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Tuesday
January 24, 1984

Selected Subjects

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Federal Aviation Administration

Banks, Banking
Federal Reserve System

Chemicals
Environmental Protection Agency

Freight
Maritime Administration

Hazardous Waste
Environmental Protection Agency

Investment Companies
Securities and Exchange Commission

Legal Services
Legal Services Corporation

Marketing Agreements
Agricultural Marketing Service

Motor Vehicle Pollution
Environmental Protection Agency

Nuclear Material
Nuclear Regulatory Commission

Oil Pollution
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Postal Service
Postal Service

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

Pay Under the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Interim rule and request for comments.

SUMMARY: The Office of Personnel Management is adding regulations to establish the procedures used in determining the hourly, daily, weekly or biweekly rates of pay for members of the Senior Executive Service. These regulations adopt the 2087 divisor for computing the annual pay for members of the SES to ensure they continue to be paid in the same manner as all other salaried employees on a biweekly basis.

DATES: 1. This rule is effective on January 1, 1984.

2. Comments must be received on or before February 23, 1984.

ADDRESS: Send or deliver written comments to Mr. Jerome D. Julius, Assistant Director, Office of Pay and Benefits Policy, Room 4351, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Mr. Jan B. Karicher, 202–632–9677.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 5504(a), members of the Senior Executive Service (SES) are paid at biweekly intervals. They are not, however, included under the provisions of section 5504(b) that establish procedures for determining the hourly, daily, weekly, or biweekly rates of pay for all other employees paid on a biweekly basis. Nor does any other statute establish a method to compute their pay. In accordance with its regulatory authority over SES pay matters, OPM has determined that members of the SES should have their pay computed in the same manner as other employees paid on a biweekly basis.

Section 310(b)(1) of the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97–253) as amended, provided that effective January 1984, employees whose hourly rates of pay were derived under section 5504(b)(1) would, during fiscal years 1984 and 1985, have their hourly rates of pay derived by dividing the annual rate of pay by 2087 hours rather than 2080 hours. This regulation adopts the 2087 divisor for computing the pay for members of the SES to ensure they continue to be paid in the same manner as all other salaried employees paid on a biweekly basis.

Pursuant to section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective on the first day of the first pay period beginning on or after January 1, 1984, to assure that members of the SES continue to be paid under the same procedures applicable to other salaried employees paid on a biweekly basis.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal employees.

List of Subjects in 5 CFR Part 534

Government employees, wages, Civil defense, Administrative practice and procedure.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office of Personnel Management is adding § 534.404 to Subpart D of Title 5, Code of Federal Regulations, to read as follows:

PART 534—PAY UNDER OTHER SYSTEMS

Subpart D—Pay Under the Senior Executive Service

* * * * *

§ 534.404 Pay computation for members of the Senior Executive Service.

(a) Except as provided in paragraph (b) of this section, pay for members of the senior executive service shall be computed in accordance with 5 U.S.C. 5504(b).

(b) From the first day of the first pay period beginning on or after January 1, 1984, to derive an hourly rate divided the annual rate by 2,087.

(5 U.S.C. 5385.)

[FR Doc. 84–1640 Filed 1–23–84; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 55

Office of Management and Budget Information Collection Control Numbers Assigned to Voluntary Inspection of Egg Products Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adds a new § 55.25 to Part 55. This section identifies the information collection requirements contained in this part and the respective control numbers assigned by the Office of Management and Budget (OMB). In accordance with 5 CFR Part 1320, this change is made in order to make the information more convenient to locate.

EFFECTIVE DATE: January 24, 1984.

FOR FURTHER INFORMATION CONTACT: D. M. Holbrook, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 3944, South Building, Washington, D.C. 20250 (202–447–3506).

SUPPLEMENTAL INFORMATION:

Executive Order 12291

The Agency has determined that this amendment is merely administrative, involving only the identification of information collection requirements and display of OMB control numbers

pursuant to 5 CFR Part 1320 and is not subject to the requirements of Executive Order 12291.

Administrative Procedure Act

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest because this amendment is nonsubstantive, imposes no new requirements, and merely provides a convenient listing of information collection requirements and OMB control numbers. Thus, good cause also is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register**.

Regulatory Flexibility Act

Since this rulemaking is exempt from the notice and comment provisions of the Administrative Procedure Act, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Paperwork Reduction Act

This rulemaking does not require an additional collection of information from the public under the Paperwork Reduction Act of 1980.

Background

The Paperwork Reduction Act of 1980 was designed both "to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons" and "to maximize the usefulness of information collected by the Federal government." On March 31, 1983, OMB issued a final rule implementing the provisions of the Paperwork Reduction Act of 1980. Among other provisions, the rule requires the display of OMB control numbers on collection of information requirements contained in agency rules adopted after public notice and comment. The control numbers provide a simple and effective way for the public to tell whether a paperwork burden an agency seeks to impose has been cleared as the Act requires. The Director of OMB, as the accountable individual in the Government, has assured that the information is needed, is not duplicative of information already collected, and is collected efficiently.

Therefore, a new § 55.25 is added to Part 55. This section identifies the information collection requirements contained in Part 55 and the respective control numbers assigned by OMB. The Agency has determined that this amendment is not substantive. It merely provides a convenient listing of the current information collection requirements and OMB control numbers in accordance with 5 CFR Part 1320.

List of Subjects in 7 CFR Part 55

Egg products, Voluntary inspection service.

Accordingly, under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), the U.S. Department of Agriculture hereby amends the Regulations Governing the Voluntary Inspection of Egg Products and Grading (7 CFR Part 55) as set forth below:

PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

1. In Part 55, a new § 55.25 is added to read as follows:

§ 55.25 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR Part 55 pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

(b) *Display.*

7 CFR section where identified and described	Current OMB control number
Sec:	
55.10	0581–0146
55.24(a)	0581–0146
55.30(a)	0581–0146
55.40	0581–0146
55.50	0581–0146
55.60	0581–0146
55.90(b)	0581–0146
55.95(b)	0581–0146
55.96	0581–0146
55.120	0581–0146
55.130(a)	0581–0146
55.130(b)	0581–0146
55.130(c)	0581–0146
55.140	0581–0146
55.150	0581–0146
55.160	0581–0146
55.200(a)	0581–0146
55.240	0581–0146
55.300	0581–0146
55.340(c)	0581–0146
55.350	0581–0146
55.370(a)	0581–0146
55.380	0581–0146
55.390	0581–0146
55.400	0581–0146
55.420	0581–0146
55.560(a)(1)	0581–0146
55.560(b)(1)	0581–0146
55.560(b)(3)(ii)	0581–0146
55.600	0581–0146

(Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627))

Done at Washington, D.C., on: January 18, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84–1847 Filed 1–23–84; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 907

[Navel Orange Regs. 590, 589 (Amdt. 1), 588 (Amdt. 2)]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 590 establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period January 27–February 2, 1984. Regulation 589, Amendment 1, increases the quantity of such oranges that may be shipped during the period January 20–26, 1984, and Regulation 588, Amendment 2, increases the quantity of such oranges that may be shipped during the period January 13–19, 1984. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATES: This regulation 590 becomes effective January 27, 1984, and the amendments are effective for the periods January 20–26, 1984, and January 13–19, 1984.

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

SUPPLEMENTARY INFORMATION: Findings.

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

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

These actions are consistent with the marketing policy for 1983–84. The marketing policy was recommended by the committee following discussion at a

public meeting on September 27, 1983. The committee met again publicly on January 17, 1984 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is good.

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 and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportuntiy to submit information on views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of navel oranges. 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 907

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

PART 907—[AMENDED]

1. § 907.890 is added as follows:

§ 907.890 Navel Orange Regulation 590.

The quantities of navel oranges grown in California and Arizona which may be handled during the period January 27, 1984, through February 2, 1984, are established as follows:

(a) *District 1:* 1,500,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons.

2. § 907.889 Navel Orange Regulation 589 paragraphs (a) through (d) are hereby revised to read:

§ 907.889 Navel Orange Regulation 589.

(a) *District 1:* 1,650,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons.

3. § 907.888 Navel Orange Regulation 588, as amended (49 FR 1468), paragraphs (a) through (d) are hereby revised to read:

§ 907.888 Navel Orange Regulation 588.

(a) *District 1:* 1,700,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons.

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

Dated: January 18, 1984.

Russell L. Hawes,

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

[FR Doc. 84–1846 Filed 1–23–84; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

NRC Export Licensing Authority; Interpretation

AGENCY: Nuclear Regulatory Commission.

ACTION: Interpretative rule.

SUMMARY: The Nuclear Regulatory Commission is issuing an interpretative rule that further specifies those components especially designed or prepared for use in a gas centrifuge uranium enrichment plant which are subject to the Commission's export licensing authority. This action will carry out the IAEA Zangger Committee's recommendation that these components be subject to export licensing control by supplier nations.

EFFECTIVE DATE: January 24, 1984.

FOR FURTHER INFORMATION CONTACT: Joanna M. Becker, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Phone: 301–492–7630 or Marvin R. Peterson, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Phone: 301–492–4599.

SUPPLEMENTARY INFORMATION: For the past two years the U.S and other nuclear supplier governments have engaged in discussions within the framework of the International Atomic Energy Agency's (IAEA) Zangger Committee to clarify the international nuclear export control "Trigger List" by specifying certain additional components especially designed or prepared for use in the gas centrifuge uranium enrichment process. Agreement has not been reached on the specific centrifuge components to be added and their detailed definitions. Currently, all especially designed and prepared enrichment plant components are subject to NRC's export licensing control under a general heading in Appendix A of NRC's export licensing regulations (10 CFR Part 110). However, in order to improve the administration of export controls over these components, the U.S. and the other supplier governments, working in the context of IAEA's Zangger Committee, have agreed that a more detailed listing of the components covered should be prepared and included in each government's export control regulations. As a result of this agreement, the Department of State, as the responsible U.S. Government agency for undertaking the Zangger Committee negotiations, has recommended that the Commission publish an appropriate interpretative notice in the **Federal Register** which lists the new specified components.

Appendix A to 10 CFR Part 110 lists all of the nuclear equipment and material subject to NRC's export/import licensing authority. Paragraph (b) of Appendix A covers isotope separation equipment as follows:

(b) Plants for the separation of the isotopes of source material, special nuclear material or lithium, and specifically designed or prepared equipment and components therefor as follows:

(1) Uranium hexafluoride (UF6) corrosion resistant valves.

(2) Units capable of separating isotopes of source material, special nuclear material or lithium, such as (i) gas centrifuges, (ii) jet nozzle separation units, (iii) vortex separation units, and (iv) laser isotope separation units.

(3) Uranium hexafluoride (UF6) corrosion resistant axial or centrifugal compressors, and specially designed or prepared seals for such compressors.

(4) Gaseous diffusion barriers specially designed or prepared for use in separating isotopes of source material, special nuclear material or lithium.

(5) Gaseous diffuser housings specially designed or prepared for use in plants for separating isotopes of source material, special nuclear material or lithium.

(6) Heat exchangers specially designed or prepared for use in gaseous diffusion plants.

(7) Any other equipment or component specially designed or prepared for use in an isotope separation plant.

(8) Specially designed or prepared parts and components for any of the above.

The components specified by the Zangger Committee are covered by paragraphs (b)(2)(i), (b)(7) and (b)(8) of Appendix A. Accordingly, the effect of this interpretative rule is to clarify that the specific components identified are especially designed or prepared for use in gas centrifuges and are subject to the statutory export licensing criteria of section 109 of the Atomic Energy Act of 1954, as amended. Assistance to foreign uranium enrichment programs is subject to very stringent requirements. Therefore, any proposed export of enrichment plant components would be subject not only to criteria (1), (2) and (3) of section 109b, but more stringent

requirements to meet the non-inimicality criterion and other provisions of the Act as now apply.

Until the clarification recently agreed upon, many of the components specified by the Zangger Committee have been under the export control authority of the Commerce Department as "dual-use" commodities pending the determination of their "especially designed or prepared" status. As a result, this interpretative rule has been coordinated with the Commerce Department, which will also be publishing in the near future an appropriate notice clarifying that it no longer will exercise export licensing authority over gas centrifuge enrichment components now specified as especially designed or prepared. Commerce will continue to exercise export licensing controls over a wide-range of other dual-use nuclear-related commodities, including several with potential gas centrigue related end-uses.

List of Subjects in 10 CFR Part 110

Administrative practice and procedures, Classified information, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear material, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Scientific equipment.

Interpretation

The NRC considers the components listed below to be in the materials and equipment generally specified in 10 CFR 110, Appendix A, paragraphs (b)(2)(i), (b)(7) and (b)(8):

1. *Assemblies and components especially designed or prepared for use in gas centrifuges.*

Note.—The gas centrifuge normally consists of a thin-walled cylinder(s) of between 75mm (3 ins.) and 400mm (16 ins.) diameter contained in a vacuum environment and spun at high peripheral speed (of the order of 300m/per second and more) with its central axis vertical. In order to achieve high speed, the materials of construction for the rotating rotor assembly, and hence its individual components, have to be manufactured to very close tolerances in order to minimize the unbalance. In contrast to other centrifuges, the gas centrifuge for uranium enrichment is characterized by having within the rotor chamber a rotating disc-shaped baffle(s) and a stationary tube arrangement for feeding and extracting UF_6 gas and featuring at least 3 separate channels of which 2 are connected to scoops extending from the rotor axis towards the periphery of the rotor chamber. Also contained within the vacuum environment are a number of critical items which do not rotate and which, although they are especially designed, are not difficult to fabricate nor are they fabricated out of unique materials. A centrifuge facility, however, requires a large number of these components, so that quantities can provide an important indication of end use.

1.1 *Rotating Components.*

(a) Complete Rotor Assemblies: Thin-walled cylinders, or a number of interconnected thin-walled cylinders, manufactured from one of the high strength-to-density ratio materials described in the Footnote to this Section.

If interconnected, the cylinders are joined together by flexible bellows or rings as described in § 1.1(c). The rotor is fitted with an internal baffle(s) and end caps, as described in § 1.1 (d) and (e), if in final form. However, the complete assembly may be delivered only partly assembled.

(b) Rotor Tubes: Especially designed or prepared thin-walled cylinders with thickness of 12mm (.50 in) or less, a diameter of between 75mm (3 ins.) and 400mm (16 ins.), and manufactured from one of the high strength-to-density ratio materials described in the Footnote to this Section.

(c) Rings or Bellows: Components especially designed or prepared to give localized support to the rotor tube or to join together a number of rotor tubes. The bellows in a short cylinder of wall thickness 3mm (.125 in.) or less, a diameter of between 75mm (3 ins.) and 400mm (16 ins.), having a convolute, and manufactured from one of the high strength-to-density ratio materials described in the Footnote to this Section.

(d) Baffles: Disc shaped components of between 75mm (3 ins.) and 400mm (16 ins.) diameter especially designed or prepared to be mounted inside the centrifuge rotor tube, in order to isolate the take-off chamber from the main separation chamber and, in some cases, to assist the UF_6 gas circulation within the main separation chamber of the rotor tube, and manufactured from one of the high strength-to-density ratio materials described in the Footnote to this Section.

(e) Top Caps/Bottom Caps: Disc shaped components of between 75mm (3 ins.) and 400mm (16 ins.) diameter especially designed or prepared to fit to the ends of the rotor tube, and so contain the UF_6 within the rotor tube, and in some cases to support, retain or contain as an integrated part an element of the upper bearing (top cap) or to carry the rotating elements of the motor and lower bearing (bottom cap), and manufactured from one of the high strength-to-density ratio materials described in the Footnote to this Section.

Footnote.

The materials used for centrifuge rotating components are:

(a) Maraging steel capable of an ultimate tensile strength of 2.050×10^9 N/m^2 (300,000 lb/in.^{2}) or more.

(b) Aluminium alloys capable of an ultimate tensile strength of 0.460×10^9 N/m^2 (67,000 lb/in.^{2}) or more.

(c) Filamentary Materials suitable for use in composite structures and having a specific modulus of 12.3×10^6 or greater and a specific ultimate tensile strength of 0.3×10^6 or greater ("Specific Modulus" is the Young's Modulus in N/m^2 divided by the density in Kg/m^3; "Specific Ultimate Tensile Strength" is the ultimate tensile strength in N/m^2 divided by the density in Kg/m^3).

1.2 *Static Components.*

(a) Magnetic Suspension Bearings: Especially designed or prepared bearing assemblies consisting of an annular magnet suspended within a housing containing a damping medium. The housing will be manufactured from a UF_6 resistant material (see footnote to section 2). The magnet couples with a pole piece or a second magnet fitted to the top cap described in Section 1.1(e). The magnet may be ring-shaped with a relation between outer and inner diameter smaller or equal to 1.6:1. The magnet may be in a form having an initial permeability of 0.15 Henry/meter (120,000 in CGS units) or more, or a remanence of 98.5% or more, or an energy product of greater than 80,000 joules/m^3 (10×10^6 gauss-oersteds.) In addition to the usual material properties, it is a prerequisite that the deviation of the magnetic axes from the geometrical axes is limited to very small tolerances (lower than 0.1mm) or that homogeneity of the material of the magnet is specially called for.

(b) Bearings/Dampers: Especially designed or prepared bearings comprising a pivot/cup assembly mounted on a damper. The pivot is normally a hardened steel shaft polished into a hemisphere at one end with a means of attachment to the bottom cap described in section 1.1(e) at the other. The shaft may, however, have a hydrodynamic bearing attached. The cup is pellet-shaped with hemispherical indentation in one surface. These components are often supplied separately to the damper.

(c) Molecular Pumps: Especially designed or prepared cylinders having internatlly machined or extruded helical grooves and internally machined bores.

Typical dimensions are as follows: 7mm (3 ins.) to 400mm (16 ins.) internal diameter, 10mm (0.4 ins.) or more wall thickness, 1 to 1 length to diameter ratio. The grooves are typically rectangular in cross-section and 2mm (0.08 ins.) or more in depth.

(d) Motor Stators: Especially designed or prepared ring shaped stators for high speed multi-phase AC hysteresis (or reluctance) motors for synchronous operation within a vacuum in the frequency range of 600–2000 Hz and a power range of 50–1000 volts amps. The stators consist of multi-phase windings on a laminated low loss iron core comprised of thin layers typically 2.0mm (0.080 in.) thick or less.

2. *Especially designed or prepared auxiliary systems, equipment and components for gas centrifuge enrichment plants.*

Note.—The auxiliary systems, equipment and components for a gas centrifuge enrichment plant are the systems of plant needed to feed UF_6 to the centrifuges to link the individual centrifuges to each other to form cascades (or stages) to allow for progressively higher enrichments and to extract the product and tails of UF_6 from the centrifuges, together with the equipment required to drive the centrifuges or to control the plant.

