SAND #115	SOUTH LONE ELM	16.0	AMINOIL USA INC
-THE GHK COMPANY				RECEIVED:	12/05/83	JA: OK			
8410872	22849	3501521365		102-2		DIDIER #1-28		279.0	TRANSOK PIPE LINE
8410870	22811	3503920766		102-2		HIGGINS #1-23		300.0	
8410871	22814	3514920276		102-2		JOHNSON 1-20	WILDCAT	0.0	
-TIPPERARY OIL AND GAS CORP				RECEIVED:	12/05/83	JA: OK			
8410867	22534	3508300577		102-4		KIESEL #1	SOUTH GUTHRIE LAKE	108.0	BUCKEYE NATURAL G
-TOWNER PETROLEUM CO				RECEIVED:	12/05/83	JA: OK			
8410874	22631	3501722434		102-4		VERNA LEIGHTON #7-1		0.0	PHILLIPS PETROLEU
-TRIGG DRILLING COMPANY INC				RECEIVED:	12/05/83	JA: OK			
8410843	24747	3508720898		103		GLENDA #1		0.0	LONE STAR GAS CO
-TXO PRODUCTION CORP				RECEIVED:	12/05/83	JA: OK			
8410875	22632	3506120589		102-2		BLANKENSHIP "A" #2	BROOKEN	0.0	
8410949	22750	3512900000		102-2		MOONEY #1	E ROLL	0.0	DELHI GAS PIPELIN
-UNION TEXAS PETROLEUM				RECEIVED:	12/05/83	JA: OK			
8410856	24882	3507300000		108		MARIE WRIGHT #1	CASHION	53.0	CHAMPLIN PETROLEU
8410857	24881	3507300000		108		NUGEN #1	DOVER HENNESSEY	0.0	EXXON CORP
-WESTERN PACIFIC PETROLEUM INC.				RECEIVED:	12/05/83	JA: OK			
8410893	24653	3504723378		103		WYATT #1-1	EAST BROWN	51.0	
-WESTSANDS OIL CORP				RECEIVED:	12/05/83	JA: OK			
8410889	24772	3503725034		103		SQUITO ONE	MOSQUITO CREEK	16.4	ARCO OIL & GAS CO
**********									
WEST VIRGINIA DEPARTMENT OF MINES									
**********									
-ALLEGHENY LAND & MINERAL COMPANY				RECEIVED:	12/05/83	JA: WV			
8410978		4703301072		108		A-688	EAGLE DISTRICT	0.0	CONSOLIDATED GAS
8410987		4708504391		108		A-849	UNION DISTRICT	0.0	CONSOLIDATED GAS
8410979		4708300306		108		A-852	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8410989		4708504472		108		A-901	GRANT DISTRICT	0.0	CONSOLIDATED GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8410986		4708504366		108		H-565	MURPHY DISTRICT	0.0	CONSOLIDATED GAS
8410994		4708504486		108		H-875	MURPHY DISTRICT	0.0	CONSOLIDATED GAS
8410988		4708504444		108		H-881	GRANT DISTRICT	0.0	CONSOLIDATED GAS
8411014		4708504487		108		H-885	GRANT DISTRICT	0.0	CONSOLIDATED GAS
8411013		4708504495		108		H-900	GRANT DISTRICT	0.0	CONSOLIDATED GAS
8410990		4708504473		108		H-902	GRANT DISTRICT	0.0	CONSOLIDATED GAS
8410991		4708504480		108		H-905	GRANT DISTRICT	0.0	CONSOLIDATED GAS
8410993		4708504481		108		H-907	GRANT DISTRICT	0.0	CONSOLIDATED GAS
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	12/05/83	JA: WV			
8411007		4704101842		108		JOSEPH NORRIS 11441	FREEMANS CREEK	14.0	GENERAL SYSTEM PU
8411004		4704101461		108		S D CAMDEN 10796	FREEMANS CREEK	1.0	GENERAL SYSTEM PU
8411006		4700100325		108		W E WILLIAMSON 10861	PLEASANT	17.0	GENERAL SYSTEM PU
8411003		4709701599		108		WESLEY ODELL 11929	WASHINGTON	15.0	GENERAL SYSTEM PU
8411005		4703300621		108		YOUNG & SMITH 11505	GRANT	21.0	GENERAL SYSTEM PU
-E W VALENTINE				RECEIVED:	12/05/83	JA: WV			
8410999		4708523848		108		E W VALENTINE #H-613	MURPHY DISTRICT	22.7	CONSOLIDATED GAS
-ELDER OIL CO				RECEIVED:	12/05/83	JA: WV			
8410992		4708529710		108		BUNGARDNER #1	BUNGARDNER	4.4	CONSOLIDATED GAS
-INDUSTRIAL GAS CORPORATION				RECEIVED:	12/05/83	JA: WV			
8410960		4700500388		108		ALLEN & PRYOR 23-486	SCOTT	0.8	HOUDAILLE INDUSTR
8410961		4700501163		108		CASSINGHAM 16-359	SCOTT	0.6	HOUDAILLE INDUSTR
8410962		4700500312		108		CASSINGHAM 22-440	SCOTT	1.8	HOUDAILLE INDUSTR