Normally UF_6 is evaporated from the solid using heated autoclaves and is distributed in gaseous form to the centrifuges by way of cascade header pipework. The "product" and "tails" of UF_6 gaseous streams flowing from the centrifuges are also passed by way of cascade header pipework to cold traps (operating at about − 70°C) where they are condensed prior to onward transfer into suitable containers for transportation or storage. Because an enrichment plant consists of many thousands of centrifuges arranged in cascades, there are many kilometers of cascade header pipework, incorporating thousands of welds with a substantial amount of repetition of layout. The equipment, component and piping systems are fabricated to very high vacuum and cleanliness standards.

The following items either come into direct contact with the UF_6 process gas or directly control the centrifuge and the passage of the gas from centrifuge to centrifuge and cascade to cascade.

(a) Feed Systems/Product and Tails Withdrawal Systems:

Especially designed ro prepared process systems including:

1. Feed autoclaves (or stations), used for passing UF_6 to the centrifuge cascades at up to 100 Kg/m^2 (15 $lb/in.^2$)

2. Desublimers (or cold traps) used to remove UF_6 from the cascades at up to 3 Kg/m^2 (0.5 lb/in^2 pressure. The desublimers are capable of being chilled to −70°C and heated to 70°C.

3. Product and tails stations used for trapping UF_6 into containers.

This plant, equipment and pipework are wholly made of or lined with UF_6 resistant materials (see Footnote to this Section) and are fabricated to very high vacuum and cleanliness standards.

(b) Machine Header Piping Systems: Especially designed or prepared piping systems and header systems for handling UF_6 within the centrifuge cascades.

This piping network is normally of the "triple" header system with each centrifuge connected to each of the headers. There is thus a substantial amount of repetition in its form. It is wholly made of UF_6 resistant materials (see Note to this Section) and is fabricated to very high vacuum and cleanliness standards.

(c) UF_6 Mass Spectrometers/Ion Sources: Especially designed or prepared magnetic or quadrapole mass spectrometers capable of taking 'on-line' sample of feed, product or tails from UF_6 gas streams and having all of the following characteristics:

1. Unit resolution for mass greater than 320.

2. Ion sources constructed of or lined with nichrome, monel or nickel-plate.

3. Electron bombardment ionization sources.

4. Having a collector system suitable for isotope analysis.

(d) Frequency Changers: Frequency changers (also known as converters or invertors) especially designed or prepared to supply motor stators as defined under Section 1.2(d), or parts, components and subassemblies of such frequency changers having all of the following characteristics:

1. A multiphase output of 600 Hz to 2000Hz,

2. High stability (with frequency control better than 0.1%),

3. Low harmonic distortion (less than 2%), and

4. An efficiency of greater than 80%.

Footnote: Materials resistant to corrosion by UF_6 include stainless steel, aluminum, aluminum alloys, nickel or alloys containing 60% or more nickel.

(Sec. 109, 92 Stat. 141 (42 U.S.C. 2139, as amended); secs. 201 as amended, 206, 88 Stat. 1242 as amended, 1246 (42 U.S.C. 5841, 5846); 5 U.S.C. 552, 553)

Dated at Washington, D.C., this 19th day of January 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84–1925 Filed 1–23–84; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R–0506]

Interest on Deposits; Temporary Suspension of Early Withdrawal Penalty; Regulation Q

AGENCY: Federal Reserve System.

ACTION: Temporary suspension of the Regulation Q early withdrawal penalty.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by severe freezing temperatures in the Texas counties of Cameron, Hidalgo, Starr and Willacy.

EFFECTIVE DATE: January 7, 1984.

FOR FURTHER INFORMATION CONTACT: Daniel L. Rhoads, Attorney (202/452–3711), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On January 7, 1984, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 12148 of July 15, 1979, the President, acting through the Director of the Federal Emergency Management Agency, designated the Texas counties of Cameron, Hidalgo, Starr and Willacy major disaster areas. The Board regards the President's action as recognition by the Federal government that a disaster of major proportions had occurred. The President's designation enables victims of the disaster to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty (12 CFR 217.4(d)). The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster areas as a result of the severe freezing temperatures beginning on or about December 22, 1983. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed

statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to January 7, 1984, and will remain in effect until 12 midnight, July 7, 1984.

List of Subjects in 12 CFR Part 217

Advertising, Banks, banking, Federal Reserve System, Foreign Banking.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons in the designated Texas counties directly affected by the severe freezing temperatures, good cause exists for dispensing with the notice and public participation provisions in section 553(b) of Title 5 of the United States Code with respect to this action. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make this action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority, January 18, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-1877 Filed 1-23-84; 8:45 am]

BILLING CODE 6210-01-M

COMMODITY FUTURES TRADING COMMISSION

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. I and Ch. II

[Release No. 20578]

Designation Criteria for Futures Contracts and Options on Futures Contracts Involving Non-Diversified Stock Indexes of Domestic Issuers

January 18, 1984.

AGENCY: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Interpretation and Statement of General Policy.

SUMMARY: The Commodity Futures Trading Commission and the Securities and Exchange Commission are jointly publishing an interpretation and statement of general policy with respect to the minimum criteria for applications by boards of trade for designation as a contract market for futures contracts on a non-diversified stock index composed of securities of domestic issuers (or options on such futures contracts) under the standards of Section 2(a)(1)(B) of the Commodity Exchange Act (7 U.S.C. 2a(ii)(1982)). The agencies intend to review these criteria by January, 1985 or three months following these criteria by January, 1985 or three months following the completion of the Special Study of the Futures and Related Markets, whichever is later.

ADDRESS: Any comments on this interpretation and statement of general policy should be sent to: Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C 20581, Attention: Jane K. Stuckey, Secretary; or Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, Attention: George A. Fitzsimmons, Secretary, File No. S7-5-84.

FOR FURTHER INFORMATION CONTACT: Paula Tosini, Acting Director, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, (202) 254-6990 or Richard G. Ketchum, Associate Director or Richard T. Chase, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, (202) 272-2866.

SUPPLEMENTARY INFORMATION: On December 7, 1981, the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) reached an agreement on certain jurisdictional issues that has arisen between the agencies. One purpose of this agreement (hereinafter referred to as the Accord) was to remove existing regulatory obstacles that had prevented the exchanges regulated by the agencies to offer new and innovative risk-management instruments to the public. The Accord was embodied in legislative proposals which the agencies promptly submitted to the Congress. Congress enacted these legislative proposals in substantially the form submitted by the agencies through amendments to the Commodity Exchange Act administered by the CFTC and to several of the securities laws administered by the SEC.Those aspects of the Accord which amended the Commodity Exchange Act were included in Title I of the Futures Trading Act of 1982, Public Law No. 97-444, 96 Stat. 2294-97.

Under the amendments effected by the Futures Trading Act of 1982, Section 2(a)(1)(B) of the Commodity Exchange Act, 7 U.S.C. 2a(ii), empowers the CFTC to designate a contract market for futures trading on an index or a group of securities (or an option on such futures contract) if certain minimum statutory requirements are met. Specifically, the CFTC must find that: (i) settlement or delivery on the contract or option is effected by cash or by exempted securities under the Securities Act of 1933 or the Securities Exchange Act of 1934 (other than municipal securities); (ii) trading in the contract or option is not readily susceptible to manipulation in the price of the contract or option, nor to causing or being used in the manipulation of the price of any underlying security, an option on such security, or an option on a group or index including such securities; and (iii) the index or group of securities is a widely published measure of, and shall reflect, the market for all publicly traded equity or debt securities or a substantial segment thereof, or is comparable to such measure.

In addition, for applications submitted prior to December 9, 1982, the CFTC is required to consult with the SEC regarding each such application concerning a stock index and the SEC may request an oral hearing before the CFTC if the SEC objects to designation on the ground that any of the statutory criteria have not been met. For applications submitted on or after December 9, 1982, Section 2(a)(1)(B) of the Commodity Exchange Act provides that the CFTC shall not approve an application if the SEC determines that the futures contract fails to meet these statutory criteria.

Since the consummation of the Accord, the CFTC and SEC have worked closely in reviewing applications by boards of trade for contract market designation of stock index futures contracts and in monitoring the trading of those contracts that have been designated to date. During this time, the agencies have endeavored to administer the provisions of the Accord in a manner which implements their agreement of December 1981 and the intent of Congress in establishing the statutory standards for designation set forth above. The agencies have identified certain guidelines concerning whether an application comports with these statutory criteria. The agencies believe that proposed contracts involving an index composed only of securities of issuers in the same or a similar industry, that do not meet the following guidelines would not meet certain of the requirements of Section 2(a)(1)(B) of the Commodity Exchange Act.

The agencies have determined to publish these guidelines for the benefit of interested members of the public, potential applicants for designation and for other interested persons. Although the nature of the SEC's participation in the designation process depends upon whether an application was submitted prior to or after December 9, 1982, the

same statutory criteria govern all applications. Accordingly, the guidelines in this policy statement apply to all applications for designation, regardless of the date of submission to the CFTC. The CFTC and SEC have agreed to issue the following guidelines to facilitate their review of contract market applications and to enable potential applicants to structure their submissions in a manner consistent with how the agencies intend to administer the statutory criteria set forth in the Commodity Exchange Act.

Scope of the Policy Statement

The guidelines agreed to by the agencies will apply only to applications for designation as a contract market for futures contracts (or options on such contracts) involving a non-diversified group or index of domestic equity securities, i.e., a group or index that reflects equity securities of United States issuers in the same or a similar industry. In contrast, a diversified stock index, which is not covered by the guidelines, would include stocks of issuers in various industries. The agencies also wish to emphasize that compliance with the guidelines will not secure designation under the Accord if an application does not assure that delivery under the contract will be effected by cash or by permissible exempted securities and that the index will be a widely published measure of the market for securities in that industry. In addition, the CFTC wishes to emphasize that designation will also depend on satisfaction of all other relevant provisions of the Commodity Exchange Act, as well as of CFTC Guidelines No. 1 and No. 2, relating to designation conditions under the Act.

The guidelines represent the agencies' efforts to interpret the statutory standards imposed by Congress as a condition of a designation under the terms of the Accord. Since the agencies believe that the concerns raised by the Accord remain applicable not only to the designation of the contract but also to subsequent trading in those contracts, the agencies have agreed that an applicant board of trade must include in its proposal rules providing that the index will be brought back into compliance with the terms of the guidelines, if at any time, whether prior to or after trading commences, the index fails to meet any of the guidelines with the exception of the capitalization standard. In addition, and as explained in more detail below, if, after trading commences, the index capitalization falls below $50 billion, no new trading months may be listed under the index until the $50 billion level is restored.

Under the guidelines adopted by the agencies, an application for designation involving a non-diversified stock index must meet four minimum criteria. The criteria will apply both to capitalization-weighted indices and to non-capitalization weighted indices, such as price-weighted indices. In a capitalization-weighted index, the value of the index is derived with reference to the aggregate capitalization of all securities comprising the index, with each security's capitalization computed by multiplying the number of securities publicly outstanding times the current market price for a single share of that security. In non-capitalization weighted indices the value of the index is normally related only to the aggregate weighted price of each component security within the index. As noted below, a fifth provision of the guidelines applies to applications involving a non-capitalization weighted index for stocks within the index which represent ten percent or more of the weight of all securities comprising the index.

Set forth below are the guidelines which the agencies will apply to the applications.

1. Number of Securities

An index must be composed of the domestic equity securities of at least twenty-five issuers.

2. Index Capitalization

The aggregate capitalization of the securities comprising the index must be at least $75 billion. As stated above, if at any time after trading commences the aggregate capitalization of the index falls below $50 billion (⅔ of $75 billion) no new months may be listed under the contract until the $50 billion level is restored.

3. Percent of Index Weighting of Largest Stock

In a capitalization-weighted index, no single security within the index may have a capitalization exceeding twenty-five percent of the aggregate capitalization of all securities within the index. Similarly, in a non-capitalization weighted index, no single security may have a weight in excess of twenty-five percent of the weight of all securities within the index.

4. Percent of Index Weighting of Smaller Stocks in a Non-Capitalization Weighted Index

If any single security in a non-capitalization weighted index has a weight of ten percent or more of the aggregate weight of all securities within the index, that security may not be part of the index if its weighted percentage in the index exceeds three times its percentage weight of total index capitalization. For example, if an application is submitted for a price-weighted index and the index is comprised of stocks with a total capitalization of $100 billion, a security whose weighted price represents 21% of the weighted price of all securities in the index would have to have a capitalization of at least $7 billion, i.e., 7% of the aggregate capitalization of all securities in the index.

5. Percent of Index Weighting of Group of Largest Securities

In a capitalization-weighted index, the aggregate capitalization of the three securities having the highest capitalization within the index may not exceed more than 45% of the capitalization of all securities within the index. Similarly, in a non-capitalization weighted index, the aggregate weight of the three securities having the highest percentage weight of all securities within the index may not exceed 45% of the aggregate weight of all securities within the index.

The CFTC and the SEC intend to monitor closely trading of contracts which may be approved pursuant to the terms of these guidelines and to share regularly their surveillance data as well as those collected by the relevant exchanges on the futures and related securities markets. In this connection, the agencies also will take into account the findings contained in the Special Study of the Futures and Related Markets called for by Section 236 of the Futures Trading Act of 1982, 96 Stat. 2324–25, which is being conducted by the Board of Governors of the Federal Reserve System, the CFTC and the SEC, with the assistance of the Secretary of the Treasury. That study is to be submitted to the Congress not later than September 30, 1984 and may prove useful in evaluating these guidelines and in determining whether any modifications of the guidelines are warranted. In any event, the CFTC and SEC will review these guidelines by January 31, 1985 or ninety days after submission of the Special Study, whichever occurs later.

The Commissions have determined that the foregoing guidelines represent an interpretation and statement of general policy and that therefore the provisions of the Administrative Procedure Act, as codified, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and other opportunity for public participation are not applicable. Similarly, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601

et seq.) do not apply. Nevertheless, the Commissions are interested in receiving comments from any interested person concerning these guidelines, and will consider those comments in the course of its review of its experience under these guidelines.

Issued in Washington, D.C. on January 18, 1984, by the Commissions

Jane K. Stuckey,

Security, Commodity Futures Trading Commission.

George A. Fitzsimmons,

Secretary, Securities and Exchange Commission.

[FR Doc. 84-1957 Filed 1-23-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket Nos. RM83-73-001, et al.; Order No. 349-A]

Standard Form for Purchased Gas Adjustment Filings Submitted by Natural Gas Pipeline Companies; FERC Form No. 542-PGA

Issued: January 16, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Extending the Effective Date of the Final Rule and Granting Applications for Rehearing for Purposes of Further Consideration.

SUMMARY: On November 21, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 349 (48 FR 53091, issued November 25, 1983) to require natural gas pipelines that file purchased gas adjustment filings to use a standard format prescribed in FERC Form No. 542-PGA, Purchased Gas Adjustment (PGA) Filings. Since issuing Order No. 349, the Commission has received eight requests for clarification, reconsideration and rehearing of the rule. The Commission is extending the effective date of the final rule from February 1, 1984, until June 1, 1984 for PGA filings that are to be *effective* on or after July 1, 1984. With regard to the substantive issues raised by the petitioners, the Commission is granting hearing solely for the purposes of further consideration of these issues.

EFFECTIVE DATE: June 1, 1984 for PGA filings that are to be effective on or after July 1, 1984.

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

SUPPLEMENTARY INFORMATION:

In the matter of Standard Form for Purchased Gas Adjustment Filings Submitted by Natural Gas Pipeline Companies: FERC Form No. 542-PGA, Docket Nos. RM83-73-001, RM83-73-002, RM83-73-003, RM83-73-004, RM83-73-005, RM83-73-006, RM83-73-007, RM83-73-008; Order Extending Effective Date and Granting Rehearing for Purposes of Further Consideration.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is extending from February 1, 1984 until June 1, 1984 the effective date of Order No. 349 (RM83-73-000), issued on November 21, 1983. This action is taken in response to applications for rehearing and petitions for reconsideration of the final rule. The Commission also is granting rehearing for purposes of further consideration of all other issues raised in the petitions.[1]

Order No. 349 requires natural gas pipeline companies that file purchased gas adjustment filings with the Commission to use a standard format prescribed in FERC Form No. 542-PGA, Purchased Gas Adjustment (PGA) Filing. The Commission issued this rule to reduce the processing costs incurred by the Commission and the Department of Energy, and to allow users of this information to use it more easily, effectively and accurately. The rule was scheduled to be effective on February 1, 1984.[2]

II. Effective Date

Several natural gas pipeline companies have petitioned the Commission for waiver from the requirements of the rule, and reconsideration, clarification or rehearing of the final rule. For the most part, the companies express their concurrence with the Commission regarding the need for a standard form for PGA filings. However, almost all the companies inform the Commission that they will require additional time in which to reprogram their computers and change their recordkeeping procedures to comply with the new filing requirements. Most of the companies request an additional six months beyond the February 1, 1984 deadline by which to comply with the new requirements. Some of the companies and the Interstate Natural Gas Association of America, speaking for its members, also request additional extensions for companies that can satisfactorily support claims of hardship.

As stated in the final rule, the Commission believes that the new reporting requirements should be effective as soon as practicable. At the same time, the Commission acknowledges that the companies are experiencing difficulties complying with the new requirements by February 1, 1984. Therefore, the Commission is hereby delaying the effective date of the final rule until June 1, 1984 for all rates effective on or after July 1, 1984. All PGA filings that are to be *effective* on or after July 1, 1984 will be required to be submitted in compliance with the reporting requirements set forth in the final rule. The July 1 date allows all the pipeline companies to file the first of their two 1984 semi-annual PGA filings under the current less stringent filing requirements. The Commission believes that all the companies should be able to comply with the new requirements after that date.[3]

Accordingly, the Commission hereby extends the effective date of Order No. 349 until June 1, 1984, for rates effective on or after July 1, 1984.

III. Substantive Issues

A few of the petitioners also raise certain specific technical issues about

[1] The Commission received applications for clarification, reconsideration or rehearing of the final rule from the following pipeline companies: Michigan Wisconsin Pipe Line Company; Algonquin Gas Transmission Company; Transcontinental Gas Pipe Line Corporation; Northern Natural Gas Company, Division of InterNorth, Inc.; Consolidated Gas Supply Corporation; Interstate Natural Gas Association of America; Tennessee Gas Pipeline Company and Southern Natural Gas Company. Some of these petitioners requested waivers of application of the rule to the petitioner, or, in the alternative, rehearing of the final rule. The Commission received requests for extension of time for complying with the final rule from the following pipeline companies: Texas Eastern Transmission Corporation; Texas Gas Transmission Corporation; El Paso Natural Gas Company; Columbia Gas Transmission Corporation; and Natural Gas Pipeline Company of America. All the above petitioners are referred to herein as the "petitioners."

[2] The effective date of the final rule was tentative, pending approval by the Office of Management and Budget (OMB). On January 11, 1984, OMB approved the filing requirements of the rule and assigned them No. 1902-0070.

[3] To the extent that individual pipeline companies have already requested, or in the future request, waiver from compliance with the new filing requirements, the Commission will respond individually to their petitions. The Commission believes that the June 1, 1984 filing date for rates effective on or after July 1, 1984 is ample time to comply with the new requirements and that few pipeline companies will need additional time by which to comply.

FERC Form 542–PGA. In another order, the Commission will consider and respond to these comments on substantive issues, whether presented for rehearing, reconsideration, or clarification. Accordingly, with regard to all other issues raised by the applications for rehearing, the Commission grants rehearing solely for purposes of consideration. This action does not constitute a grant or a denial of the applications on the merits in whole or in part. As provided in § 385.713(d) of the Commission's regulations, no answers to the applications will be entertained by the Commission because this order does not grant rehearing on any substantive issues.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–1926 Filed 1–23–84; 8:45 am]

BILLING CODE 6717–01–M

POSTAL SERVICE

39 CFR Part 9

Policy on Communications With Governors of the Postal Service During Pendency of Rate and Classification Proceedings

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Postal Service adopt guidelines limiting ex parte contacts with the Governors and requiring that certain communications to the Governors be placed on the public record. These guidelines are needed in connection with the Governors' role in postal rate and mail classification matters.

EFFECTIVE DATE: January 24, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. David F. Harris, Secretary, Board of Governors, U.S. Postal Service, Washington, D.C. 20260–1000, (202) 245–3734.

SUPPLEMENTARY INFORMATION: On July 18, 1983, the United States Postal Service published in the **Federal Register** a notice of intent to adopt a statement of policy concerning ex parte contacts with the Governors. (48 FR 32713.) The policy guidelines would require that certain communications to the Governors be placed on the public record. Interested persons were invited to submit written comments to Mr. David F. Harris, Secretary, Board of Governors.

Comments on the proposed guidelines were received from the Honorable Glenn English, Chairman, Subcommittee on Government Information, Justice and Agriculture of the House Committee on Government Operations; the Postal Rate Commission; the American Bankers Association; Dow Jones & Company, Inc.; the Magazine Publishers Association; the Third Class Mail Association; and Time, Inc.

After carefully reviewing the comments received and discussing them at a public meeting on November 1, 1983, the Board concluded that they did not warrant any change in the proposed guidelines. At that same meeting the Board considered an amendment to the guidelines proposed by one of its members. The motion to amend the guidelines was rejected, and the Board adopted the guidelines as previously published without any change in substance. The comments received and the amendment proposed by a Board member are described below. One nonsubstantive change made in the proposed guidelines is the addition of a new § 9.3 specifying the time and place for inspection of comments placed on the public record pursuant to the guidelines.

Discussion of Comments and Proposed Amendment

Several commenters urged changes in the scope of the guidelines. As previously published, the guidelines would not apply to communications between Governors and Postal Service officers and staff during the pendency of a rate or classification proceeding. Some commenters objected to the absence of restrictions on such communications on the grounds that certain Postal Service personnel might exercise improper influence over the Governors' decision or act as a conduit for off-the-record communications from outside parties. In practice, when considering a recommended decision of the Commission, the Governors ordinarily have little if any direct contact with witnesses or attorneys who participated directly in that proceeding on behalf of the Postal Service. The question raised by these comments is whether the Board should adopt a formal separation-of-functions rule to restrict communications within the Postal Service. Under such a rule, the Governors could be insulated from contact with some or all Postal Service personnel who designed the rate proposal or participated in the Postal Rate Commission proceeding.

After considering the arguments offered in support of a separation-of-functions rule, the Board determined that such a rule should not be adopted. The Postal Reorganization Act does not by its terms require a separation of functions. Indeed, no commenter suggested that the Postal Service is required by law to insulate the Governors from contact with other Postal Service personnel. The Board concluded that such a rule was not justified as a matter of policy.

The United States Postal Service is a business enterprise as well as an agency of the Federal Government, and analogies between the Postal Service and Federal regulatory agencies are often misleading. The Postal Service is charged by law with the responsibility to provide a basic and fundamental service to the people of the United States. Pursuant to that charge, it delivered nearly 120 billion pieces of mail last year. The Board of Governors directs "[t]he exercise of the power of the Postal Service," 39 U.S.C. 202(a), and works closely with postal management to help ensure that patrons in all areas receive prompt, reliable and efficient service. To discharge their supervisory responsibility and to inform their decisions, the members of the Board must be able to communicate informally and confidentially with postal officers and employees about all subjects that bear on the Service's performance, including the impact of a change in rates or classifications on postal operations and on the financial condition of the Postal Service.

Neither the basic scheme of the Postal Reorganization Act nor its legislative history gives any indication that Congress expected the Governors, who are part-time officials, to cut themselves off from the officers and staff of their own agency. On the contrary, because of the close relationship between the issues presented in a rate or classification case and those that arise in connection with general oversight of postal operations, such insulation could jeopardize one of the key objectives identified by the President's Commission on Postal Reorganization (the Kappel Commission): namely, establishing "a Board of Directors with full authority for postal management." *Towards Postal Excellence* 55 (1968). A further indication that Congress did not intend the Governors to disassociate themselves from the rest of the Postal Service when considering rate and classification issues is the assignment to the full Board, and not just the Governors, of the responsibility to determine when a change in postal rates or classifications shall become effective. 39 U.S.C. 3625(f). Resolution of the timing issue—in which senior postal officials participate—is likely to turn on many of the same considerations as are taken into account by the Governors in

deciding whether to accept a Commission recommendation.

Moreover, a separation-of-functions rule would entail significant costs and difficulties in practice. Constructing a major rate proposal requires the efforts of hundreds of Postal Service officers and staff, including a large part of senior management. If the Governors were cut off from all personnel who had worked on the case, they would have to assemble a very large staff of their own to consult with them on the issues and guide them through a large and extremely complex record. To obtain information or advice from officials who had participated in the preparation of the rate case, the Governors would presumably have to hold public hearings at which such officials could make formal presentations. The result would be considerable cost, duplication of effort, delay and the creation of a new and unnecessary level of administrative complexity.

Governor Voss, although concurring with the adoption of the ex parte guidelines, disagrees with the conclusion that communications with management should not be limited. While he would not totally prohibit communications with management during the restricted period, he believes that such communications should be subject to certain controls.

Several commenters suggested enlarging the time period during which communications are restricted. As previously published, the restrictions would go into effect when the Commission issued a recommended decision and would last until the Governors acted on that recommendation. Several commenters would have the restrictions go into effect when the Postal Service submits a request for a recommended decision. After consideration of the reasons presented for this suggestion, the Board concluded that the time period should not be changed. Prior to the issuance of a recommended decision, the issues that will eventually come before the Governors are still uncertain. Moreover, because of the length of rate and classification proceedings and the number of issues involved, an extension of the restrictions to this entire time period would significantly interfere with the Governors' ability to communicate with the customers of the Postal Service. Under these circumstances, the Board found that the risk of an interested party's trying to influence the views of a Governor before the issuance of a recommended decision is outweighed by the need to preserve the Governors' ability to communicate with the Postal Service's customers.

One commenter suggested that oral communications should be freely permitted, but with summaries to be submitted for the record by the person making the communication rather than by the Governor to whom it is made. Another commenter suggested that interested parties should be permitted to reply to written or oral communications received by the Governors. The Board found that these procedures were unlikely to enhance the decisionmaking process and would create significant administrative difficulties.

The Board also rejected a suggestion that every person communicating to the Governors under the guidelines should have to provide copies of the communication to all parties of record in the Commission proceeding. As previously published, that obligation is imposed only on parties of record in the Commission proceeding who seek to communicate with the Governors during the restricted period. The Board found that the suggestion to require persons who are not parties to distribute copies of their communications to all parties would impose an inappropriate burden on them. Their communications would, of course, be in the public record and available for inspection.

At the public meeting in which the proposed guidelines and comments were considered, Governor Ryan offered an amendment to prohibit written communications even when submitted for the record. Governor Ryan suggested that such communications would be redundant to the extent they addressed matters already in the record, and improper to the extent they did not. Other Governors suggested that written communications submitted for the record could sharpen issues and provide them with independent assistance in sifting through and evaluating the evidence in the record. Governor Ryan's proposed amendment was not adopted.

The Board has, accordingly, adopted the ex parte guidelines as previously published in the **Federal Register** on July 18, 1983, 48 FR 32713, with the addition of new § 9.3.

For the reasons set out above, the Board amends title 39, Code of Federal Regulations, as follows:

List of Subjects in 39 CFR Part 9

Administrative practice and procedure.

Add a new Part 9 to read as follows:

PART 9—POLICY ON COMMUNICATIONS WITH GOVERNORS OF THE POSTAL SERVICE DURING PENDENCY OF RATE AND CLASSIFICATION PROCEEDINGS [APPENDIX]

Sec.

9.1 General policy.
9.2 Comminications with Governors during the restricted period.
9.3 Public availability of communications.

Authority: 39 U.S.C. 202, 203, 205, 401 (2), (10), 3621, 3625.

§ 9.1 General Policy.

(a) To represent the public interest generally and to insure that the Postal Service meets the needs of the mailing public, the Governors must be free to hold uninhibited discussions on broad postal issues with mailers and the general public. Nevertheless, the Governors believe that certain restrictions on communications with the public are appropriate when the Governors act in their capacity as final administrative decisionmakers on recommended decisions of the Postal Rate Commission concerning postal rates and classifications. These restrictions should reflect a balance between, on the one hand, the need to safeguard the integrity of the administrative process for setting rates and classifications and insure meaningful judicial review of decisions of the Governors on these subjects, and on the other hand, the need for open access to the Board to permit the members to meet their statutory responsibilities. To strike an appropriate balance, the Board has adopted the following general guidelines: From the time the Postal Rate Commission issues a recommended decision until the Governors have acted on the recommended decision, any communication from an interested person to the Governors that is relevant to the merits of the proceeding should be on the public record and available for public inspection.

(b) In reviewing recommended decisions of the Commission, the Governors act on the record before them. They are under no obligation to take communications from the public into account in reaching their decision.

§ 9.2 Communications with the Governors During the Restricted Period.

Once the Commission issues a recommended decision, and until the Governors have acted on that recommended decision by approving, rejecting, allowing under protest or modifying it, the following guidelines apply to communications with the

Governors that are relevant to the merits of the proceeding.

(a) *Oral Communications.* During the restricted period, it is the policy of the Governors not to receive oral communications relevant to the merits of the proceeding from any interested person. In the event such a conversation does inadvertently take place, the Governor involved shall prepare a memorandum of the conversation and submit it to the Secretary of the Board for inclusion in the public record, where it shall be available for public inspection.

(b) *Written Communications.* (1) During the restricted period any communication relevant to the merits of the proceeding that an interested person may wish to submit to the Governors must be in writing and should not exceed fifteen pages in length. Such comments should be based on the record and addressed to the Governors through the Secretary of the Board. If the commenter has been a party to the Commission proceeding, copies should be sent to all other parties to that proceeding. The Secretary shall make all such communications available for public inspection.

(2) Because the Governors are often required to act promptly on a recommended decision from the Commission, interested persons seeking to communicate with the Governors should submit their comments no later than ten (10) days after the Commission has issued its recommended decision. This period may be extended at the discretion of the Governors.

(c) *Scope of the Guidelines.* These guidelines apply to communications from interested persons to the Governors, their staff, personal assistants (if any), the Secretary of the Board and any official of the Office of the Board. Since the Act assigns final decisionmaking authority on Commission recommended decisions to the Governors and not the Board, these guidelines do not apply to the Postmaster General or the Deputy Postmaster General, nor do they apply to other officers or officials of the Postal Service. Moreover, in order to carry out their statutory responsibility to direct "the exercise of the power of the Postal Service," 39 U.S.C. 202(a), the Governors must be free to discuss all matters of postal policy with officers and employees of the Postal Service. Accordingly, no restrictions apply to communications between the Governors and Postal Service employees.

§ 9.3 Public Availability of Communications.

All communications placed on the public record pursuant to these guidelines shall be available for public inspection at the Office of the Board of Governors, United States Postal Service, Room 10–300, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260–1000, between 8:30 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

David F. Harris,

Secretary.

[FR Doc. 84–1694 Filed 1–23–84; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–2465–7, Docket No. A–83–36]

Control of Pollution From New Motor Vehicles and New Motor Vehicle Engines; Smoke Emissions From 1984 and Later Model Year Diesel Heavy-Duty Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: This rule will allow the manufacturers of diesel heavy-duty engines to determine exhaust opacity by a measuring procedure other than the one described in Subpart I of Part 86 as long as the results are correlatable. The Administrator will, however, conduct all confirmatory tests according to the procedures described in Subpart I.

DATE: These regulations are effective as of February 23, 1984. EPA will, however, consider comments on this rule received within 30 days after publication of this notice. (See section VI of this preamble-Public Participation.)

ADDRESS: Material relevant to this interim final rule is contained in Public Docket No. A–83–36. The docket is located at the U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays and a reasonable fee may be charged for copying. Please submit written comments to: U.S. Environmental Protection Agency, Central Docket Section (A–130), Attn: Docket No. A–83–36, Waterside Mall, West Tower Lobby, Gallery I, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Clifford D. Tyree, Certification Policy and Support Branch, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668–4310.

SUPPLEMENTARY INFORMATION:

I. Applicability

The provisions of these regulations apply to 1984 and later model year diesel heavy-duty engines.

II. Background

The diesel heavy-duty engine exhaust opacity measurement procedure specified in Subpart I was originally adopted in 1968. The term "end-of-line" has been used to describe the actual test procedure. This end-of-line procedure attempts to measure the visible plume of exhaust as it leaves the exhaust stack, thus providing a direct measurement of the smoke that would be visible in use. To maximize the correlation between measured values and the appearance of the exhaust, the procedure specifies the use of a smokemeter which incorporates specific structural and operational characteristics, and the positioning of the meter at the end of the exhaust stack. However, this end-of-line measurement procedure tends to be cumbersome to use within a test cell.

In recent years EPA has received numerous requests for approval of opacity measurement procedures which are more suitable for use within test cells. One such alternative is the "in-line" procedure. This procedure does not require the use of an evacuation system for the exhaust gases, nor custom-fabricated stack systems for bypassing the exhaust gases when engine operation without the opacity measurement device is desired. However, the in-line technique does not directly measure the opacity of the exit exhaust plume. In addition, there are a number of manufacturers of in-line smokemeters, each of which may use a slightly different technique for determining the opacity measurement. Since the basis of the existing standards is the end-of-line procedure, and the in-line technique does not necessarily produce results identical to the end-of-line technique, the in-line measurement technique cannot be used as the sole basis for determining compliance with the smoke standards. However, manufacturers have submitted data which show that the measurements from in-line meters can be correlated with measurements which are obtained by means of the Subpart I procedure.

III. Discussion

In response to requests from manufacturers to allow other means to make opacity determinations, EPA will

permit a new, optional certification protocol. This protocol would depart from past practice in that acceptability would be based on data which "correlates" with results obtained following the provisions of Subpart I, and one-to-one instrument response equivalence would not be required. Under the optional protocol, the manufacturer is responsible for determining whether the results obtained by the alternative measuring procedure correlate with the results which would be obtained from the procedure in Subpart I.

Data exist which indicate that correlation coefficients as high as 0.997 have been established between the results obtained from different measurement procedures and the measurement procedure described in Subpart I.[1] When correlation exists at the 0.997 level it would be appropriate to adjust the measured results with the applicable offset. However, if correlation coefficients are significantly lower, it is important that the manufacturer take into account such factors as the confidence interval around the point of interest before a simple offset is applied to the data.

When a manufacturer chooses to use an alternative measurement procedure it will: (1) Determine the correlation between the alternative measuring procedure and the Subpart I procedure, (2) maintain a record of the testing that is performed to establish this correlation and make these data available to the Administrator upon request, (3) provide a statement that on the basis of good engineering practices the results obtained on the alternative measuring procedure do correlate with the results which would be obtained from Subpart I, and (4) use the appropriate correlation offset to adjust the measured values before the data are submitted to EPA for comparison to the applicable standards in § 86.084–11.

The Administrator will not routinely approve or disapprove the use of any measuring procedure different than that specified in Subpart I. Rather, EPA will choose to accept the "adjusted" data for comparison with the standard or specify that a confirmatory test be conducted (Ref: § 86.084–29(b)) in accordance with Subpart I test procedures.

IV. Stringency

The use of an alternative opacity measurement procedure by a manufacturer would not have any effect on the stringency of the present Federal exhaust opacity standards for heavy-duty diesel engines. First of all, neither the smoke standards in 40 CFR 86.084–11(b) nor the test cycle is being changed. Secondly, data determined under an alternative measuring procedure would have to be adjusted to account appropriately for the procedural differences in results prior to comparing them to the standard. EPA would continue to review the data in the same manner as data obtained in accordance with Subpart I and would only issue a certificate of compliance upon satisfactory completion of that review. Thirdly, should EPA question the results in any specific case, it can conduct or require the manufacturer to conduct confirmatory testing. Such confirmatory testing would use the Subpart I procedures. Fourthly, if based upon confirmatory testing EPA were to have reason to believe that there was a systematic problem in that the data generated under an alternative measurement procedure did not adequately correlate with Subpart I data, EPA could, until the lack of correlation was resolved, require that all certificates not already issued be based on data from Subpart I procedures. Finally, manufacturers typically complete their development process and attempt certification just prior to starting production of the new model engines. Any delays due to questionable data could result in delays in production and lost sales. Thus, the last-minute jeopardy of unsuccessful certification is sufficiently high that a manufacturer would only choose optional alternative measurement procedures which it is convinced would readily be accepted by EPA. Because of the above safeguards, manufacturers will have sufficient incentive to submit data which adequately correlates with results that would have been obtained by the opacity measurement procedure of Subpart I. Thus, the stringency of the regulations will be retained.

V. Economic Impact

These amendments will not increase the cost of compliance to the regulated industry. Further, because these amendments are optional, the manufacturer has the flexibility of complying with the exhaust opacity standards with the procedure that is best suited for its need, thus minimizing the overall certification cost.

VI. Public Participation

The Agency finds that good cause exists for omitting as unnecessary and contrary to the public interest a notice of proposed rulemaking. This finding is based on the following facts: (1) The action is optional on the part of the regulated industry; (2) the changes are minor and technical in nature and do not affect the stringency of the applicable exhaust opacity standards or the manufacturers' obligation to comply with these standards; and (3) immediate implementation of the amendments will allow the manufacturers additional flexibility in complying with certification requirements for diesel heavy-duty engines, potentially resulting in an immediate reduction in the cost of demonstrating compliance.