8410967		4709901276		108		E R PRICHARD 9-1103	STONEWALL	11.0	HOUDAILLE INDUSTR
8410969		4709900980		108		G W WORKMAN 4-955	BUTLER	0.6	HOUDAILLE INDUSTR
8410964		4709900977		108		HOARD BALDWIN 38-933	STONEWALL	1.5	HOUDAILLE INDUSTR
8410965		4700501144		108		LITTLE COAL LD CO 89-318	SCOTT	1.6	HOUDAILLE INDUSTR
8410963		4709900860		108		LOUISA COLLINS 7-861	GRANT	1.1	HOUDAILLE INDUSTR
8410966		4700500250		108		REYIONA COAL CO 22-419	SHERMAN	1.5	HOUDAILLE INDUSTR
8410968		4709900862		108		WILSON COAL LAND CO 68-870	LINCOLN	0.5	HOUDAILLE INDUSTR
-JAMES F SCOTT				RECEIVED:	12/05/83	JA: WV			
8410995		4703302574		108		ISABEL MORGAN S-351	COAL	0.0	CONSOLIDATED GAS
-MARION GAS COMPANY				RECEIVED:	12/05/83	JA: WV			
8410977		4703300922		108		LLOYD BURDETTE #1	RIPLEY	0.0	GAS TRANSPORT INC
-PENNZOIL COMPANY				RECEIVED:	12/05/83	JA: WV			
8410984		4700501032		108		J A WETHERALL #9	YAWKEY-FREEMAN	6.1	CONSOLIDATED GAS
-PETROLEUM DEVELOPMENT CORP				RECEIVED:	12/05/83	JA: WV			
8411009		4708506129		102-4		DONNELLY #1	GOOSE CREEK POOL	135.0	CONSOLIDATED GAS
8411000		4708506178		102-4		GRIFFIN PRODUCING C#2	GRIFFIN	13.0	CONSOLIDATED GAS
8411001		4708506134		102-0		GRIFFIN PRODUCING CO A#2	GRIFFIN	87.6	CONSOLIDATED GAS
8411008		4708506159		102-4		GRIFFIN PRODUCING E#2	GRIFFIN POOL	129.0	CONSOLIDATED GAS
8411011		4708505848		102-4		GRIFFIN PRODUCING G#1 (#111218-2)	GRIFFIN	77.0	CONSOLIDATED GAS
8410983		4785058780		102-4		GRIFFIN-PRODUCING 5613-2 #H-1	GRIFFIN	0.0	CONSOLIDATED GAS
8410982		4708505282		102-3		JUANITA PARKER #1	CISKO	274.0	CONSOLIDATED GAS
8411002		4708505110		102-3		NOBLE ROGERS #7	CISKO POOL	300.0	CONSOLIDATED GAS
8410980		4708505088		102-3		ROGERS #2 NOBLE	CISKO	342.0	CONSOLIDATED GAS
8410981		4708505111		102-3		ROGERS #8 NOBLE	CISKO	83.0	CONSOLIDATED GAS
8411012		4708505773		102-4		SUE DAVIS #1	GOOSE CREEK	32.0	CONSOLIDATED GAS
8411010		4708505863		102-4		SUE DAVIS A#2	GOOSE CREEK POOL	46.0	CONSOLIDATED GAS
-RAINBOW 7 8 & 9 80 LTD				RECEIVED:	12/05/83	JA: WV			
8410976		4708504906		108		BERNARD RICHARDS H-1059	CLAY DISTRICT	20.0	CONSOLIDATED GAS
-STONEWALL GAS CO				RECEIVED:	12/05/83	JA: WV			
8410985		4703302591		108		CUMBERLEDGE #1A (77-SH)	UNION	25.0	CONSOLIDATED GAS
-SUNSTATE OIL CO				RECEIVED:	12/05/83	JA: WV			
8410970		4708700124		108		HAROLD #1	UHLER	1.2	CONSOLIDATED GAS
8410974		4708703262		108		HAROLD #2	UHLER	1.2	CONSOLIDATED GAS
8410973		4708701074		108		HAYS #1	UHLER	1.2	CONSOLIDATED GAS
8410971		4708701025		108		JARVIS #1	UHLER	1.2	CONSOLIDATED GAS
8410972		4708701060		108		MATHENY #1	UHLER	1.2	CONSOLIDATED GAS
8410975		4708701213		108		WINES 2-A	MILLER	9.2	HARRY C BOGGS NAT
-UNITED PETRO LTD				RECEIVED:	12/05/83	JA: WV			
8410996		4701303323		108		HOWARD DYE #1 - UPL	MINNORA GAS	7.0	CONSOLIDATED GAS
8410997		4701303314		108		JOHN CHENOWETH #1	MINNORA GAS FIELD	12.0	CONSOLIDATED GAS
8410998		4701303309		108		SARAH TAYLOR #2	MINNORA GAS	7.0	CONSOLIDATED GAS

[Volume 1038]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: January 9, 1984

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS

ISSUED JANUARY 9, 1984

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
********** OKLAHOMA CORPORATION COMMISSION **********									
-AN-SON CORPORATION				RECEIVED:	12/06/83	JA: OK			
8411099	25086	3508720864		103		LAWANDA #1	GOLDSBY	91.3	SUN GAS CO
8411202	24963	3501700000		108		SCHWARZ #1	N CONCHO	6.9	PHILLIPS PETROLEU
-ANADARKO LAND & EXPLORATION CO				RECEIVED:	12/06/83	JA: OK			
8411125	22857	3512920872		102-4		ALLEN #1-A		100.0	TRANSOK PIPELINE
8411119	22882	3503920880		103		ATKIN #1-4	S E THOMAS	250.0	TRANSOK PIPE LINE
-ANADARKO PRODUCTION COMPANY				RECEIVED:	12/06/83	JA: OK			
8411131	24524	3500321004		108		BUCK A 1-36	LAMBERT SOUTH EAST	9.0	PIONEER GAS PRODU
8411130	24523	3500321019		108		CROSS 2-5	LAMBERT SE	19.0	PIONEER GAS PRODU
8411171	24869	3500321059		103		TUCKER E 2-21	LAMBERT SOUTH EAST	42.0	PIONEER GAS PRODU
-ARCO OIL AND GAS COMPANY				RECEIVED:	12/06/83	JA: OK			
8411206	22955	3511922135		102-4		PIGG #2	N W STILLWATER AIRPOR	18.3	ARCO OIL & GAS CO
8411051	22629	3501922472		102-4		RICKEY #1	N W OIL CITY	47.5	LONE STAR GAS CO
-ARKOMA PRODUCTION CO				RECEIVED:	12/06/83	JA: OK			
8411172	24858	3507920493		102-4		ANDEE GIST #1-T	KINTA	50.0	ARKANSAS LOUISIAN
-AUTUMN ENERGY CORP				RECEIVED:	12/06/83	JA: OK			
8411116	24981	3503725165		103		GRACE #4	KELLYVILLE	400.0	GOLDEN ARROW GAS
-BARBOUR ENERGY CORP				RECEIVED:	12/06/83	JA: OK			
8411042	21011	3508321926		102-4		KELLOGG #1-31		0.0	BUCKEYE NATURAL G
-BERRY PETROLEUM CORP				RECEIVED:	12/06/83	JA: OK			
8411181	14339	3504722692		103		TRUITT #1-30	SOONER TREND	91.0	EXXON CO USA
-BETA OIL CO				RECEIVED:	12/06/83	JA: OK			
8411135	24985	3501121791		103		HENRY WEBER #1-2	OMEGA	150.0	MUSTANG FUEL CORP
-BLAIK OIL COMPANY				RECEIVED:	12/06/83	JA: OK			
8411182	17098	3510320609		108-ER		KINDSCHI #1	SOONER TREND	0.0	AMINOIL U S A INC
-BOGERT OIL CO				RECEIVED:	12/06/83	JA: OK			
8411142	25015	3509322705		103		KOEHN 1-16	SOONER TREND/SOUTH FA	360.0	PHILLIPS PETROLEU
-BRACKEN EXPLORATION CO				RECEIVED:	12/06/83	JA: OK			
8411158	22888	3504321633		102-2		ANNA BETH SMITH 1-6		35.0	PHILLIPS PETROLEU
-BROOKS HALL OIL CORP				RECEIVED:	12/06/83	JA: OK			
8411101	25069	3512120786		103		BROWNE #1	BLOCKER	118.0	SOUTHEAST TRANSMI
-BUCK HARRY F & MAYO ROSS L				RECEIVED:	12/06/83	JA: OK			
8411176	24792	3510929763		103		RICE #2-22		91.3	PHILLIPS PETROLEU
-CHALLENGE OIL & GAS				RECEIVED:	12/06/83	JA: OK			
8411037	22516	3505320929		102-2		SHELLHAMMER #1		0.0	MID AMERICAN GAS
-CHEROKEE RESOURCE MANAGEMENT				RECEIVED:	12/06/83	JA: OK			
8411161	22934	3508121806		103		HODGE #1	STROUD PRUE	24.0	ALLIED MATERIALS
-CITIES SERVICE COMPANY				RECEIVED:	12/06/83	JA: OK			
8411126	22855	3501722033		102-4		PORTER C #1	UNION CITY	182.5	DELHI GAS PIPELIN
-CONOCO INC				RECEIVED:	12/06/83	JA: OK			
8411050	22618	3514920339		102-2		ELLIS 15-1	SENTINEL FIELD	160.6	PRODUCERS GAS CO
-CONTINENTAL RESOURCES CORP				RECEIVED:	12/06/83	JA: OK			
8411035	22557	3504321623		102-4	103	CROSS #1-2		0.0	HYDROCARBONS SERV
-CUESTA ENERGY CORPORATION				RECEIVED:	12/06/83	JA: OK			
8411166	24680	3501722499		103		COREY #1-19		30.0	PHILLIPS PETROLEU
-DAVIS OIL COMPANY				RECEIVED:	12/06/83	JA: OK			

JD NO	JA DKT	API NO
8411097	25082	3500121727
-DAWN ENERGY CO		
8411147	24945	3513921757
-DEMINEX US OIL COMPANY		
8411078	24240	3504921784
-DIASU OIL & GAS CO INC		
8411129	24508	3505300000
-DLB ENERGY CORP		
8411186	22280	3507323724
-ECC OIL CO		
8411128	24489	3514722141
-EL PASO NATURAL GAS COMPANY		
8411045	14512	3500935560
8411207	23970	3500906796
-EQUITY DRILLING CO INC		
8411192	23007	3511721676
8411196	23049	3511721744
8411195	23048	3511721722
-ESSEX EXPLORATION INC		
8411167	24682	3505921182
-EXXON CORPORATION		