VII. Environmental Impact

There are no significant environmental impacts associated with these amendments (Ref: Section IV).

VIII. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Analysis. This regulation is not major because it will result in an annual effect on the economy of less than $100 million and it involves no significant adverse effects on competition, employment, investment, or productivity.

This action was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket for this rulemaking; Docket No. A–83–36.

IX. Reporting and Recordkeeping Requirements

If a manufacturer chooses to use the optional exhaust opacity certification protocol allowed by this action, additional records will have to be kept of the correlation data between the alternative procedure the manufacturer chooses to use and the procedure in Subpart I. The information collection requirements contained in Subpart I have been reviewed by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2000–0390.

X. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a regulatory analysis. The optional measurement procedure for determining compliance with the exhaust opacity standards will only

[1] Green, G. L., Wallace, D., "Correlation Studies of an In-Line, Full-Flow Opacimeter", SAE 801373, Oct. 20–23, 1980.

increase the manufacturer's flexibility and potentially reduce its costs. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Authority: Statutory authority for this action is provided by Sections 202, 206, 208, and 301(a) of the Clean Air Act (42 U.S.C. 7521, 7525, 7542, and 7601(a)).

Dated: January 13, 1984.

William D. Ruckelshaus,

Administrator.

PART 86—[AMENDED]

For the reasons set forth in the preamble, 40 CFR Part 86 is amended as follows:

1. Section 86.082–1 is amended by adding paragraph (f) as follows:

§ 86.082–1 General applicability.

* * * * *

(f) Optional Procedures for Determining Exhaust Opacity.

(1) The provisions of Subpart I apply to tests which are performed by the Administrator, and optionally, by the manufacturer.

(2) Measurement procedures, other than that described in Subpart I, may be used by the manufacturer provided the manufacturer satisfies the requirements of § 86.084–23(f).

(3) When a manufacturer chooses to use an alternative measurement procedure it has the responsibility to determine whether the results obtained by the procedure will correlate with the results which would be obtained from the measurement procedure in Subpart I. Consequently, the Administrator will not routinely approve or disapprove any alternative opacity measurement procedure or any associated correlation data which the manufacturer elects to use to satisfy the data requirements of Subpart I.

(4) If a confirmatory test(s) is performed and the results indicate there is a systematic problem suggesting that the data generated under an optional alternative measurement procedure do not adequately correlate with Subpart I data, EPA may require that all certificates of conformity not already issued be based on data from Subpart I procedures.

2. Section 86.084–23 is amended by adding paragraph (f) as follows:

§ 86.084–23 Required data.

* * * * *

(f) If the manufacturer elects to use a measurement procedure other than that specified in Subpart I to determine compliance with the standards of § 86.084–11(b), the manufacturer will:

(1) Determine the correlation between the alternative measurement procedure chosen and the procedure set forth in Subpart I for each of the opacity measurements required in § 86.084–11(b),

(2) Maintain a description of the procedure and test(s) used to determine the correlation and the data derived from such tests,

(3) Make available to the administrator, upon request, any of the information or data required in paragraphs (f)(1) and (2), and

(4) For each engine family for which a certificate is requested:

(i) Provide a statement that the results obtained by the alternative measurement procedure correlate with the results which would be expected when determined by the procedure in Subpart I, and

(ii) Provide these results, adjusted if necessary with the applicable correlation offset, to be compared with the opacity standards of § 86.084–11(b).

[FR Doc. 84–1904 Filed 1–23–84; 8:45 am]

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40 CFR Part 271

[SW–6–FRL–2511–4]

Hazardous Waste Management Program, Arkansas; Interim Authorization Phase II, Component C

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Hazardous Waste Management Program; termination of permit processing by EPA.

SUMMARY: The State of Arkansas has applied for Interim Authorization, Phase II, Component C (permitting of hazardous waste land disposal facilities). EPA has reviewed Arkansas' application and has determined that Arkansas' hazardous waste program is substantially equivalent to the Federal program covered in Phase II, Component C. The State of Arkansas is hereby granted Interim Authorization for Phase II, Component C, to operate the state's hazardous waste program covered by Phase II, Component C, in lieu of the Federal program in the State of Arkansas.

EPA and the State of Arkansas have been jointly processing a permit application. With today's announcement, EPA is terminating its processing in favor of the State's authorized procedures.

EFFECTIVE DATE: Interim Authorization for Phase II, Component C, for Arkansas shall become effective January 24, 1984.

FOR FURTHER INFORMATION CONTACT: H. J. Parr, Hazardous Materials Branch, Air and Waste Management Division, Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270, Telephone (214) 767–2645.

SUPPLEMENTARY INFORMATION:

Background

In the May 19, 1980, **Federal Register** (45 FR 33063) the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act, as amended (RCRA), to protect human health and the environment from the improper management of hazardous wastes. RCRA includes provisions whereby a state agency may be authorized by EPA to administer the hazardous waste program. For a state program to receive Final Authorization, its hazardous waste program must be fully equivalent to the Federal program under RCRA and consistent with programs in other other authorized states and the Federal program in non-authorized states. In order to expedite the authorization of state programs, RCRA allows EPA to grant a state Interim Authorization if its program is substantially equivalent to the Federal program. During Interim Authorization, a state can make whatever legislative or regulatory changes that may be needed for the state's hazardous waste program to become fully equivalent to the Federal program.

The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program takes effect. Phase I regulations were published on May 19, 1980, and became effective on November 19, 1980. Phase I of the program contains standards for persons that generate or transport hazardous wastes and interim status standards that persons treating, storing or disposing of hazardous wastes must comply with pending the receipt of a permit under Phase II of the program.

The State of Arkansas was authorized for Phase I of the program on November 19, 1980.

In the January 26, 1981, **Federal Register** (46 FR 7965), the Environmental Protection Agency announced the availability of portions or components of Phase II of Interim Authorization. Component A, published in the **Federal Register** January 12, 1981 (46 FR 2802.

contains standards for permitting containers, tanks, surface impoundments and waste piles. Component A was subsequently modified on July 26, 1982 (47 FR 14146), to contain standards for permitting the storage of hazardous waste only in tanks and containers. Component B, published in the **Federal Register** January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators.

Arkansas received Interim Authorization for Phase II, Components A and B on April 19, 1982.

In the July 26, 1982, **Federal Register** (47 FR 32378), the Environmental Protection Agency announced that States with qualified programs can be authorized for Phase II Interim Authorization, Component C. Component C contains permitting standards for land disposal facilities including landfills, land farms, surface impoundments and waste piles.

Draft Application

The State of Arkansas submitted a draft application for Phase II, Component C on October 14, 1982. After detailed review, EPA transmitted comments to the State on November 12, 1982. Although no major issues were identified, there were some areas which needed to be clarified or included before the State could be authorized for Component C. These areas were the permitting and compliance monitoring procedures and descriptions of resource commitments.

Complete Application

Each of these areas was addressed when the State submitted an official application for Component C on October 4, 1983. An EPA review team consisting of both Headquarters and Regional personnel made a detailed analysis of Arkansas' hazardous waste management program.

EPA comments were forwarded to the state on November 23, 1983. No major questions were raised in the comments; however, some minor clarifications were requested. By letter dated November 30, 1983, the State responded to all the issues raised by EPA.

Public Hearing and Comment Period

As noticed in the **Federal Register** on October 26, 1983, EPA gave the public the opportunity to comment on the State's application. EPA also issued a public notice for a hearing to be held in Little Rock, Arkansas, on December 1, 1983, although EPA reserved the right to cancel the hearing if significant interest in holding the hearing wasn't communicated to EPA by November 18, 1983.

Responsiveness Summary

By November 23, 1983, EPA had received no expressions of interest in holding the hearing and the hearing was cancelled. EPA did receive four (4) comments on the Arkansas application. Each of the commenters supported the authorization of the Arkansas program as the most effective means of implementing the hazardous waste program, and had praise for the ability of the Arkansas agency to carry out the program. EPA appreciates these comments and took them into consideration in reaching a decision on whether to grant authorization to Arkansas. However, the criteria EPA must, by statute, use in assessing the program is whether the state program as described in the application, is substantially equivalent to the Federal program. EPA has found the program to be substantially equivalent to the Federal program.

Joint Permit Processing

Prior to being authorized for a component of Phase II, Interim Authorization, a state may require facilities that treat, store or dispose of hazardous waste to obtain a state permit. There are not provisions in RCRA or the federal hazardous waste regulations for designating these preauthorization state permits as RCRA permits. RCRA permits can be issued only by EPA or an authorized state. Authorization requirements ensure that an authorized state will be using procedures substantially equivalent to the Federal permitting procedures (including the requirements of section 7004(b) of RCRA) and will be requiring facilities to comply with standards providing substantially the same degree of protection as the Federal technical standards.

The State of Arkansas and EPA have been jointly processing a permit for the Pine Bluff Arsenal, Pine Bluff, Arkansas. EPA will cease processing the permit application upon publication of this notice. EPA has determined through the review of the Interim Authorization application that the State permitting procedures and technical standards which have been and will be used in processing this permit application are substantially equivalent to the Federal procedures and standards. Accordingly, if Arkansas issues a permit to Pine Bluff Arsenal it will be considered a RCRA permit.

Decision

EPA has reviewed Arkansas' complete application for Interim Authorization, for Phase II, Component C, and has determined that the State program is substantially equivalent to Phase II, Component C, of the Federal program as defined in 40 CFR Part 271, Subpart B, as amended at 47 FR 32373 (July 26, 1982). In accordance with Section 3006(c) of RCRA and implementing regulations, Arkansas is hereby granted Interim Authorization for Phase II, Component C, to operate the State's hazardous waste program in lieu of the Federal program in Arkansas.

With today's action, I have determined that Arkansas' permitting and technical standards are substantially equivalent to EPA's and thus EPA is terminating the processing of the permit for the Pine Bluff Arsenal, Pine Bluff, Arkansas, in favor of the authorized State processing procedures.

Regulatory Flexibility Act

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

Executive Order 12291

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

List of Subjects in 40 CFR Part 271

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

Authority

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

Dated: December 29, 1983.

Dick Whittington, P.E.,

Regional Administrator.

[FR Doc. 84-1886 Filed 1-23-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-6-FRL 2511-5]

Hazardous Waste Management Program, Louisiana: Interim Authorization, Phase II, Components A, B and C

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Hazardous Waste Management Program.

SUMMARY: The State of Louisiana has applied for Interim Authorization, Phase II, Components A, B and C. EPA has reviewed Louisiana's application and has determined that Louisiana's hazardous waste program is substantially equivalent to the Federal program covered in Phase II, Components A, B and C. The State of Louisiana is hereby granted Interim Authorization for Phase II, Components A, B and C, to operate the State's hazardous waste program in lieu of the Federal program in the State of Louisiana.

EFFECTIVE DATE: Interim Authorization for Phase II, Components A, B and C, for Louisiana shall become effective January 24, 1984.

FOR FURTHER INFORMATION CONTACT: H. J. Parr, Hazardous Materials Branch, Air and Waste Management Division, Environmental Protection Agency, 1201 Elm St., Dallas, Texas 75270, Telephone (214) 767-2645.

SUPPLEMENTARY INFORMATION:

Background

In the May 19, 1980, **Federal Register** (45 FR 33063) the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), to protect human health and the environment from the improper management of hazardous waste. RCRA includes provisions whereby a State agency may be authorized by EPA to administer the hazardous waste program in that State in lieu of a Federally administered program. For a State program to receive Final Authorization, its hazardous waste program must be fully equivalent to and consistent with the Federal program under RCRA. In order to expedite the authorization of State programs, RCRA allows EPA to grant a State Interim Authorization if its program is substantially equivalent to the Federal program. During Interim Authorization, a State can make whatever legislative or regulatory changes that may be needed for the State's hazardous waste program to become fully equivalent to the Federal program. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program takes effect.

Phase I regulations were published on May 19, 1980, and became effective on November 19, 1980. Phase I of the program contains standards for persons that generate or transport hazardous waste and Interim Status Standards that persons treating, storing or disposing of hazardous waste must comply with pending the receipt of a permit under Phase II of the program.

The State of Louisiana received Interim Authorization for Phase I on December 19, 1980.

In the January 26, 1981 **Federal Register** (46 FR 7965), the Environmental Protection Agency announced the availability of portions or components of Phase II of Interim Authorization. Component A, published in the **Federal Register** January 12, 1981 (46 FR 2802), contains standards for permitting containers, tanks, surface impoundments and waste piles. Component A was subsequently modified on July 26, 1982 (47 FR 14146) to contain standards for permitting the storage of hazardous waste only in tanks and containers. Component B, published in the **Federal Register** January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators.

In the July 26, 1982 **Federal Register** (47 FR 32378), the Environmental Protection Agency announced that states with qualified programs can be authorized for Phase II Interim Authorization, Component C. Component C published in the **Federal Register** includes standards for permitting land disposal facilities (including surface impoundments and waste piles).

Draft Application

The State of Louisiana submitted its draft application for Phase II, Components A, B and C, on May 27, 1983. After detailed review, EPA transmitted comments to the State on June 30, 1983, for consideration. Major issues were identified for resolution before the State could be authorized. These issues involved the substantial equivalence of the State's regulations.

Complete Application

These issues were basically resolved at the time of submittal of the complete application. The Environmental Control Commission adopted emergency rules on August 29, 1983, which resolved these issues.

On October 24, 1983, Louisiana submitted to EPA an official application for Phase II, Components A, B and C. An EPA review team consisting of both Headquarters and Regional personnel made a detailed analysis of Louisiana's hazardous waste management program.

EPA comments were forwarded to the State on November 30, 1983. No major questions were raised in the comments; however, some minor clarifications were requested. By letter dated December 5, 1983, the State responded to all the issues raised by EPA.

Public Hearing and Comment Period

As noticed in the **Federal Register** on November 3, 1983, EPA gave the public the opportunity to comment on the State's application. EPA also issued a public notice for a hearing to be held in Baton Rouge, Louisiana, on December 6 and 7, 1983.

At the hearing, held in two sessions, one in the evening and one in the morning of the next day, no comments were presented. Region VI received four (4) written comments on the Louisiana application.

All comments were considered before reaching a decision on the Louisiana application for Phase II, Components A, B and C, Interim Authorization.

Responsiveness Summary

In response to the notice published announcing the availability of the Louisiana application for Phase II for review, EPA received four (4) comments. All four commenters objected to the disposal of hazardous waste in Louisiana or in the Gulf of Mexico.

Response: The specific issues on siting disposal facilities or the disposal of hazardous waste is not a consideration under this authorization. Rather, the issue is whether the State's hazardous waste program is substantially equivalent to the Federal RCRA program.

While EPA recognizes the concern citizens have regarding the siting of facilities or the disposal of hazardous wastes in their communities, concerned individuals are assured that they will have the opportunity to comment on any facilities proposed in their area. The State of Louisiana has demonstrated equivalence with Section 7004(b)(2) of RCRA which requires that an opportunity for comments be afforded to

everyone and that, on request, a public hearing will be held in the area of such a proposed facility.

Disposal of hazardous waste in the Gulf of Mexico is primarily governed by the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* [Ocean Dumping Act]. Public notice and hearings are also provided under this Act before issuance of a permit.

Decision

EPA has reviewed Louisiana's complete application for Interim Authorization, Phase II, Components A, B and C, and has determined that the State program is substantially equivalent to Phase II, Components A, B and C, of the Federal program as defined in 40 CFR Part 271, Subpart B, as amended at 47 FR 32373 (July 26, 1982). In accordance with Section 3006(c) of RCRA and implementing regulations, Louisiana is hereby granted Interim Authorization for Phase II, Components A, B and C, to operate the State's hazardous waste program in lieu of the Federal program in Louisiana.

Regulatory Flexibility Act

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

Executive Order 12291

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

List of Subjects in 40 CFR Part 271

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

Authority

This notice is issued under the authority of Secs. 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: December 29, 1983.

Frances E. Phillips,

Deputy Regional Administrator.

[FR Doc. 84-1885 Filed 1-23-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-1-FRL 2511-7]

Vermont; Phase II, Components A, B, and C, Interim Authorization State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final approval.

SUMMARY: The State of Vermont has applied for Interim Authorization for Phase II Components A, B, and C. EPA has reviewed Vermont's application for Phase II Interim Authorization, Components A, B, and C, and has determined that Vermont's hazardous waste program is substantially equivalent to the Federal program covered by Components A, B, and C. The State of Vermont is hereby granted Interim Authorization for Phase II, Components A, B, and C, to operate the State's hazardous waste program.

EFFECTIVE DATE: January 24, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Jane O'Donnell, State Waste Programs Branch, U.S. E.P.A., Region I, J.F.K. Federal Building, Boston, Massachusetts 02203, (617) 223-4448.

SUPPLEMENTARY INFORMATION: In the May 19, 1980 **Federal Register** (45 FR 33063), the Environmental Protection Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. Included in these regulations, which became effective November 19, 1980, were provisions for a transitional stage in which states would be granted interim program authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program has taken effect.

The State of Vermont received Interim Authorization for Phase I on January 8, 1981.

In the January 26, 1981 **Federal Register** (46 FR 7965), the Environmental Protection Agency announced the availability of portions of the second phase of Interim Authorization. In order to proceed with authorizing State programs as expeditiously as possible and because some of the standards for hazardous waste treatment, storage and disposal facilities (40 CFR Part 264) have been promulgated at different times, EPA made the second phase of Interim Authorization available in components. On October 1, 1982, EPA published a notice in the **Federal Register** (47 FR 43405) inviting the public to comment on the Vermont application for Interim Authorization Phase II, Components A, B, and C, at a public hearing on November 9, 1982. This notice also invited the public to submit written comments on the Vermont application to Region I by November 12, 1982. Notice was also given in three major newspapers in Vermont.

On May 5, 1983, EPA determined that the absence of state regulations corresponding to the federal permitting requirements contained in 40 CFR Part 270 (formerly 40 CFR Part 122) precluded EPA from granting Interim Authorization to Vermont. In addition, uncertainty about the legal status of the State's regulations made it impossible to determine whether the Vermont program was substantially equivalent to Part 264.

On September 17, 1983, Vermont adopted regulations that were intended to clarify the legal status of the portion of the Vermont program that corresponded to the federal Part 270 and Part 264 regulations. On September 27, 1983, Vermont submitted a revised application reflecting the newly adopted regulations and the other associated changes to the Vermont program.