8411064	22765	3500920530
8411057	26005	3512920661
-F C D OIL CORP		
8411180	25137	3505321006
-FUNK EXPLORATION INC		
8411117	22937	3500722407
8411058	22744	3500722408
-GEMARA OIL CO		
8411047	22585	3512322017
-GILL JOHN K		
8411134	24928	3511124414
-GRACE PETROLEUM CORPORATION		
8411160	22930	3512920696
-GRAHAM OIL & GAS LTD		
8411174	24808	3515321432
-GRAHAM-MICHAELIS CORP		
8411120	20031	3513900000
8411075	24592	3515300000
-GULF OIL CORPORATION		
8411085	1633	3512920075
8411179	7595	3505120086
-H G & G INC		
8411140	25007	3501722459
8411141	25011	3501721490
-HAMM PRODUCTION CO		
8411152	22414	3508321878
-HARPER OIL COMPANY		
8411149	24980	3507323822
8411115	24979	3504723306
8411077	24343	3507300000
-HAWKINS OIL & GAS INC		
8411118	22884	3504521112
8411200	23000	3504521090
8411031	22701	3513921673
-HESTON OIL CO		
8411038	22340	3505320781
8411039	22339	3505320649
-HPC INC		
8411048	21825	3501722409
8411046	21824	3501722412
8411188	22508	3501722412
-INTERNORTH INC		
8411157	22885	3512920706
-JIM L HANNA DBA HANNA OIL AND GAS C		
8411059	22483	3504723185
-JOE D DAVIS		
8411164	24353	3512121036
-JONES & PELLOW OIL CO		
8411203	25079	3506100000
-JORDAN OIL & GAS COMPANY		
8411122	22868	3505321010
8411123	22867	3505320722
-K P EXPLORATION INC		
8411040	21354	3513921281
8411041	21353	3513921469
-KAISER-FRANCIS OIL COMPANY		
8411084	26271	3504521156
8411124	22860	3500722414
8411083	26366	3515121423
8411079	24195	3505121411
-KEITH F WALKER		
8411108	24652	3508520690
-KING E L		
8411121	24167	3511123625
-KIRK BILL E		
8411104	25024	3511103018
-LEEMAN ENERGY CORP		
8411137	24995	3509900000
-LINCOLN ROCK CORP		
8411066	22600	3508520668
8411168	24693	3508520659
-LINDLEY-HOBSON OIL CO		
8411187	22502	3503724444
-LONG ROYALTY CO		
8411173	24850	3501100000
-MAY PETROLEUM INC		
8411162	24717	3508322198
-MESA PETROLEUM CO		
8411194	23041	3503920711
-MID-CONTINENT PETROLEUM MGMT INC		
8411095	25072	3505121422
-MOBIL OIL CORP		
8411087	17817	3504900000

D	SEC(1)	SEC(2)	WELL NAME
	103		SCHEFFLER #1
	RECEIVED:	12/06/83	JA: OK
	103		MCDONALD #4-22
	RECEIVED:	12/06/83	JA: OK
	103		STEPHENS-HATCHER #1
	RECEIVED:	12/06/83	JA: OK
	103		RAGAINS #2
	RECEIVED:	12/06/83	JA: OK
	102-4		GLOVER #2-16
	RECEIVED:	12/06/83	JA: OK
	108		HOLDEN #3 NE 531-T25N-R14E
	RECEIVED:	12/06/83	JA: OK
	108-PB		PUCKETT #2
	108		PUCKETT A #1
	RECEIVED:	12/06/83	JA: OK
	102-4		DECKER #1 NW/4 S27-T21N-R6E
	102-4		GREGG-MONROE #1
	102-4		WEAVER #1 SW/4 S27-T21N-R6E
	RECEIVED:	12/06/83	JA: OK
	103		DEES #1
	RECEIVED:	12/06/83	JA: OK
	102-3		PEARL SCOTT GAS UNIT #2
	107-DP		RHOME NIX #1
	RECEIVED:	12/06/83	JA: OK
	103		EDWIN D #1
	RECEIVED:	12/06/83	JA: OK
	102-4	103	CECIL #1
	102-4	103	WRIGHT #1-34
	RECEIVED:	12/06/83	JA: OK
	102-4		BROWN #2
	RECEIVED:	12/06/83	JA: OK
	103		SIBERTS #1-A
	RECEIVED:	12/06/83	JA: OK
	102-2		LEACH 1-22
	RECEIVED:	12/06/83	JA: OK
	103		BELL #1
	RECEIVED:	12/06/83	JA: OK
	108-ER		LEE #1 - 15
	108		RENDERGRASS #1 - 12
	RECEIVED:	12/06/83	JA: OK
	108-PB		HORRELL #1
	108-PB		JOHN COURTNEY #1
	RECEIVED:	12/06/83	JA: OK
	103		KREMEIER #1-13
	103		STANLEY KREMEIER #1-12
	RECEIVED:	12/06/83	JA: OK
	108		RAY #2
	RECEIVED:	12/06/83	JA: OK
	103		ARNOLD #2
	103		HOGE #4
	108		SWAIM-POLLARD #1
	RECEIVED:	12/06/83	JA: OK
	102-4	103	HARRELL #1-10 U
	102-4	103	MCCLEERY 1-9 U
	102-4		PHILLIPS #1-35
	RECEIVED:	12/06/83	JA: OK
	102-2		CINK #15-2