On October 20, 1983 EPA published a notice in the **Federal Register** (48 FR 48690) inviting the public to comment on the revised Vermont application at a public hearing on November 22, 1983. This notice also invited the public to submit written comments on the Vermont application to Region I by November 22, 1983. Notice was also given in three major newspapers in Vermont.

Discussion

The State submitted its application for Phase II, Components A, B, and C, on September 7, 1982. Several issues were raised concerning the substantial equivalence of the State's program. The issues were: whether or not Vermont's facility exemption provision for generators who store hazardous waste on-site for less than 90 days was substantially equivalent to the federal provisions of 40 CFR 262.34; the extent to which Vermont intended to use compliance schedules in permit and the reporting requirements associated with the use of compliance schedules;

whether or not Vermont's incinerator facility certification (permit) application information requirements were substantially equivalent to the federal requirements of 40 CFR 270.19. In addition, two significant legal issues were raised regarding Vermont's application. The first legal issue concerned the relationship of Vermont's Best Control Technology (BCT) facility standards to the federal facility standards contained in 40 CFR Part 264. In particular, EPA questioned whether Vermont's BCT facility standards required the imposition of standards that are substantially equivalent to the federal standards of Part 264. The second problem area was Vermont's reliance on assurances in the Memorandum of Agreement, rather than on duly promulgated regulations, as its means of demonstrating that the State's permitting requirements would be substantially equivalent to the federal provisions of 40 CFR 271.14 requirements for permitting.

The State submitted its first addendum to its application on December 20, 1982. The addendum contained clarification on some of the issues EPA raised. The following discussion indicates specifically how Vermont addressed each issue.

1. *Short-term Storage Exemption:* Vermont's facility exemption provision for generators storing waste on-site for less than 90 days differ from the federal requirements of 40 CFR 262.34 on two points. Vermont's provisions require that inspection of tank storage areas occur each day the facility or attached generating plant is in operation as opposed to requiring inspections daily. In addition to this difference, 40 CFR 262.34(a)(3) requires that containers be marked with the date upon which acccumulation first begins while Vermont's provisions require that containers be labelled with the date the container was first put in storage. Vermont has made a demonstration that their program is substantially equivalent even with these differences.

In the December 1982 addendum, Vermont has agreed to amend its regulations prior to final authorization to be equivalent to the federal requirements with respect to inspection of tanks and date of accumulation. In addition, on January 3, 1983, EPA proposed an amendment to the 40 CFR 262.34 requirements to allow for "satellite accumulation" whereby generators could accumulate up to 55 gallons of hazardous waste in satellite areas *prior* to being put into storage. This proposed amendment would only require that containers be labelled *after* 55 gallons had been accumulated and the container put into storage. Since Vermont's provisions are basically consistent with EPA's proposed amendment and since the State further agrees to adopt provisions equivalent to the federal ones for final authorization, EPA believes Vermont's short-term storage exemption provisions to be substantially equivalent to the federal requirements.

2. *Compliance Schedules:* The State has indicated that compliance schedules will not be used in permits under any condition but will rely on the Assurance of Discontinuance mechanism which specifies corrective actions to be taken. The State's use of the Assurances of Discontinuance meets the reporting requirements of 40 CFR 271.14.

3. *Incinerator Application Requirements:* The State has clarified their certification application requirements relative to the requirements of 40 CFR 270.19. The State's requirements are more stringent than the corresponding federal ones and are thus substantially equivalent.

4. *Best Control Technology Facility Standards:* Prior to submission of its September 27, 1983 revised application, Vermont enacted regulations which explicitly incorporate by reference the federal 40 CFR Part 264 facility standards into the Vermont Best Control Technology facility standards, thereby eliminating any doubts about the substantial equivalence of the Vermont facility standards to the federal standards.

5. *Vermont Permitting Requirements:* Vermont's permitting requirements previously had been specified in the form of assurances in the state's Memorandum of Agreement. In order to make certain the legally binding nature of these permitting requirements, the state has incorporated them by reference into regulations thereby bringing its permitting requirements into substantial equivalence with the federal permitting requirements of 40 CFR 271.14.

Responsiveness Summary

In the **Federal Register** notice of October 1, 1982 (47 FR 43405) EPA gave the public opportunity to review and comment on the State of Vermont's application for Phase II Components A, B, and C Interim Authorization Hazardous Waste Management Program under the Resource Conservation and Recovery Act (RCRA). The comment period extended to November 12, 1982. EPA also conducted a public hearing on the application on November 9, 1982 at the Pavilion Auditorium in Montpelier, Vermont. Four members of the public attended as well as several employees of the Vermont Agency of Environmental Conservation (AEC) and the U.S. Environmental Protection Agency (EPA). EPA received two oral comments at the hearing from members of the public. In addition, during the comment period (October 1–November 12, 1982) EPA received two written comments on the Vermont application. All timely comments, whether presented at the hearing or in writing, were reviewed and considered in reaching a decision on the Vermont Application for Phase II Interim Authorization. The comments received and EPA's response to those comments are summarized as follows:

Comment—The two oral comments received at the hearing were directed at questioning the level of publicity for the hearing and questions over what the hearing was about.

EPA Response—EPA's regulations governing approval of State's application for Interim Authorization require that a notice of receipt of the complete application and public hearing be published in the **Federal Register** and be circulated in a manner calculated to attract the attention of interested persons by publication of a legal notice in major newspapers and direct mailing to persons on the State/EPA mailing lists. [See 40 CFR 271.135]. In addition to the **Federal Register** notice, notices of the hearing, comment period and availability of the State's application for public inspection were sent to three major newspapers in Vermont for publication for thirty consecutive days, and were mailed to citizens and organizations on the State/EPA mailing list. As required under 40 CFR 271.135, all notices indicated the location where copies of the application were available for public inspection and copying. EPA believes that adequate notice of the availability of the Vermont Phase II application for review and public comment was provided. In an attempt to attract the attention of as many interested persons as possible, two additional newspapers in the State of Vermont received legal notices to ensure greater geographic coverage.

Comment—One commenter wrote in favor of EPA approving the State of Vermont's application and granting Vermont Phase II Interim Authorization based on the stricter standards that the State's program would impose and based on the Vermont Agency of Environmental Conservation's ability to work effectively with both industry and the public.

EPA Response—No response needed.

Comment—One commenter wrote to question whether Vermont had an existing program substantially equivalent to the federal program based on the commenter's observation that many of the "key portions" of the federal permitting requirements and procedures, the requirements of 40 CFR 271.14 (formerly 40 CFR 123.7), were imposed through assurances in the Memorandum of Agreement rather than through Vermont state laws and regulations. The commenter asserted that, in the absence of properly promulgated binding regulations, the Vermont Phase II RCRA program cannot be said to be in existence, and therefore EPA could not legally approve the program. The commenter also questioned whether permit conditions imposed pursuant to the Memorandum of Agreement assurances could be legally enforced, either by the State against permittees or by the public against permittees or against the State, unless those permit conditions are instead imposed pursuant to state regulations.

EPA Response—Vermont has adopted the federal permitting requirements into regulations by incorporating by reference the assurances that the state had previously sought to impose through the Memorandum of Agreement. As such, the Vermont regulations now contain permitting requirements and procedures that are substantially equivalent to the federal requirements of 40 CFR 271.14.

In the **Federal Register** notice of October 20, 1983 (48 FR 48690) EPA gave the public the additional opportunity to comment and review Vermont's revised Phase II application. If significant public interest was expressed EPA was to have held a public hearing on November 22, 1983. However, EPA did not receive any oral or written comments on Vermont's revised application during the comment period (October 20, 1983–November 22, 1983). Therefore a public hearing was not held.

Decision

I have determined that Vermont's program is substantially equivalent to the Federal program for permitting hazardous waste treatment, storage and disposal facilities as defined in 40 CFR Part 271, Subpart B. In accordance with Section 3006(c) of RCRA, the State of Vermont is hereby granted Interim Authorization to operate its hazardous waste program in lieu of Phase II, Component A, B, and C, of the Federal hazardous waste program for the permitting of storage, treatment and disposal facilities.

Authority

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

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

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

List of Subjects in 40 CFR Part 271

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

Dated: December 22, 1983.

Michael R. Deland,

Regional Administrator.

[FR Doc. 84–1882 Filed 1–23–84; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–42

[FPMR Amdt. H–147]

Recovery of Precious Metals

Correction

In FR Doc. 84–1309, beginning on page 2246, in the issue of Thursday, January 19, 1984, on page 2247, in the first column, the table of contents for Subpart 101–42.3 should read as follows:

Subpart 101–42.3—Recovery of Precious Metals

Sec.
101–42.300 Scope of subpart.
101–42.301 General.
101–42.302 Agency responsibilities.
101–42.302–1 Precious metals recovery surveys.
101–42.302–2 Agency reporting requirements.
101–42.302–3 Precious metals recovery program monitor.
101–42.302–4 Internal audits.
101–42.303 Recovery of silver from precious metals bearing materials.
101–42.303–1 Guidelines for the recovery of silver from used hypo solution and scrap film.
101–42.303–2 Recovery of silver from used hypo solution.
101–42.303–3 Recovery of silver from scrap film.
101–42.304 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.
101–42.304–1 Civil agency participation in the DOD Precious Metals Recovery Program.
101–42.304–2 Use of DOD-recovered fine precious metals.

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

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3106

Oil and Gas Leasing; Interpretive Rule Relating To Approval of Assignments on Producing Leases

AGENCY: Bureau of Land Management, Interior.

ACTION: Interpretive rule.

SUMMARY: This notification announces an interpretive rule designed to clarify for the public the Bureau of Land Management's (BLM) regulations at 43 CFR 3106.7–3, requiring that no assignment shall be approved unless the lease account is in good standing. Certain lease obligations that must be agreed to by the assignee and its surety prior to approval of the assignment of a producing lease may be necessary to ensure that the interests of the United States Government are protected in accordance with the above-cited regulation.

EFFECTIVE DATE: January 24, 1984.

FOR FURTHER INFORMATION CONTACT:

Proper BLM State Office Oil and Gas Leasing Section; or
Lois Mason, (202) 653–2190

SUPPLEMENTARY INFORMATION: The BLM has established as a priority the elimination of oil and gas lease assignment backlogs. Recently, the Minerals Management Service (MMS) indicated to the BLM that they will no longer provide reviews of lease accounts to determine the financial liability of the assignor prior to approval of lease assignments for producing leases. To provide the public with an expedited assignment approval procedure the BLM will allow the continued approval of

producing lease assignments without reliance on an MMS review of lease accounts. In order to assure that a lease account is in good standing, the BLM will approve assignments of producing leases only when one of the four following situations exists, all else being regular:

1. Assignment of an undivided interest where the assignor retains some portion of the record title.

2. Assignments where there is: (a) Merger between the assignor and assignee and corporate transfer continues the required bond coverage, and/or (b) a transfer of lease record title within a single corporate entity.

3. Assignments where divided or total lease interests are conveyed and the assignee and its surety *both* accept liability in writing for past as well as future obligations. The following steps will be taken:

a. The BLM will notify the assignee(s) that a pending assignment will be approved only if the assignee(s) and its surety accept liability for *all* debts owed the government under the lease (both past and future). It is the assignee's responsibility to obtain its surety's consent to the liability.

b. The BLM will allow 90 days for the assignee(s) to obtain a bond or a bond rider accepting this condition of liability. If the assignee requires more than 90 days, it is to notify the proper BLM office that additional time is necessary to provide BLM with approval of the condition of liability. If there is more than one assignee, *all* assignees and surety(s) must respond accepting the condition of liability before the BLM proceeds. Proof of bonding in the form of an original bond or rider to an existing lease or statewide bond noting the assignee's and surety's acceptance of liability, must be provided to the proper BLM office. If the assignee has a nationwide bond filed in another State office the assignee will file the rider in that State office and provide a copy of the rider to the State office where the assignment has been submitted for approval.

c. When these conditions have been met, the assignment will be noted to show the assignee's acceptance of liability and approved by the BLM.

4. Assignments of operating rights where the record title holder remains bonded or the operator has furnished a bond in lieu of a general lease and drilling bond furnished by the record title holder, and the assignee operator and its surety have accepted liability for all past and future obligations. Where two or more operators have interests in different formations or portions of the lease, each operator that files an operating bond in lieu of the lessee's bond and their surety must accept the condition of liability before the assignment of operating rights can be approved. The procedures outlined in number 3 above will be followed.

It is important to note that assignees can protect themselves by private arrangements with assignors, such as contract(s) which shift the assignee's risk back to assignors.

Dated: January 17, 1984.

Robert F. Burford,

Director.

[FR Doc. 84-1880 Filed 1-23-84; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 381

Cargo Preference—U.S.-Flag Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Interim Final Rule and Request for Comments.

SUMMARY: The Maritime Administration (MARAD) is issuing this interim final rule setting forth procedures governing the evaluation by U.S. departments or agencies ("the agencies") of bids from subsidized U.S.-flag bulk vessel operators for the carriage of dry bulk preference cargoes. The procedures require that operating-differential subsidies (ODS) received by operators of vessels carrying dry bulk preference cargoes be considered a cost to the government for the carriage of such cargoes and be considered in the calculation of fair and reasonable rates for such carriage. MARAD's intent in establishing these regulations is to ensure equitable competition between subsidized and unsubsidized operators of dry bulk preference cargoes and to enable operators to carry these cargoes at the lowest cost per ton to the government. This rulemaking is effective upon issuance.

However, MARAD specifically invites comments on the issue of whether it should require an agency to consider the total cost to the government when bids are evaluated for the carriage of dry bulk preference cargoes by subsidized and unsubsidized bulk vessel operators. In addition, MARAD invites comments on any other issues raised by this rulemaking. MARAD will review all comments received and modify the rule, if necessary.

DATES: This rule is effective January 19, 1984. Comments must be received on or before February 23, 1984.

ADDRESS: Send the original and two (2) copies of the comments to: Secretary, Maritime Administration, Nassif Building, Room 7300, 400 Seventh Street SW., Department of Transportation, Washington, D.C. 20590. To expedite the review of the comments, the agency requests, but does not require, that an additional eight (8) copies of the comments be submitted.

Any commentor who desires acknowledgement of MARAD's receipt of comments should include a self-addressed and stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Acting Director, Office of Ship Operating Costs, Maritime Administration, Washington, D.C. 20590, Telephone (202) 382-6036..

SUPPLEMENTARY INFORMATION:

a. Authority

Section 901(b)(1) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1241(b)(1), (the Act), requires that at least 50 percent of any equipment, materials, or commodities purchased by the United States or for the account of any foreign nation without provision for reimbursement, or acquired as the result of funds or credits from the United States, should be transported on privately owned U.S.-flag commercial vessels if such vessels are available at a fair and reasonable rate. The equipment, materials, or commodities purchased and so transported are called "preference cargoes." Section 901(b)(2) and Section 204(b) of the Act, 46 U.S.C. 1241(b)(2) and 46 U.S.C. 1114(b), provides the authority for MARAD (by delegation from the Secretary of Transportation) to issue regulations governing the administration of section 901(b)(1) of the Act.

Present regulations implementing section 901(b)(2) of the Act, 46 CFR Part 381, require government agencies to comply with section 901(b)(1) of the Act, and to submit data to MARAD on U.S. and foreign flag carriage of preference cargoes under their control.

b. Legal Background

In 1978, Aeron Marine Shipping Company and its affiliated companies (collectively, the Berger Group)[1]

[1] The Berger Group companies involved are: Aeron Marine Shipping Company, American Shipping, Inc., Aquarius Marine Company, Altas Marine Company, Pacific Shipping Inc., and Worth Oil Transport Company.

petitioned MARAD[2] for permission to carry dry bulk preference cargoes on seven of its subsidized bulk cargo vessels. These cargoes had previously been carried exclusively on unsubsidized vessels. In Docket No. A–132, MARAD, through the Maritime Subsidy Board (Board), granted permission for two Berger Group vessels to carry preference cargoes. They were also allowed to receive ODS, while carrying preference cargo, subject to the condition that the vessels carry these cargoes at world rates (the equivalent of freight rates that would be charged by foreign-flag vessels). In addition, MARAD agreed to pay a fuel allowance on the outbound leg of each voyage performed by the two vessels, with provision for ending the allowance if world rates exceeded the break-even rate for the vessels.

The Berger Group sought review of MARAD's action in the U.S. District Court for the District of Columbia, arguing that (1) all seven vessels should be admitted to the dry bulk preference trades with ODS; (2) MARAD did not have the authority to set rates; and (3) even if MARAD could set rates, the rate scheme chosen by MARAD was unreasonable. On October 21, 1981, the District Court ordered MARAD to admit all seven ships, ruled that MARAD had ratemaking authority, and found that the rate scheme chosen by MARAD was reasonable. The Court held that MARAD had broad authority to establish a rate formula and to provide guidance on fair and reasonable rates to other agencies and remanded to MARAD the issue of whether a priority system was necessary to protect unsubsidized carriers in the preference trade. The Court doubted that a priority system could be justified *Aeron Marine Shipping Co.* v. *United States*, 525 F. Supp. 527 (D.D.C. 1981).

On August 4, 1982, MARAD admitted the remaining five Berger vessels under the same terms and conditions applied to the first two vessels and also decided that a priority system was not justified. The Berger Group appealed the District Court's decision on the rate issues to the U.S. Court of Appeals for the District of Columbia. The American Maritime Association also filed motions in that Court to rescind the order admitting all seven vessels. On November 23, 1982 the Court of Appeals affirmed the District Court's order for admission of all seven vessels and MARAD's authority to set rates. However, it reversed the District Court on the issue of the reasonableness of the rate system adopted by MARAD and instructed the District Court to remand the matter to MARAD for reconsideration of a proper rate for subsidized vessels. *Aeron Marine Shipping Co.* v. *United States*, 695 F. 2d 567 (D.C. Cir. 1982).

In response to the remand, MARAD published a Tentative Order *Aeron Marine Shipping Co., et al.*, Docket No. A–132, 22 SRR 319 (MSB, August 31, 1983), seeking public comment on a proposal to permit subsidized bulk cargo vessels to participate in the dry bulk preference trades, using a fair and reasonable rate. Normally, for the unsubsidized vessel, the rates are based on an operator's total costs for preforming a voyage in the preference trade, with an allowance for profit. Under the Tentative Order, however, the fair and reasonable guideline rates for a subsidized vessel would be reduced by the amount of ODS received by the vessel for the voyage. In these circumstances, bids for perference cargoes submitted by the subsidized operators would be evaluated by the agency in the same manner as bids by unsubsidized operators.[3]

On September 16, 1983, the U.S. District Court approved a stipulation that gave immediate effect to MARAD's action in the Tentative Order, by allowing the Berger Group vessels to carry dry bulk preference cargoes at a fair and reasonable rate while still receiving ODS. *Aeron Marine Shipping Company* v. *United States*, Civil Action No. 79–2048 (D.D.C., September 16, 1983).