	102-2		MCDONALD #22-1
	RECEIVED:	12/06/83	JA: OK
	103		NITZEL #2
	103		REESE #2
	102-4		REESE #2-6
	RECEIVED:	12/06/83	JA: OK
	102-2		WALTON 25 #1
C	RECEIVED:	12/06/83	JA: OK
	102-4		WUERFLEIN #1
	RECEIVED:	12/06/83	JA: OK
	103		WATKINS #1
	RECEIVED:	12/06/83	JA: OK
	108		DONNA KENNEDY #1
	RECEIVED:	12/06/83	JA: OK
	102-4	103	FRANKIE SKRDLA #2-5
	102-4	103	KRETCHMAR #1-5
	RECEIVED:	12/06/83	JA: OK
	102-4		WRIGHT #1-34
	102-4		WRIGHT #2-34
	RECEIVED:	12/06/83	JA: OK
	103		BERRYMAN #1-19
	103		ELAM #1-23
	103		GARDNER A-1
	103		MORSE #3-36
	RECEIVED:	12/06/83	JA: OK
	103		RAY #2
	RECEIVED:	12/06/83	JA: OK
	108		E L KING JR #2 E L KING ETAL
	RECEIVED:	12/06/83	JA: OK
	103		FLECHS #1-RE
	RECEIVED:	12/06/83	JA: OK
	103		WEIR #1
	RECEIVED:	12/06/83	JA: OK
	102-4		BEDO #1
	103		CLINTON #5
	RECEIVED:	12/06/83	JA: OK
	102-4		EDMOND #1
	RECEIVED:	12/06/83	JA: OK
	103		CHEYENNE ARAPAHO TRIBAL LANDS #2-6
	RECEIVED:	12/06/83	JA: OK
	103		JONES #1-11
	RECEIVED:	12/06/83	JA: OK
	102-2		BAKER #1-10
	RECEIVED:	12/06/83	JA: OK
	103		MOSS #1-11
	RECEIVED:	12/06/83	JA: OK
	108-PB		C LAMBERT #3

FIELD NAME	PROD	PURCHASER
COOPER	3.2	
N E RICE	50.0	PHILLIPS PETROLEU
S W PAOLI	23.0	WARREN PETROLEUM
CHEROKEE-REDFORK	0.0	NORTHWEST CENTRAL
SOONER TREND	100.0	PHILLIPS PETROLEU
OGLESBY GAS FIELD	16.0	OKAN GAS CO
ERICK SOUTH	0.0	EL PASO NATURAL G
ERICK SOUTH	0.0	EL PASO NATURAL G
EAST CASEY	68.0	H J D CATTLE CO
EAST CASEY	41.0	H J D CATTLE CO
EAST CASEY	55.0	H J D CATTLE CO
DOBY SPRINGS	201.8	PEOPLES NATURAL G
ELK CITY WEST	285.0	EL PASO NATURAL G
WILDCAT	165.0	EL PASO NATURAL G
N E LAMONT	43.8	FARMLAND INDUSTRI
DOMBREY	182.0	GULF STATES UTILI
WILDCAT	60.0	GULF STATES UTILI
WEST OAKMAN	104.0	ARKANSAS LOUISIAN
YOUNGSTOWN FIELD	16.8	SWAB CORP
WEST STRONG	0.0	EL PASO NATURAL G
NW SHARON	0.0	
CAMRICK	10.0	KN ENERGY INC
SW CEDARDALE	18.0	MICHIGAN-WISCONSI
PEEK SOUTH	0.0	PANHANDLE EASTERN
MIDDLESBURG	0.0	MOBIL OIL CORP
	0.0	PHILLIPS PETROLEU
	0.0	PHILLIPS PETROLEU
S COVINGTON	7.6	EASON OIL CO
N W CLOMBIA	37.0	EXXON CORP
DRUMMOND	180.0	ARKANSAS LOUISIAN
SOONER TREND	0.0	EXXON CORP
W CARMAGO	36.0	PHILLIPS PETROLEU
SE ARNETT	36.0	PHILLIPS PETROLEU
E ADAMS	360.0	PANHANDLE EASTERN
	766.5	MID-AMERICA GAS I
	474.5	MID-AMERICA GAS I
S E CALUMET	4.6	PHILLIPS PETROLEU
	0.0	PHILLIPS PETROLEU
N CALMUT	300.0	PHILLIPS PETROLEU
SW LEEDEY	0.0	NORTHERN NATURAL
	0.0	UNION TEXAS PETRO
	0.0	ARKANSAS LOUISIAN
SAYRE	10.0	DELHI GAS PIPELIN
NE BANNER	20.0	FARMLAND INDUSTRI
NE BANNER	70.0	FARMLAND INDUSTRI
OPTIMA	360.0	NATURAL GAS PIPEL
OPTIMA	360.0	NATURAL GAS PIPEL
ARNETT	386.9	
W SLAPOUT	298.0	
AVARD	292.0	
N W CHICKASHA	36.5	ARKANSAS LOUISIAN
	10.9	AMINOIL USA INC
HAMILTON SWITCH	6.0	PHILLIPS PETROLEU
BALD HILL	27.0	PHILLIPS PETROLEU
WEST DAVIS	1.0	AMINOIL USA INC
NORTHEAST MARIETTA	25.0	CIMARRON TRANSMIS
NORTHEAST MARIETTA	5.0	CIMARRON TRANSMIS
OLIVE	189.0	M P & R PRODUCTIO
NORTHWEST CANTON	600.0	PHILLIPS PETROLEU
	36.5	EASON OIL CO
REDFORK	85.0	
SOUTH CHICKASHA	20.0	TRANSOK INC
GOLDEN TREND	13.9	WARREN PETROLEUM

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8411072	25166	3501900000		108		GRAHAM DEESE #1-10J J LAHMAN #5	SHO VEL TUM	0.2	LONE STAR GAS CO
-MONTEJAS EXPLOR & PROD CO				RECEIVED:		12/06/83 JA: OK			
8411191	22705	3508322138		102-4		SWINDELL #1	NE COON CREEK	376.0	
-MORGAN & STEINERT INC				RECEIVED:		12/06/83 JA: OK			
8411163	24497	3504723331		103		GROENDYKE #2	SOONER FIELD	150.0	UNION TEXAS PETRO
-NONDORF OIL & GAS INC				RECEIVED:		12/06/83 JA: OK			
8411156	22806	3508322031		102-3		NELSON #1-28	N NAVINA	193.0	
-NORTH CENTRAL DRILLING CO INC				RECEIVED:		12/06/83 JA: OK			
8411100	25064	3508122085		103		SHEREE #1 081-80143	SW STROUD	20.0	NATURAL GAS ENTER
-OFS-TULSA CORP				RECEIVED:		12/06/83 JA: OK			
8411109	24920	3507323771		103		TEDDY #1-23		150.0	CONOCO INC
-ONYX ENERGY CORP				RECEIVED:		12/06/83 JA: OK			
8411114	24944	3504321280		103		MOORE #1-31		505.5	TRANSWESTERN PIPE
8411113	24943	3504723102		103		PRIBIL #1-16		100.0	EXXON CORP
-PENN HOMA OIL & GAS CO				RECEIVED:		12/06/83 JA: OK			
8411144	25028	3510100000		103		ANNIE 1	BALD HILL	365.0	PHILLIPS PETROLEU
-PETREX CORP				RECEIVED:		12/06/83 JA: OK			
8411212	22611	3511922132		102-4		FRANKLIN #1	MARKHAM	16.5	PARKS ENERGY INVE
8411213	22612	3511922154		102-4		FRANKLIN #2	MARKHAM	16.5	PARKS ENERGY INVE
-PETRO-LEWIS CORPORATION				RECEIVED:		12/06/83 JA: OK			
8411073	24737	3509300000		108		OLIVER 36-1	SOONER TREND	5.1	PARTNERSHIP PROPE
-PETROLEUM INC				RECEIVED:		12/06/83 JA: OK			
8411053	24790	3507323731		103		HOBBS "C" #1	WEST DOVER	5.0	PHILLIPS PETROLEU
-PETROLEUM RESERVE CORP				RECEIVED:		12/06/83 JA: OK			
8411165	24678	3502720767		103		MILLS 8-2		110.0	SUN EXPLORATION &
-PETROWEST INC				RECEIVED:		12/06/83 JA: OK			
8411093	23047	3513121062		102-2		COOK #1 API NO 13121062	WILDCAT	10.0	DIAMOND 'S' GAS S
8411090	23044	3513122368		102-2		COOK #10 API NO 13122368	WILDCAT	10.0	DIAMOND S GAS SYS
8411091	23045	3513121074		102-2		COOK #2 API #13121074	WILDCAT	10.0	DIAMOND 'S' GAS S
8411092	23046	3513121075		102-2		COOK #4 API NO 13121075	WILDCAT	10.0	DIAMOND 'S' GAS S
-PHILLIPS PETROLEUM COMPANY				RECEIVED:		12/06/83 JA: OK			
8411068	00302	3501535191		108-PB		DAHL #2	CHICKASHA	13.9	ARKANSAS LOUISIAN
8411106	24428	3513921001		103		LATH #3	SOUTH GUYMON - MORROW	0.0	PANHANDLE EASTERN
8411086	15356	3501720727		108-PB		PETIGREW A #1	UNION CITY	10.0	TRANSOK PIPELINE
8411145	25029	3505121443		103		WALTERS A #1	W CHICKASHA	0.0	TRANSOK PIPELINE
-PHOENIX ENERGY CORP				RECEIVED:		12/06/83 JA: OK			
8411146	24927	3507323542		103		POPE #1 (HOSKINS #30	SOONER TREND	300.0	PHILLIPS PETROLEU
-PREMIER OPERATING CO				RECEIVED:		12/06/83 JA: OK			
8411199	25090	3509322704		103		CHASE #1	SOONER TREND	30.0	UNION TEXAS PETRO
-PSEC INC				RECEIVED:		12/06/83 JA: OK			
8411071	25700	3508121997		107-TF		KREIG #1-28		0.0	EL PASO NATURAL G
-RAMBLER OIL CO				RECEIVED:		12/06/83 JA: OK			
8411151	22356	3505121346		102-4		BROOKSHER #1-17		0.0	TRANSOK PIPELINE
-RATLIFF EXPLORATION CO				RECEIVED:		12/06/83 JA: OK			
8411185	21644	3510920643		102-4	103	CLARKLAND "A" #28-1		0.0	CONOCO INC
8411080	23204	3510920729		102-4	103	CLARKLAND "A" #28-2		0.0	CONOCO INC
8411076	24406	3510920758		102-4	103	FRETZ #29-1		0.0	
-RED EAGLE OIL CO				RECEIVED:		12/06/83 JA: OK			
8411096	25080	3500320687		103		BUTLER #1	EAST LODER	3.6	RAU ENERGY INC
8411177	24912	3501121833		103		HUSTON #1	N W OKEENE	270.0	PIONEER GAS PRODU
8411178	24913	3501121840		103		MARVA #1	N W OKEENE	182.0	PIONEER GAS PRODU
8411169	24704	3501121802		103		T L OUTHIER #1	N W OKEENE	0.0	PIONEER GAS PRODU
-RESOURCE DEVELOPMENT CO INC				RECEIVED:		12/06/83 JA: OK			
8411081	25184	3508121915		103		ADAMS #1	SOUTH STROUD PRUE	20.0	ALLIED MATERIALS