On December 22, 1983, MARAD issued its Final Order in Docket No. A–132, which adopted many of the provisions of the Tentative Order. In that order, MARAD also directed the immediate preparation of an appropriate rule to accommodate objections raised during the administrative proceeding. That order is now administratively final, since the Secretary of Transportation did not exercise her right of review.

On January 10, 1984, the U.S. Court of Appeals for the District of Columbia stayed the U.S. District Court's September 16, 1983 order, approving a stipulation that gave immediate effect to MARAD's action in the Tentative Order. The stay is effective pending disposition on the merits of the appeals of Aeron Marine Shipping Company and Phoenix Bulkship I. The Court of Appeals ordered that, when MARAD's December 22 order becomes final pursuant to 46 CFR 202, the parties were to show cause why the appeals should not be dismissed as moot.

c. Present Procedures

Under present procedures, when considering bids received for a preference cargo by an unsubsidized operator, the agency requests that MARAD provides a guideline rate (a rate determined by MARAD as fair and reasonable) for the vessel with the lowest responsive bid. When the lowest bid for a U.S.-flag vessel is determined, the cost actually paid by the agency is either: (1) The difference between existing foreign-flag rates and the lowest responsive bid offered for a U.S.-flag vessel; or (2) the cost of the lowest bid offered for a U.S.-flag vessel transporting the cargo. For example, the U.S. Department of Agriculture (USDA) pays the difference between the existing foreign-flag rate and the lowest responsible bid offered for a U.S.-flag vessel, while the Department of State's Agency for International Development pays or finances the cost of the lowest bid offered for U.S.-flag vessel. A bid that exceeds MARAD's guideline rate would not be accepted. The rate paid by the agency is the lowest acceptable bid equal to or less than the guideline. Under the terms of the Tentative Order, the guideline rate that MARAD provided to the agency for a subsidized vessel was reduced by the amount of ODS payable for that voyage. The agency was not required to consider ODS as part of the total cost of the bid to the government.

d. Comments on the Tentative Order

In its Tentative order, MARAD, through the Board, invited comments from parties to the proceeding. A major point raised in the comments was the inequity caused when an operator receiving ODS bids for cargo against an operator not receiving ODS. Commentors also argued that payment of ODS will result in additional costs to the government for the carriage of

[2] The Maritime Subsidy Board (Board) is an operating part of MARAD and the Department of Transportation. For convenience, references to MARAD include the Board, unless otherwise specified.

[3] 46 CFR 381.2(c) lists the departments or agencies having responsibility under the cargo preference program. These department or agencies include but are not limited to the following, or, as appropriate, their successor departments or agencies: (1) Department of State, (2) Department of Agriculture, (3) Department of Defense, (4) Post Office Department, (5) General Services Administration, (6) Export-Import Bank of the United States, (7) National Aeronautics and Space Administration, (8) Inter-American Development Bank, (9) U.S. Information Agency, (10) Department of Interior, (11) Department of Commerce, (12) Department of Treasury, (13) Department of Education, (14) Department of Health and Human Services, (15) Department of Housing and Urban Development, (16) Department of Transportation, (17) Atomic Energy Commission, (18) Tennessee Valley Authority, (19) Veterans Administration, (20) Smithsonian Institution, and (21) Library of Congress.

preference cargoes, since, they argue, less efficient subsidized vessels take business in the preference trade from more efficient unsubsidized vessels, because the ODS paid to the subsidized operators offsets these operators' expenses. These commentors contended, therefore, that subsidized vessels would not be subject to the same market forces as unsubsidized vessels.

The following example compares the costs of using subsidized and unsubsidized vessels in the carriage of dry bulk preference cargoes and confirms the points raised in the comments received on MARAD's Tentative Order. In the example, the agency evaluating the bids is assumed to be the USDA, which pays an operator the difference between the U.S. and the foreign rates.

Cost per ton of cargo	Subsidized vessel	Unsubsidized vessel
U.S.-flag guideline rate	[1] $60	$65
Foreign flag rate	−25	−25
Cost to USDA	35	40
ODS	+20	
Cost to government of cargo carried	55	40

[1] The amount for the subsidized vessel does not include ODS.

This example shows that if unsubsidized and subsidized vessel bids were evaluated by USDA on the same basis and the estimated subsidy of $20 per ton is not taken into account, the subsidized vessel would be approved by USDA as the lowest bidder even though the actual total cost to the government is $55 per ton ($20 subsidy plus $35 U.S./foreign rate difference). On the other hand, the unsubsidized operator, whose cost to the government would have been $40 per ton ($65 per ton minus the $25 per ton foreign flag rate), would not be approved for carriage of the cargo even though the overall cost to the government of the cargo carried would be lower than that of the subsidized operator.

MARAD agrees with those commentors who argue that, unless the amount of ODS is taken into consideration by the agencies, subsidized vessels could have an unfair advantage. MARAD is, therefore, adopting this interim final rule setting forth procedures in which the amount of ODS paid to operators of subsidized vessels will be considered as an added cost per ton in the bidding process and will be considered in the process of calculating the fair and reasonable guideline rates. The rule will eliminate the potential inequities to unsubsidized vessels and assure that dry bulk preference cargoes are carried at the lowest cost to the government.

e. The Procedures in This Interim Final Rule

Where subsidized bulk cargo vessel operators bid for the carriage of dry bulk preference cargoes, the procedures set forth in this interim final rule require that the agency request, and MARAD provide, the ODS cost per ton of cargo carried for the voyage, as well as the guideline rates that MARAD is obligated to provide under 46 U.S.C. 1241(b)(1).

Under this interim final rule, the agency must add the cost of ODS to the subsidized vessel operator's bid (the "augmented bid") and compare that cost to bids of any unsubsidized vessel. The agency shall then request from MARAD a fair and reasonable guideline rate for the apparent low bidder. MARAD will provide the agency with such a guideline rate, based on a calculation of the vessel operator's anticipated costs plus a reasonable amount for profit. The agency will compare this guideline rate against the subsidized operator's augmented bid (or the unsubsidized operator's bid, if it is the apparent low bidder) and approve the bid if it does not exceed the guideline rate.

If the subsidized vessel operator is the low bidder, the agency only pays it on the basis of its bid, regardless of the amount of ODS that is added into its bid for purposes of the evaluation required by the interim final rule.

MARAD believes that this rule will produce a fair rate for subsidized operators, eliminate the potential economic advantage that subsidized vessels might have over unsubsidized carriers, and ensure use of the vessel with the lowest cost to the government. MARAD believes that the rule will promote competition by rewarding vessel operators who cut operating costs and reduce profits, instead of incidentally rewarding an operator because of its receipt of subsidy. This should mean somewhat lower costs to the agencies over the long-run.

This interim final rule shall apply only to those agencies that directly pay or finance all or part of U.S.-flag ocean freight transportation costs for the carriage of dry bulk preference cargoes, in accordance with the requirement in 46 CFR Part 381.

It shall not apply to agencies that provide foreign aid by direct cash transfer payments unless specific agreements between the agency and the recipient country concerning the expenditure of such funds provide for coverage of U.S.-flag vessels.

f. EO 12291 and DOT Requirements

These amendments to 46 CFR Part 381 are considered to be non-major under Executive Order 12291 and significant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979).

This interim final rule is significant because it is expected to be of substantial interest to the various agencies and to the maritime industry, since the shipment of preference cargoes represents a major source of business for that industry.

It was not possible to prepare a regulatory evaluation for this interim final rule because MARAD did not have accurate information relating to essential variables needed to determine its economic impact or conduct a cost-benefit analysis. These variables would include the number of subsidized and unsubsidized vessels that would actually compete, the particular preference trade involved, the number of voyages made, the efficiencies of the vessels, and the amount of cargo. In addition, since the rule is dependent on competition through the bidding process, it is not possible to predict which operators and which agencies would benefit. In any event, MARAD will evaluate its experience under the interim final rule and is requesting comments from the public on the likely economic impact of the interim final rule. At this time, however, MARAD believes that a full regulatory evaluation is unnecessary.

g. Applicability of the Administrative Procedure Act

This rule is being made effective upon issuance for several reasons. First, MARAD's final order in Docket No. A-132, directing the preparation of this rule, does not, in itself, constitute a complete administrative action because it lacks a procedure for equitably evaluating the bids of subsidized and unsubsidized operators and determining whether bids by subsidized operators are fair and reasonable. Accordingly, unless this rule is issued with immediate effect, subsidized carriage of dry bulk preference cargo will be precluded during the immediate future. This result would be unfair, since MARAD was ordered more than a year ago to establish a fair and reasonable rate for certain subsidized operators.

Second, agencies have been shipping cargoes and will be shipping increasing quantities of such cargoes as the peak shipping period approaches. It is especially important to permit subsidized carriage to reduce competitive inequities in the bidding process and to enable carriage of the

cargoes at the lowest cost to the government during this period.

In addition, the Tentative Order, served on all parties in Docket No. A–132, invited comments on matters considered therein, which included the rate issue and questions concerning a priority system. Thus, the parties were put on notice that MARAD would issue a final decision on these matters. Finally, interested parties did submit comments in response to the Tentative Order. Those comments were considered and form, in part, the basis for this interim final rule. Moreover, MARAD is soliciting comments on these rules and will amend them should the comments warrant.

In light of these prior opportunities to comment and because the purpose of the rule is to reduce the present competitive inequities, MARAD concludes that the failure to issue this regulation with immediate effectiveness would prejudice subsidized and unsubsidized carriers alike.

Notice and comment are not required under the Administrative Procedure Act because this is a matter relating to grants and contracts. 5 U.S.C. 553(a)(2). However, even assuming the applicability of section 553 of the Administrative Procedure Act, MARAD has found for good cause, pursuant to section 553(b), for the reasons stated above, that notice and public procedure for this interim final rule is impracticable and unnecessary. For the same reasons establishing good cause, MARAD has made a determination, under section 553(d), that this rulemaking is effective upon issuance.

Notwithstanding that the lack of notice and public procedure negates the need for certification under the Regulatory Flexibility Act, the Administrator does not believe that the rule will have a significant economic impact on a substantial number of small entities. This rulemaking does not include any new or amended information collection requirement within the scope of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 46 CFR Part 381

Freight, Maritime carriers, Reporting requirements.

PART 381—[AMENDED]

Accordingly, 46 CFR Part 381 is amended by adding a new section 381.8 to read as follows:

§ 381.8 Subsidized bulk cargo vessel participation.

(a) For the purpose of approving subsidized U.S.-flag bulk cargo vessels competing for the carriage of dry bulk preference cargoes, each department or agency having responsibility under the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)), shall evaluate bids received from such vessels in the manner described in paragraph (b) of this section.

(b) When a subsidized bulk cargo vessel operator is the apparent low U.S.-flag bidder for a dry bulk preference cargo, the responsible department or agency shall evaluate the subsidized operator's bid by (1) requesting from MARAD an amount for the operating differential subsidy (ODS) applicable to the carriage of cargo as a cost per ton for performing the voyage by the apparent low bidder and any other bidders that are subsidized; (2) deriving "augmented bids" for the subsidized operators by adding the ODS amount to each subsidized operator's bid; (3) comparing the augmented bids of the subsidized operators and the bids of unsubsidized operators to determine the apparent low bidder; (4) requesting from MARAD a fair and reasonable guideline rate (which shall be based on the operator's anticipated costs for the voyage plus a reasonable amount for profit) for the apparent low bidder; and (5) comparing the guideline rate to the subsidized operator's augmented bid or the unsubsidized operator's bid.

(c) The requirements of this section shall apply only to those departments or agencies that directly pay or finance all or part of U.S.-flag ocean freight transportation costs for the carriage of dry bulk preference cargoes, in accordance with this part. The requirements of this section shall not apply to departments or agencies that provide foreign aid by direct cash transfer payments unless specific agreements between the departments or agencies and the recipient country concerning the expenditure of such funds provide for U.S.-flag vessels.

Authority: Sec. 204(b), 901(b)(2), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1241(b)(2)); Pub. L. 97–31. (August 6, 1981)

By order of the Maritime Administrator.

Dated: January 19, 1984.

Georgia P. Stamas,

Secretary.

[FR Doc. 84–1834 Filed 1–23–84; 8:45 am]

BILLING CODE 4910–81–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1155

[Ex Parte No. 293 (Sub-2)]

Standards for Determining Rail Service Continuation Subsidies in the Northeast-Midwest Region of the United States

AGENCY: Rail Services Planning Office, Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: As a result of Consolidated Rail Corporation's (Conrail) petition, the Rail Services Planning Office (RSPO) has decided to amend 49 CFR Part 1155. The amendment will eliminate the "Employment Level Adjustment Ratio" (ELAR) from the inflation adjustment procedure used to update off branch unit costs. The amendments will eliminate a procedure that could result in inaccurate adjustments to the updated unit cost. These amendments are to be made retroactive to all subsidy years beginning on or after January 1, 1981.

EFFECTIVE DATE: Retroactive to January 1, 1981.

FOR FURTHER INFORMATION CONTACT: James Wells, (202) 275–0840.

SUPPLEMENTARY INFORMATION: Consolidated Rail Corporation (Conrail) petitioned the Rail Services Planning Office (RSPO) to amend the Regional Subsidy Standards (49 CFR 1155). The petition requested that the "Employee Level Adjustment Ratio" (ELAR) be eliminated from the procedure used in determining the inflation adjustment.

In response to Conrail's petition RSPO published a Notice of Proposed Rulemaking (NPR) on October 5, 1983 (48 FR 45440). Responses to the NPR were received from Conrail and the State of New Jersey Department of Transportation (NJDOT).

Section 1155.7(n)(5) of the Subsidy Standards contains a procedure that allows the off branch costs developed through Rail Form A, from the latest Annual Report Form R–1, to be updated to the present period. This procedure is to account for the impact of inflation on the operating expenses of the railroad until a more current Rail Form A can be completed. Contained within this procedure is a sub process that computes the adjustment for wages and salaries. This process contains two steps. The first step applies the ratio of the average wage per hour for the current period versus the base period to the base period wages and salaries. This determines the salary and wage

expenses of the base year at the current period's level. The "Employment Level Adjustment Ratio" or ELAR is determined by dividing the average number of employees for the current period into the average number of employees for the base period. In the second step the updated base period salaries and wages are multiplied by the ELAR to reflect changes in the number of employees. The amount for salary and wages, adjusted by the ELAR, is then used in determining the overall composite index for the railroad. The composite index is applied to the various unit costs used to determine the off branch cost.

The basis of the petition was that if there was a significant drop in the number of employees it could also be accompanied by a lower number of service units on the system. If the reduction in the number of employees is significant, the updated wages and salaries for the base period could decrease. This would lower the composite index and in turn reduce the amount by which the base year unit costs are increased. The problem with this process is that the unit costs are developed with the traffic activity or service units at a specific level. Since unit costs are determined by dividing expenses by service units, a distortion could result if only one side of the equation is adjusted. If the service units were also adjusted to the level of the updated period some parity would then exist. However, the basis of the updating process is measuring changes in expenses and not railroad activity. The purpose of the indexing process is to superimpose today's costs on the base period level of activity.

As the NPR noted, the Commission in Ex Parte 411, decided February 5, 1982, eliminated the ELAR from the calculation of the Rail Cost Update Ratio procedure.

Conrail's reply on this matter contained 3 comments. First, they agreed with the NPR that the ELAR embodies inappropriate logic as an integral part of the inflation adjustment process. Secondly, they point out that in periods of increased employment the use of the ELAR could result in fictitiously lower unit costs. Their final point is because this proposed change is to correct an inconsistency in the regulations it should be made retroactive to all subsidy years beginning in calendar year 1981.

NJDOT's response centered on the issue that the inflation procedure contained in regulations should reflect efficiencies achieved by Conrail as well as increases in costs.

Conrail's first comment was not unexpected since their petition was the basis for the NPR.

The second point they raise merely points out that an erroneous result could occur no matter which direction the employment level moved. When a reduction in the employment level occurs it has the effect of lowering the inflation ratio and if the employee count increased it would raise the inflation ratio and overstate the adjusted unit costs. In other words, regardless of the direction taken by the employee level it would be an inappropriate adjustment.

The final comment, relating to the retroactivity, is the most difficult to resolve. In the past, when the Standards have been amended the changes have been effective when published in the **Federal Register** or the first day of the calendar year during which the final rule is published. These amendments were in most instances improved methods of assigning categories of on-branch costs. As such, they represented refinements to the costing methodology and not the correction of errors in the procedure.

Because RSPO believes that the proposed amendment eliminates an erroneous facet of the inflation adjustment procedure and; as such, should have never been included, the final rule will be retroactive to all subsidy years beginning on or after January 1, 1981. However, the subsidy amount, including the ELAR elimination, is still subject to the 15 percent overrun provisions included in the Standards.

NJDOT's concern that efficiencies achieved by Conrail are not reflected goes back to the purpose of the indexing procedure. As was previously mentioned in this section the purpose of the updating process is to measure the change in expenses, that relates to inflation, and not railroad activity.

The indexing procedure is only to be used until more current data is available upon which the unit costs can be recalculated for a more current period. This is necessary because the data upon which a Rail Cost Form A can be completed is only available after the conclusion of each calendar year. Therefore, § 1155.7(n)(5) will be amended by eliminating § 1155.7(n)(5)(ii)(D) completely, and also amending § 1155.7(n)(5)(iii)(D) by eliminating the use of the ELAR in the calculations. In addition, these amendments are retroactive to all subsidy years that commenced on or after January 1, 1981.

This action will not significantly affect the quality of the human environment or the conservation of energy resources. Comments, however, are invited.

This action will not have a significant economic impact on a substantial number of small entities since the entities that are directly affected by this action are larger than the definitions established for small entities in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601, et seq.). Therefore, we certify that a regulatory flexibility analysis is not required.

These final rules are published under authority of 49 U.S.C. 10362(b)(5).

List of Subjects in 49 CFR Part 1155

Railroads, Uniform System of Accounts.

Issued: January 18, 1984, by William R. Southard, Director, Rail Services Planning Office.

By the Commission.

James H. Bayne,

Acting Secretary.

Part 1155 of Title 49 of the CFR is amended as follows:

PART 1155—STANDARDS FOR DETERMINING RAIL SERVICE CONTINUATION SUBSIDIES IN THE NORTHEAST-MIDWEST REGION OF THE UNITED STATES.

§ 1155.7 [Amended]

1. In § 1155.7, paragraph (n)(5)(ii)(D) is removed and reserved for future use.

2. In § 1155.7, paragraph (n)(5)(iii)(D) is revised to read as follows:

§ 1155.7 Calculation of avoidable costs and management fees.