8411082	25185	3508122039		103		FNB OF IOWA CITY #1-32	WEST STROUD FIELD	150.0	NATURAL GAS ENTER
-RICHARDSON CONSTRUCTION				RECEIVED:		12/06/83 JA: OK			
8411170	24903	3511124412		103		MOSQUITO #1	HECTORVILLE	25.6	PHILLIPS PETROLEU
-RICKS EXPLORATION CO				RECEIVED:		12/06/83 JA: OK			
8411089	23021	3502920297		102-2		CROW #34-A	N E COALGATE	109.0	ARKANSAS LOUISIAN
-ROBINSON BROS DRILLING CO INC				RECEIVED:		12/06/83 JA: OK			
8411069	22563	3514920295		102-4		HOEPFNER #31-1	W BESSIE	0.0	
8411067	22566	3514920286		102-4		KEIL 21-1	E BESSIE	0.0	
8411208	22980	3510920713		102-4		PATSY ANN #33-4	WHEATLAND	330.0	MOBIL OIL CORP
-ROGERS WELL SERVICE INC				RECEIVED:		12/06/83 JA: OK			
8411063	21715	3507100000		103		CLETUS BLUBAUGH #2-A	EAST TONKAWA	10.0	CITIES SERVICE CO
8411056	21717	3507100000		103		FARRIS #3		10.0	CITIES SERVICE CO
-ROYE REALTY & DEVELOPMENT INC				RECEIVED:		12/06/83 JA: OK			
8411153	22722	3506120056		102-4		DIXON #1		182.5	ARKANSAS LOUISIAN
8411155	22798	3560120565		102-4		DIXON #1-29		52.9	ARKANSAS LOUISIAN
8411154	22723	3506120580		102-4	103	MEANS #1		547.5	ARKANSAS LOUISIAN
-S & G DRILLING INC				RECEIVED:		12/06/83 JA: OK			
8411107	24547	3513723419		103		BIFFLE #1-27	SHOLEM ALACHEM	12.0	MOBIL OIL CORP
-SAMSON RESOURCES COMPANY				RECEIVED:		12/06/83 JA: OK			
8411183	18074	3504320313		102-4		CHRISTENSEN #1	EAST PUTNAM	8.7	HYDROCARBON SERVI
8411184	18114	3504321447		102-4	103	CHRISTENSEN #2	EAST PUTNAM	29.6	HYDROCARBON SERVI
8411043	16881	3504321404		102-4	103	LOVE #2	EAST PUTNAM	54.8	HYDROCARBON SERVI
-SANTA FE-ANDOVER OIL CO				RECEIVED:		12/06/83 JA: OK			
8411143	25016	3507323783		103		BROWNLEE #22-1		100.0	PHILLIPS PETROLEU
8411055	24684	3501121865		103		SCHEFFLER #25-2		300.0	OKLAHOMA GAS PIPE
8411052	24823	3501121866		103		SCHEFFLER #25-3		300.0	OKLAHOMA GAS PIPE
8411198	25088	3507323739		103		SCHWARZ #36-2		400.0	DELHI GAS PIPELIN
8411204	25087	3507323720		103		SCHWARZ #36-4		100.0	DELHI GAS PIPELIN
8411190	22542	3505121121		102-2	103	TREADAWAY #34-1		50.0	TRANSOK PIPELINE
8411060	24867	3501121863		103		WYMER #29-4		140.0	OKLAHOMA GAS PIPE
-SENECA OIL COMPANY				RECEIVED:		12/06/83 JA: OK			
8411193	23024	3504321621		102-4		FRANS TRUST #1-21		1040.3	TRANSOK PIPE LINE
-SOUTHLAND ROYALTY CO				RECEIVED:		12/06/83 JA: OK			
8411062	13836	3513921240		108-PB		CRAIG #1-6	CAPLE	16.0	NORTHERN NATURAL
8411054	23455	3515121083		108-PB		RORING #2-29	FREEDOM 76	10.0	PANHANDLE EASTERN
-SOUTHWESTERN EXPLOR CONSULTANTS INC				RECEIVED:		12/06/83 JA: OK			
8411102	25018	3510322007		103		HONEYWELL #2	POLO	0.0	ARCO OIL & GAS CO
-STANTON ENERGY INC				RECEIVED:		12/06/83 JA: OK			
8411065	22763	3503724455		102-4		GREENWOOD 1A		150.0	COLORADO GAS CORP
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:		12/06/83 JA: OK			
8411132	24620	3505921199		103		PRYOR STELLA C UNIT #2	MOCANE-LAVERNE GAS AR	488.0	COLORADO INTERSTA
-TENNECO OIL COMPANY				RECEIVED:		12/06/83 JA: OK			
8411201	23014	3512920790		102-2	103	LESTER #1-6	EAST CHEYENNE	10.0	DELHI GAS PIPELIN
8411032	22673	3512920906		102-2		MERRICK #1-26	EAST CHEYENNE	460.0	DELHI GAS PIPELIN
8411033	22672	3512920913		102-2		MERRICK #1-33	EAST CHEYENNE	390.0	DELHI GAS PIPELIN
8411105	25063	3501922787		103		SOUTH GRAHAM DEESE SAND UNIT 54-1A	SHO-VEL-TUM	0.5	MOBIL OIL CORP
8411061	24837	3510321993		103		SOUTH LONE ELM CLEVELAND SAND #103	SOUTH LONE ELM	3.0	AMINOIL USA INC