* * * * *

(n) * * *

(5) * * *

(iii) * * *

(D) Total employee compensation would be the sum of: the subsidy year total railroad's salaries and wages, paragraph (n)(5)(iii)A) of this section; plus U.S. Government old age retirement and unemployment insurance (including medicare and supplemental annuities), paragraph (n)(5)(iii)(B) of this section; plus Employee Health and Welfare Expenses, paragraph (n)(5)(iii)(C) of this section.

* * * * *

[FR Doc. 84-1943 Filed 1-23-84; 8:45 am]

BILLING CODE 7035-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Docket No. R-0486]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Regulation O; Technical Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendment.

SUMMARY: The Board is making a technical amendment to 12 CFR Part 215, Regulation O, published at 48 FR 56934 (December 27, 1983).

FOR FURTHER INFORMATION CONTACT: Jennifer Johnson, Senior Counsel, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3584.

SUPPLEMENTARY INFORMATION: At page 56956, footnotes 7 and 8 are renumbered footnotes 8 and 9.

Board of Governors of the Federal Reserve System, January 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-2114 Filed 1-23-84; 11:00 am]

BILLING CODE 6210-01-M

Proposed Rules

Federal Register
Vol. 49, No. 16
Tuesday, January 24, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AGL-27]

Proposed Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Columbus, Ohio, transition area. A recent review of the currently published description revealed discrepancies in the areas involved. The correct description is presented in the test of this notice.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before March 2, 1984.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 83-AGL-27, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

An informal docket will also be available for examination during normal business hours in the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: This notice replaces Airspace Docket No. 83-AGL-9. The new Columbus, Ohio, transition area description accurately references the areas involved. The airspace associated with the Washington Court House, Ohio; Newark, Ohio; Mt. Vernon, Ohio; Delaware, Ohio; and Marysville, Ohio, transition areas, will be redescribed separately in later airspace dockets. The airspace associated with the Circleville, Ohio, transition area, was redescribed in Airspace Docket No. 82-ALG-28 and is, therefore, excluded from this description.

Minimum descent altitudes may be established below the floor of the 700 foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AGL-27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability Of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulation (14 CFR Part 71) to alter the transition area airspace near Columbus, Ohio.

Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

PART 71—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Columbus, OH

That airspace extending upward from 700 feet above the surface within an 8.5 mile radius of Port Columbus International Airport, Columbus, Ohio, (latitude 39°59'42" N., longitude 82°52'11" W.); within a 14-mile radius of Rickenbacker ANGB, Columbus, Ohio, (latitude 39°49'00" N., longitude 82°56'00" W.); excluding that portion overlying the Circleville, Ohio, transition area; within an 8.5 mile radius of Ohio State University Airport, Columbus, Ohio, (latitude 40°04'08" N., longitude 83°04'24" W.); and within 3.5 miles either side of the 096° bearing from the Don Scott RBN (latitude 40°04'49" N., longitude 83°04'43" W.), extending from the RBN to 11.5 miles east of the RBN; within an 8.5 mile radius of Bolton Field Airport.

Columbus, Ohio, (latitude 39°54'07" N., longitude 83°08'12" W.); and within an 8.5 mile radius of Fairfield County Airport, Lancaster, Ohio, (latitude 39°45'21" N., longitude 82°39'27" W.).

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

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

Issued in Des Plaines, Illinois, on January 9, 1984.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 84-1763 Filed 1-23-84; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-13724; File No. S7-3-84]

Exemption for Custody of Investment Company Assets Outside the United States

AGENCY: Securities and Exchange Commission.

ACTION: Revised proposed rule.

SUMMARY: The Commission is publishing for public comment a revised rule proposal which would provide an exemption from the custody requirements of the Investment Company Act of 1940 to permit U.S. registered management investment companies to maintain their foreign securities, cash and cash equivalents with eligible foreign custodians under certain conditions. The rule would also permit Canadian management investment companies that are registered under the Act pursuant to the conditions of rule 7d-1 (17 CFR 270.7d-1) to maintain their foreign securities, cash and cash equivalents with overseas branches of qualified U.S. banks under certain conditions. The Commission has decided to resolicit public comment in view of changes in the revised rule proposal with respect to the definition of eligible foreign custodians.

DATE: Comments must be received by March 1, 1984.

ADDRESSES: Send comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549 (Reference to File No. S7-3-84). All comments received will be available for public inspection and copying in the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Elizabeth K. Norsworthy, Chief, or Brion R. Thompson, Esq., Office of Regulatory Policy, (202) 272-2048, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commissionis asking for public comment on a revision of proposed rule 17f-5 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("Act") which would permit a U.S. registered management investment company to maintain the company's foreign securities, cash and cash equivalents with eligible foreign custodians under certain conditions. A Canadian management investment company that is registered under the Act pursuant to the conditions of Rule 7d-1 would also be permitted to maintain its foreign securities, cash and cash equivalents with overseas branches of qualified U.S. banks under certain conditions. This revised proposal is based upon comments received on rule 17f-5 as initially proposed in Investment Company Act Release No. 12354 (April 5, 1982) (47 FR 16341, April 16, 1982) as well as the Commission's rethinking of certain issues raised by the original proposal.

I. Background

Section 17(f) of the Act (15 U.S.C. 80a-17(f)) provides that a registered management investment company may place and maintain its securities and similar assets in the custody of (1) a bank or banks[1] having the qualifications set forth in section 26(a)(1) of the Act (15 U.S.C. 80a-26(a)(1));[2] (2) a member firm of a national securities exchange ("member firm"), subject to such rules and regulations as the Commission may prescribe; (3) the investment company itself, but only in accordance with such rules, regulations and orders as the Commission may prescribe; or (4) a system for the central handling of securities established by a national securities exchange or national securities association registered with the Commission or such other person as may be permitted by the Commission.

As originally enacted by Congress in 1940, section 17(f) contemplated that investment company securities would be kept only in the custody of banks, member firms or the company itself. In 1970, section 17(f) was amended to permit investment company securities to be kept in a system for the central handling of securities established by a national securities exchange or a national securities association or such other person as may be permitted by the Commission. In addition, the amendments required investment companies which keep securities in a qualified bank also to keep cash assets in the custody of that bank or in accordance with such rules and regulations or orders as the Commission might prescribe.[3]

Pursuant to its rule-making authority under the section and the Act, the Commission adopted rule 17f-1 (17 CFR 270.17f-1) governing custodial arrangements with member firms,[4] rule 17f-2 (17 CFR 270.17f-2) governing self-custody,[5] rule 17f-3 (17 CFR 270.17f-3) authorizing certain petty cash accounts,[6] and rule 17f-4 (17 CFR 270.17f-4) designating clearing agencies registered with the Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1(a)) ("Exchange Act") and the Treasury/Federal Reserve book-entry system as qualified custodians.[7] In

[1] Section 2(a)(5) of the Act (15 U.S.C. 80a-2(a)(5)) defines "bank" to include "(A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having superision over banks, and which is not operated for the purpose of evading the provisions of the Act, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph."

[2] Section 26(a)(1) provides that, in order to qualify as a trustee or custodian for the purposes therein, a bank generally "shall have at all times an aggregate capital, surplus, and undivided profits of a specified minimum amount, which shall not be less than $500,000."

[3] Pub. L. 91-547, section 9(a), 84 Stat. 1420, effective Dec. 14, 1971.

[4] *See* Investment Company Act Release No. 5 (October 30, 1940) (5 FR 4317), amended by Investment Company Act Release No. 1112 (October 3, 1947) (13 FR 6717).

[5] *See* Investment Company Act Release No. 172 (July 31, 1941) (6 FR 3827).

[6] *See* Investment Company Act Release No. 7164 (May 10, 1972) (37 FR 9989).

[7] *See* Investment Company Act Release No. 10453 (October 26, 1978) (43 FR 50869).

addition, the Commission published as appendices to the guidelines for the preparation of an investment company registration statement a model custody agreement for those situations where a qualified bank acts as custodian and a model safekeeping agreement for those instances where an investment company acts as its own custodian.[8]

Registered management investment companies which invest in securities of foreign issuers have securities of foreign issuers have encountered difficulties in locating entities in foreign countries which are qualified under section 17(f) to act as custodians. Foreign banking institutions, securities depositories and broker-dealers generally do not fall within the definition of "bank" as that term is defined in the Act;[9] foreign securities depositories are not registered with the Commission under section 17A of the Exchange Act as required by rule 17f–4;[10] and assets maintained with foreign broker-dealers would not be available for inspection as required by rule 17f–1.[11]

At present, the only facility located outside the United States which qualifies as a custodian is the overseas branch of a domestic bank.[12] According to applicants for exemptive relief under section 17(f), there are countries where there are no overseas branches of U.S. banks or where there is a branch, it does not offer suitable custodial services.[13] On several occasions when a registered management investment company has been unable to locate an overseas branch of a domestic bank to act as custodian for its securities, the Commission has granted exemptions from section 17(f): (i) to enable the company to authorize its qualified bank custodian or subcustodian to deposit certain of its securities acquired abroad in a specific foreign bank or foreign securities depository;[14] and (ii) to enable the company to deposit directly certain of its securities acquired abroad in a specific foreign securities depository.[15]

In recent years, three U.S. banks that have developed systems for establishing and maintaining custody accounts abroad have filed applications for exemptive relief with the Commission.[16] Each application filed on behalf of itself, its sub-custodians, any custodian for which it acts as sub-custodian [17] and any domestic investment company registered under the Act.[18] The relief requested was from the provisions of section 17(f) and rule 17f–4 thereunder to permit the deposit of securities of foreign issues in foreign banks and foreign securities depositories under certain circumstances. The Commission granted exemptions for such arrangements under conditions generally similar to those granted to individual investment companies.[19]

In applying for exemptive relief from section 17(f), applicants have contended that, without such relief, a registered management investment company intending to acquire foreign securities and unable to locate a qualified custodian in the country or region where the securities are to be acquired, must either move the securities away from the primary market or forego effecting transactions in that particular securities market.[20] Applicants have pointed out that any movement of securities away from the primary market has several disadvantages for the investment company. The best price for the securities is ordinarily obtained in the primary market.[21] Additional costs are incurred in hiring a servicing agent in the primary market locality to collect and disseminate information concerning the securities,[22] in transferring the

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[8] *See* Investment Company Act Release No. 7221 (June 9, 1972) (37 FR 12790).

[9] *See supra* note 1. After adoption of the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*) ("Banking Act"), a foreign banking institution with a branch of branches located in the United States might fall within the definition of "bank" contained in clause (C) of section 2(a)(5) since section 3105(c)(1) of the Banking Act (12 U.S.C. 3105(c)(1)) assigns primary responsibility for supervising and examining the U.S. branches of foreign banking institutions to the Comptroller of the Currency, state banking authorities and the Federal Deposit Insurance Corporation.

[10] It should be noted, however, that where an investment company has proposed to authorize its qualified bank custodian to use a foreign securities depository as a clearing agency, not as a custodian, the Division of Investment Management has taken a no-action position based on the facts presented. *See* response to request to Lehman Multi-Currency Assets Fund, Inc. (Pub. avail. April 5, 1979).

[11] Paragraph (b)(4) of rule 17f–1 requires verification of a company's assets at the end of each annual and semi-annual fiscal period by the company's independent public accountant, as well as at least one unannounced examination at some other time during the year. Paragraph (b)(5) of that rule states that the company's assets shall, at all times, be subject to inspection by the Commission.

[12] *See* Investment Company Act Release No. 2874 (May 4, 1959), permitting International Resources Fund, Inc. to move its African securities from the custody of the London branch of Chase Manhattan Bank, N.A. ("Chase") to a wholly-owned subsidiary of Chase in Johannesburg. The Fund's application for exemptive relief was filed after the Commission determined that a foreign incorporated subsidiary (as opposed to a branch) of a domestic bank does not meet the definition of "bank" set forth in section 2(a)(5) of the Act.

It should be noted that, like an overseas branch of a U.S. bank, an overseas branch of a member firm would not be considered a foreign entity. However, as a practical matter, investment companies do not maintain their assets with overseas member firm branches (in contrast to overseas bank branches) because the assets would not be available for inspection by the companies' independent public accountants and the Commission as required by rule 17f–1. (*See supra* note 11)

[13] *See, e.g.*, applications of International Resources Fund, Inc. (File No. 812–1218) and T. Rowe Price New Era Fund, Inc. (File No. 812–4152), representing that, at the times of the filing of the respective applications, there were no branch offices of a domestic bank in the Union of South Africa and Australia; Eurofund, Inc. (File No. 812–1242), representing that, at the time of the filing of the application, Eurofund's custodian had no branch offices in the six member nations of the European Common Market; and The Chase Manhattan Bank (File No. 812–4475), representing that, at the time of the filing of the application, certain of its overseas branches did not offer custodial services.

[14] *See* International Resources Fund, Inc., Investment Company Act Release Nos. 2866 (April 17, 1959) (24 FR 3170) and 2874 (May 4, 1959); Eurofund, Inc., Investment Company Act Release Nos. 2913 (Sept. 28, 1959) (24 FR 8013) and 2989 (March 1, 1960) (39 SEC 717 (1960)); Transatlantic Fund, Inc., Investment Company Act Release Nos. 3740 (July 15, 1963) (28 FR 7408) and 3801 (October 23, 1963); American and Israel Growth Fund, Inc., Investment Company Act Release Nos. 4011 (July 15, 1964) (29 FR 9851) and 4025 (July 31, 1964; Israel American Diversified Fund, Inc., Investment Company Act Release Nos. 4174 (March 3, 1965) (30 FR 3250) and 4208 (March 31, 1965); T. Rowe Price New Era Fund, Inc., Investment Company Act Release Nos. 10051 (December 8, 1977) (42 FR 63505) and 10086 (January 6, 1978); Merrill Lynch Pacific Fund, Inc., Investment Company Act Release Nos. 12667 (September 16, 1982) (47 FR 42224) and 12744 (October 15, 1982).

[15] *See* The Mexico Fund, Inc., Investment Company Act Release Nos. 13379 (July 8, 1983) (48 FR 32420) and 13422 (August 2, 1983).

[16] File Nos. 812–4475 (application of Chase Manhattan Bank, N.A. ("Chase")), 812–5109 (application of The Bank of New York) and 812–5651 (application of the First National Bank of Boston). *See also* Investment Company Act Release No. 12002 (October 23, 1981) (46 FR 53567), the notice of the Chase application as amended and Investment Company Act Release No. 12590 (August 10, 1982) (47 FR 36318), the notice of The Bank of New York application.

[17] Although these U.S. bank applicants requested relief under section 17(f) for themselves and for their foreign sub-custodians, it is only registered management investment companies which are directly subject to the proscriptions of section 17(f).

[18] The requested relief did not encompass any foreign investment company authorized to register under the Act pursuant to section 7(d) (15 U.S.C. 80a–7(d)). Section 7(d) authorizes the Commission upon application by an investment company, organized or otherwise created under the laws of a foreign country, to issue a conditional or unconditional order permitting such company to register under the Act and to make a public offering of its securities in the United States.

[19] *See* Investment Company Act Release No. 12053 (November 20, 1981), granting the Chase application as amended and Investment Company Act Release No. 12658 (September 14, 1982), granting The Bank of New York application.

[20] *See, e.g.*, Case application as amended, at p. 10.

[21] For example, International Resources Fund, Inc., represented in an application filed with the Commission (File No. 812–1218) that the best market for South African securities was in Johannesburg. The Fund further stated that, while such securities could be purchased on the London market, such purchases were subject to a 2% *ad valorem* tax. *See* Investment Company Act Release No. 2874 (May 4, 1959).

[22] Since foreign securities are often bearer instruments whose beneficial owners are not identifiable to the foreign issuer, notices with

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securities to an eligible custodian, in exchanging coupons for interest or dividends or for new shares in connection with a rights offering,[23] and in insuring the securities and coupons for loss in transit. The company may be prevented from, or delayed in, selling securities which have been moved away from the primary market because the company is unable to make timely delivery of the securities to a prospective purchaser.[24]

The Commission believes that it is now appropriate to dispense with the requirement of individual applications and to delegate to investment company directors the responsibility for approving foreign custody arrangements. The present requirements concerning foreign custodianship, unlike the requirements concerning domestic custodianship, may make it difficult or even impossible for funds to make certain investments which they find desirable. Further, the directors should be in a position to evaluate objectively whether foreign custodial arrangements are in the best interests of the company and its shareholders and are adequate to prevent the potential problem addressed by section 17(f), the loss of the highly liquid assets of investment companies. The Commission believes that it is particularly important to allow investment companies this flexibility in view of the extent to which companies are now investing in foreign securities and, as described above, may be finding their investment opportunities curtailed.

II. Discussion

A. Rule 17f–5 as Initially Proposed

Rule 17f–5 as initially proposed would have permitted any management investment company registered under the Act, other than a foreign investment company permitted to register pursuant to section 7(d) of the Act, to place and maintain any foreign securities of the company in foreign banks and foreign securities depositories so long as the following conditions were met: (1) Prior to placing any such securities in any foreign bank or foreign securities depository, a majority of the board of directors: (a) Determined that maintaining the securities in a particular country or countries is consistent with the best interests of the company; (b) determined that maintaining the securities in a particular foreign bank or foreign securities depository is consistent with the best interests of the company; and (c) approved, as consistent with the best interests of the company, a custody agreement which would govern the manner in which the securities would be maintained; and (2) a majority of the board of directors, as soon as practicable after any material change of circumstances, and in any event at least annually, reviewed and approved the continuance of the custody agreement and custody arrangements made pursuant thereto as consistent with the best interests of the company.

The rule as initially proposed would have defined "foreign securities" to include securities issued and sold outside the United States by a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country and certificates of deposit, evidences of indebtednes and other similar securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof or by any agency thereof or any securities issued by any entity organized under the laws of the United States or of any state thereof which have been issued and sold outside the United States. "Foreign Bank" would have been defined to mean a banking institution organized in and regulated by the banking authorities of a country other than the United States. "Foreign Securities Depository" would have been defined to mean an entity incorporated or organized under the laws of a foreign country which operates a system outside the United States for the central handling of securities and which is regulated by a foreign government or agency thereof. The rule as initially proposed would also have contained an instruction summarizing the factors dicussed in the proposing release which the directors should consider in making their determinations.

The Commission received fifteen comment letters on the proposal, suggesting several technical and substantive changes. Substantive criticism focused primarily on the scope of the rule and on the level of responsibility for foreign custodial arrangements which should be assumed by the directors, officers, adviser and U.S. intermediary, if any.

B. Modification of the Scope of the Rule

In response to comments received and in view of the Commission's rethinking of certain issues raised in the original release, the rule has been modified with respect to the type of investment companies which may rely on the rule, the type of assets which such companies may maintain with foreign custodians, and the type of entities which are eligible to act as foreign custodians.