8411088	23011	3510321872		103		SOUTH LONE ELM CLEVELAND SAND #37	SOUTH LONE ELM	2.0	AMINOIL USA INC
-TEXACO INC				RECEIVED:		12/06/83 JA: OK			
8411159	22927	3505320948		102-2		O GRAYSON #1	W POND CREEK POOL	75.2	SUN EXPLORATION &

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-THE WIL-MC OIL CORP				RECEIVED:	12/06/83	JA: OK			
8411148	24958	3505320711		103		MITCHELL A-2	WEST MEDFORD	8.0	EL GRANDE PIPELIN
-THREE SANDS OIL INC				RECEIVED:	12/06/83	JA: OK			
8411150	22952	3510321855		102-2		H T SMITH #1		146.0	ARCO OIL & GAS CO
8411215	22952	3510321855		103		H T SMITH #1		146.0	ARCO OIL & GAS CO
-TOMMY M MOORE				RECEIVED:	12/06/83	JA: OK			
8411127	23919	3511124107		108		LOONEY #1-A	E BEGGS	11.0	PHILLIPS PETROLEU
-TOWNER PETROLEUM CO				RECEIVED:	12/06/83	JA: OK			
8411216	22955	3501521517		102-4	103	CRAIN CHILDREN #12-1		0.0	
8411205	22956	3501521521		102-4	103	FRANKLIN BOLES #12-1		0.0	
-TRANS-WESTERN EXPLORATION INC				RECEIVED:	12/06/83	JA: OK			
8411034	22565	3503920656		102-2	103	MILLER #1-32		1000.0	TRANSOK PIPELINE
-TXO PRODUCTION CORP				RECEIVED:	12/06/83	JA: OK			
8411214	22823	3506120281		102-4		BURRIS "A" #1 -OPER BY HUNT ENERGY	KINTA	292.0	ARKANSAS LOUISIAN
8411074	24628	3504321738		103		BUTLER "E" #1	N PUTMAN	0.0	DELHI GAS PIPELIN
8411209	6460	3512900000		108-ER		EAKINS #1	TONKAWA FORMATION	0.0	NORTHWEST CENTRAL
8411103	25023	3515121059		103		HAMPSTEN "B" #1	N FREEDOM	0.0	DELHI GAS PIPELIN
8411070	22532	3512100000		102-4	103	FENFIELD #1	BACHE	0.0	
8411197	25103	3512120181		108		SHERRILL "A" #1	MCALESTER	131.0	DELHI GAS PIPELIN
8411210	13769	3504500000		108-ER		STATE #1	MORROW FORMATION	0.0	NORTHERN NATURAL
8411036	22533	3506120584		102-4	103	TATE "B" #1	KINTA	177.0	
8411136	24993	3509322724		103		WILCOX "B" #1	CHEYENNE	0.0	DELHI GAS PIPELIN
-UNION TEXAS PETROLEUM				RECEIVED:	12/06/83	JA: OK			
8411133	24878	3500300000		108		F DAVIS #2	HODGE II	0.0	PANHANDLE EASTERN
-UNIT DRILLING & EXPLORATION CO				RECEIVED:	12/06/83	JA: OK			
8411098	25084	3504321705		103		KOUNS #2	SQUIRREL CREEK	40.0	HYDROCARBON SERVI
-VIERSEN & COCHRAN				RECEIVED:	12/06/83	JA: OK			
8411110	24934	3500321060		103		FRANK CROMWELL #1-26	WAKITA TREND	90.0	
-VISTA EXPLORATION INC				RECEIVED:	12/06/83	JA: OK			
8411111	24938	3514322588		103		JACK GARY #2 WELL	BIXBY	20.0	PHILLIPS PET CO
8411112	24939	3514322450		103		NIMROD-CARLILE #1 WELL	BIXBY	24.0	PHILLIPS PET CO
-W R COOK				RECEIVED:	12/06/83	JA: OK			
8411094	25070	3503120490		108		PALMER "A" WELL #11	EAST LAWTON	20.0	MANN INDUSTRIES I
-WARD ENERGY INC				RECEIVED:	12/06/83	JA: OK			
8411175	24802	3508100000		103		WANNAMAKER 28-1		120.0	SUN EXPLORATION &
-WATKINS PAUL				RECEIVED:	12/06/83	JA: OK			
8411189	22525	3510100000		103		HAWKINS-VIERSEN #6-A	HAWKINS-VIERSEN	20.0	ARTEX ENERGY INC
-WESTERN STATES OIL & GAS CO				RECEIVED:	12/06/83	JA: OK			
8411044	16238	3510300000		103		PHILLIPS #1	SOUTH ORLANDO	0.0	AMINOIL USA
-WILLARD OIL & GAS INC				RECEIVED:	12/06/83	JA: OK			
8411138	24997	3500722522		103		JERICHO #1		1390.7	PHILLIPS PETROLEU
8411139	24998	3500721603		103		TABOR #1		181.8	PHILLIPS PETROLEU
-WOODS PETROLEUM CORPORATION				RECEIVED:	12/06/83	JA: OK			
8411211	22123	3504321531		102-4	103	MCDANNALD #19-1	SW LENORA	949.0	WESTERN FARMERS E
8411049	22586	3503920556		102-2		STELLA MYERS #4-1	NW CLINTON	810.0	NATURAL GAS PIPEL

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