1. *Eligible investment companies.* The revised proposed rule has been drafted to provide a limited exemption for Canadian management investment companies that are registered under the Act pursuant to the conditions of rule 7d–1 in view of the Commission's extensive experience with such companies. As observed by one commentator, to make a limited exemption available to Canadian companies would be consistent with the position taken by the Commission in adopting rule 7d–1, which provides definitive standards upon which Canadian investment companies may rely in preparing applications to register under the Act. At the time rule 7d–1 was proposed, the Commission stated that the conditions and arrangements set forth in the proposed rule were established "in light of the high degree of comity that has prevailed between this country and Canada, the existing treaties, the proximity of the two countries, their joint heritage of the common law, and the essential similarity of statutes and law relating generally to corporations and the rights of the stockholders."[25]

Although rule 7d–1 presently requires that all of an applicant's securities and cash, other than cash necessary to meet administrative expenses, be maintained in the custody of a qualified U.S. bank in the United States, the Commission believes that rule 7d–1 contains a sufficient number of other provisions addressed to jurisdictional concerns[26] to permit Canadian investment companies to maintain their assets in overseas branches of qualified U.S. banks. Prior individual exemptive orders have permitted Canadian companies to maintain their assests in the care of overseas branches so long as a minimum percentage of the assets remain in the custody of a qualified U.S.

respect to such securities (e.g., tender or redemption offers) are published in the locality of the primary market instead of being mailed to the beneficial owners. Unless the investment company has an agent in the primary market area which will convey such information, the company is deprived of adequate notice with respect to a portion or all of its portfolio. *See* Chase application as amended, at pp. 10–11.

[23] Since foreign securities are often bearer instruments, the beneficial owner must present coupons to the issuer in order to exercise rights appurtenant to those instruments. *See, e.g.*, notice of application of America and Israel Growth Fund, Inc., Investment Company Act Release No. 4011 (July 15, 1964) (29 FR 19851).

[24] *See* Chase application as amended, at p. 10.

[25] Investment Company Act Release No. 1945 (January 28, 1954) (19 FR 2585).

[26] *See, e.g.*, paragraph (d)(6) which requires the applicant to agree that any shareholder shall have the right to bring suit at law or in equity in any court of competent jurisdiction in the United States and Canada.

bank in the United States. [27] A new paragraph (c) has been added to the proposed rule, permitting Canadian companies to maintain any percentage of their assets in overseas U.S. bank branches, provided that the directors: (i) Have determined that maintaining the company's assets in a particular country or countries is in the best interests of the company; (ii) establish a system to monitor such arrangements; and (iii) at least annually, review and approve the continuance of such arrangements as consistent with the best interests of the company and its shareholders. Paragraph (b)(8)(v) of rule 7d–1 would be amended accordingly. A new paragraph has also been added to the revised proposed rule to define "qualified U.S. bank." This definition generally tracks the definition of "bank" contained in section 2(a)(5) and the qualifications prescribed in paragraph (1) of section 26(a) for the trustees of unit investment trusts. [28]

Certain of the commentators suggested making rule 17f–5 available to all foreign investment companies, arguing that the omission of foreign funds would place such funds at a significant and unfair competitive disadvantage. One of these commentators argued that, once a foreign fund has been permitted to register pursuant to section 7(d) of the Act, the Commission's jurisdictional concerns should be resolved, because a statutory condition to registration under that section is a Commission finding that "it is both legally and practically feasible effectively to enforce the provisions of (the Act) against such company." Other commentators believed that the custody of foreign investment company assets should be considered separately from the instant rule-making proceeding. The Commission believes that, with the exception of Canadian companies using foreign branches of U.S. banks, foreign custodial arrangements of foreign investment companies should be evaluated in the context of individual applications in order to address adequately the potential difficulties which a U.S. shareholder or the Commission may encounter in obtaining jurisdiction over, or enforcing a judgment against, such foreign companies and their officers and directors.

Although one commentator observed that unit investment trusts ("UITs") should also be permitted to rely on the rule, the proposal has not been amended to include such trusts because rule 17f–5 assigns a critical role to the directors in assessing foreign custody arrangements and UITs have no directors. [29] Comment is requested, however, as to whether a companion rule to rule 17f–5 should be adopted under section 26 (15 U.S.C. 80a–26), the section of the Act that addresses custody arrangements of UITs, that would assign to the directors of a UIT sponsor the same responsibilities assigned to management investment company directors under rule 17f–5.

2. *Type of assets which may be maintained abroad.* The revised proposal would permit investment companies to maintain cash and cash equivalents, as well as foreign securities, in the care of a foreign custodian. A majority of the commentators observed that investment companies would need to keep cash and cash equivalents abroad, mainly in order to pay for securities. According to these commentators, to wire cash or cash equivalents from the United States for purchases abroad would be impractical. The investment company's directors, in approving foreign custody arrangements for cash or cash equivalents, should, however, ensure that the amount of cash or cash equivalents maintained in the care of eligible foreign custodians is limited to an amount reasonably necessary to effect the company's foreign securities transactions.

The definition of "foreign securities" is expanded in the revised proposal to allow companies to keep outside the United States those securities which are primarily traded abroad but which may also be sold in the United States. This change is made in response to commentator observations that securities of U.S. issuers may have a significant trading market outside the United States, just as securities of foreign issuers may also be sold in the United States. Investment companies acquiring foreign securities would be permitted to keep them abroad so long as the companies met the conditions of foreign custody in the rule. The Commission does not agree, however, with commentators who believed that the rule should be expanded to allow investment companies to maintain any assets with foreign custodians, for there should be a nexus between the scope of the rule and its purpose, *e.g.*, to give investment companies the flexibility to keep abroad assets purchased or intended to be sold abroad.

3. *Eligible foreign custodians.* The proposal has been revised to refer to "eligible foreign custodians" and to define that term to include certain foreign banking institutions and trust companies and securities depositories and clearing agencies. Since, as commentators pointed out, non-bank trust companies may also be acceptable foreign custodians, the revised proposal refers to trust companies as well as banking institutions. Similarly, since the concept of "bank" may change from country to country, instead of specifying that foreign banking institutions and trust companies must be regulated by the "banking" authorities of the country where they are located, the revised proposal states that such entities must be regulated as such by the applicable foreign government or agency thereof.

In view of the wide disparity in regulatory systems outside the United States, the Commission believes that foreign banking institutions and trust companies should also meet a minimum size standard. To be considered eligible foreign custodians, such entities with the exception of majority-owned foreign direct or indirect subsidiaries of U.S. banks and bank-holding companies, must have a minimum stockholders' equity of $400 million (U.S.$ or the equivalent of U.S.$). Majority-owned foreign direct or indirect subsidiaries of U.S. banks and bank-holding companies must have parent banks or bank-holding companies with a minimum stockholders' equity of $200 million. [30]

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[27] *See, e.g.*, Templeton Growth Fund, Ltd., Investment Company Act Releases Nos. 12613 (August 24, 1982) (47 FR 38667) and 12682 (September 22, 1982) requiring that fund to maintain no more than 30 percent of its assets in the custody of overseas branches of qualified U.S. banks

[28] Since a foreign banking institution with a U.S. branch could technically fall within the definition of "bank" contained in section 2(a)(5)(C) (*see supra* note 9), the rule definition inserts the phrase "organized under the laws of any state or of the United States" in the portion of the definition tracking section 2(a)(C).

[29] See section 5 (15 U.S.C. 80a–4).

[30] The definitional section of the rule has been drafted to cover the different types of foreign subsidiaries that may be owned by U.S. banking organizations. In particular, a subsidiary may be a direct subsidiary of a U.S. bank or bank-holding company or an indirect subsidiary of a U.S. bank or bank-holding company through an Edge or Agreement corporation. Edge and Agreement corporations are located in the United States and are authorized by section 25A of the Federal Reserve Act to carry on international banking activities. 12 U.S.C. 601–604(a), 611–631. Edge corporations are federally chartered and regulated under regulation K, 12 CFR 211.4, by the Federal Reserve Board. Agreement corporations are state chartered and subject to state banking laws. *See* Note, "Impact and Implications of International Banking Facilities," 22.3 VIRGINIA JOURNAL OF INTERNATIONAL LAW 521, 532 n. 58 (1982).

Applying the revised standard, approximately 126 foreign banks and more than 700 majority-owned foreign subsidiaries of U.S. banks and bank-holding companies would qualify as eligible foreign custodians. *See* "The Top 500 By Country," THE BANKER, June 1983, at 93 and MOODY'S INTERNATIONAL MANUAL 1982. *See also* Houpt and Martinson, "Foreign Subsidiaries of U.S.

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In response to a number of commentators who pointed out that several principal securities depositories are not regulated by any foreign government or agency thereof, the definition of "eligible foreign custodian" in the revised proposal omits that requirement. Instead, the rule would state that, in order to be an eligible foreign custodian, a foreign securities depository or clearing agency [31] must either operate the central system for handling of securities or equivalent book-entries in a particular country or operate a transnational system for the central handling of securities or equivalent book-entries.

One commentator suggested that, in lieu of requiring that foreign securities depositories be regulated by a foreign government or agency thereof, the rule could provide that such entities have a minimum number of participants and a significant operating history. Although these are aspects of a foreign securities depository or clearing agency operation which should be considered by the directors (or an intermediary custodian) in determining where the company's assets should be maintained, if the rule were to attempt to draw a base-line, such as a minimum number of participants, it might exclude certain depositories or clearing agencies which could be acceptable foreign custodians. Similarly, although another commentator suggested that the Commission identify all eligible foreign securities depositories and clearing agencies in the rule, an attempt to list all eligible entities could inadvertently omit an acceptable custodian and would probably become quickly outdated.

In the release initially proposing rule 17f–5, specific comment was requested as to whether the rule should permit registered management investment companies to keep their foreign securities in the custody of foreign entities other than foreign banks or foreign securities depositories. Although one commentator suggested that foreign borker-dealers could be used, the Commission has decided not to designate foreign broker-dealer as a separate category of eligible foreign custodians in the revised proposal primarily because investment companies have never expressed any interest in using foreign broker-dealers as custodians outside the United States.

Although one of the commentators suggested that the rule should be expanded to give investment companies the freedom to enter into self-custody arrangements with foreign banks, the Commission believes that it would be inappropriate to do so. In view of the risk involved in permitting directors, officers, employees or agents of the company to have direct access to the company's assets, rule 17f–2 (17 CFR 270.17f–2) permits self-custody arrangements only if, among other things, the assets are: (i) Maintained with a bank or other company whose functions and physical facilities are supervised by federal or state authority; (ii) Subject at all times to inspection by the Commission through its authorized employees or agents; and (iii) Verified by complete examination by an independent public accountant retained by the investment company at least three times during each fiscal year, at least two of which are to be chosen by the accountant without prior notice. Outside the United States, the banking operations of foreign banking institutions are not subject to the supervision of U.S. banking authorities, and assets maintained in those foreign banking institutions would probably not be made available for inspection by the Commission or the independent public accountants under applicable foreign law. Thus a self-custody arrangement with a foreign bank would not have the safeguards that are present when a U.S. bank is used for self custody. Moreover, it would be unduly expensive and impractical for the Commission and in many cases for the company's accountants to physically inspect assets in foreign banks.

C. Responsibility for Foreign Custodial Arrangements

1. *Involvement of directors.* As in the rule as originally proposed, the revised proposal delegates responsibility for authorizing foreign custody arrangements to the board of directors of an investment company and the instructions to the rule summarize the factors which the directors should consider in carrying out their fiduciary duty to authorize only those arrangements which are consistent with the best interests of the company and its shareholders.

Although a number of commentators objected to the inclusion of instructions, the Commissions believes that, in view of the rule's scope, the extent of departure from past practices which it authorizes, and the critical importance of the safekeeping of fund assests, it is imperative that the rule not convey an impression that foreign custody is a routine matter. By calling attention to the directors' fiduciary duty, the Commission hopes that directors are put on notice that determinations concerning foreign custody of fund assests, because of the increased risks involved, mandate a high degree of scrutiny.

The board should request assistance from experts such as the company's U.S. custodian, attorneys and accountants whenever necessary. In addition to obtaining assistance from such non-management sources, the board should also request whatever information and advice is necessary from the company's officers and investment adviser.

Selection of Country Where Securities Will Be Maintained

Pursuant to paragraph (a)(1)(i) of the rule, both as originally proposed and revised, before placing a U.S. investment company's assets in the care of an eligible foreign custodian, a majority of the board of directors would be required to determine that maintaining the securities in a particularly country or countries is consistent with the best interests of the company and its shareholders. Pursuant to paragraph (b)(1), a majority of the board of directors of a Canadian company would be required to make the same determination. In making that determination, the directors should weigh the risks involved in maintaining the securities in or near the country where the primary market for those securities is located, balanced against the benefits which the company may gain from that arrangement.

As pointed out in the notice to the Chase application, the Commission believes that, in evaluating the risks involved, the directors have a responsibility to consider whether applicable foreign law would restrict the access afforded the company's independent public accountants to books and records of an eligible foreign custodian located in that country; the company's ability to recover its assets in the event of the bankruptcy of an

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Banking Organizations," FEDERAL RESERVE STAFF STUDY NO. 120 (October 1982), at 6. An investment company could continue to rely on an exemptive order that permits the company to maintain its assets with a foreign banking institution having less than $400 million (U.S.$ or the equivalent of U.S.$) stockholders' equity or with a majority-owned foreign direct or indirect subsidiary of a U.S. bank or banking-holding company having less than $200 million stockholders' equity. Any new foreign custodial arrangement, however, would have to meet the conditions set forth in rule 17f–5.

[31] It should be noted that the revised proposal refers to foreign clearing agencies as well as foreign securities depositories since a foreign securities depository may be denominated a clearing agency in certain countries. Paragraph (b) of rule 17f–4 which governs deposits of securities in securities depositories would be amended accordingly. *See Depositories and Clearing Systems—Status as per December 31, 1981.* 2nd International Symposium of Securities Administrators (ISSA 2) (May 24–27, 1982)

eligible foreign custodian located in that country; and the company's ability to recover assets that are lost while under the control of an eligible foreign custodian located in that country.[32]

Although the independent public accountants have the option under section 30(e) of the Act (15 U.S.C. 80a–29(e)) of verifying assets owned by the company by receiving confirmation from the company's custodian, the accountants may require physical examination of the company's assets.[33] If applicable foreign law would bar U.S. accountants from conducting whatever physical examination they consider necessary to meet generally accepted auditing standards, the directors should consider the risk to which the company would be exposed by maintaining assets in that location and the extent to which use of a qualified U.S. intermediary might mitigate that risk.

If applicable foreign law would bar the company from asserting jurisdiction over, or enforcing a judgment against, a bankrupt foreign custodian or a foreign custodian responsible for loss of the company's assets, then again the directors should consider the risk to which the company would be exposed by maintaining assets in that location.

In addition, the board should consider whether difficulties in converting the company's cash and cash equivalents to U.S. dollars are reasonably foreseeable and whether the government of the country in question would be likely to expropriate, nationalize, confiscate or freeze the assets of an American company which are in the custody of a foreign custodian located there.[34]

The directors should consider whether the risks associated with the contemplated foreign custody arrangement may be mitigated by obtaining insurance or assurances of indemnification as well as whether the cost of such protection would exceed its benefits. If the directors decide that it is in the best interests of the company and its shareholders to maintain its assets in a particular country, the extent of the company's exposure to loss and the potential effect thereof upon shareholders should be disclosed, if material, in the company's prospectus.

Selection of Foreign Custodian

Under paragraph (a)(1)(ii) of the rule, both as originally proposed and revised, before placing a U.S. investment company's assets in the custody of an eligible foreign custodian, a majority of the board of directors must determine that maintaining the securities in that foreign entity is consistent with the best interests of the company and its shareholders. The Commission anticipates that, in considering the company's and its shareholders' best interests, the directors would choose a foreign custodian which provides a level of safeguards for the company's assets not materially different from that provided by the company's U.S. custodian for the company's assets in the United States.

In view of the potential difficulties in asserting jurisdiction or enforcing judgments against a foreign entity, the directors should also consider whether the foreign entity has branch offices in the United States, since the existence of a United States branch could facilitate the assertion of jurisdiction over the foreign entity by a U.S. court and the satisfaction of a judgment against the foreign entity obtained in a U.S. court.[35]

Approval of the Custody Agreement

Paragraph (a)(1)(iii) of the rule, both as originally proposed and revised, would require that, before placing a U.S. investment company's assets in the custody of an eligible foreign custodian, a majority of the board of directors approve, as consistent with the best interests of the company and its shareholders, a custody agreement which will govern the manner in which the company's assets will be maintained by that custodian.[36] In negotiating the custody agreement, the board should consider the extent to which the specific safekeeping provisions contained in prior orders and rules 17f–1 and 17f–4 should be incorporated in the agreement. Such specific provisions, as well as factors which the Commission believes might be appropriate for the board to consider in evaluating such provisions, are discussed below.

Specifically, the Commission believes that the custody agreement should provide, among other things, that: (a) the company's assets will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the foreign entity or its creditors except a claim of payment for their safe custody or administration; and (b) beneficial ownership of the assets will be freely transferable without the payment of money or value other than for safe custody or administration.[37]

In addition, the directors, in considering the best interests of the company and its shareholders, should provide for the adequate segregation of the company's assets. Adequate segregation has been most recently interpreted to mean that the custodian with which the company is dealing directly should maintain the assets in an account which contains only the company's assets.[38]

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[32] It should be noted that, although the Commission has treated the overseas branch of a domestic bank as an eligible custodian (*see supra* note 12), the investment company's directors should consider whether it is in the best interests of the company and its shareholders to utilize an overseas branch in a custodial capacity without modification of the custody agreement. For example, unless there is a special provision in the agreement, foreign law may apply to the standard of care required of an overseas branch and recovery of the company's assets from the overseas branch may present considerably more difficulties than recovery of those assets from the branch's home office. *See* P. Heiniger, "Liability of U.S. Banks for Deposits Placed in their Foreign Branches", 11 LAW & POLICY IN INT. BUSINESS 903, 944–50 (1979).

[33] T. Rowe Price New Era Fund, Inc., for example, represented in an application filed with the Commission (File No. 812–4152) that the Fund had arranged with its domestic auditors to have their Australian affiliate verify by direct physical examination the accuracy of the books and records of the foreign bank, including at least one scheduled and two unscheduled audits each fiscal year. *See* Investment Company Act Release No. 10051 (December 8, 1977) (42 FR 63505).

[34] *See* note 4 to Investment Company Act Release No. 12002 (October 23, 1981) (46 FR 53567) (notice of Chase application as amended).

[35] *See* application of America and Israel Growth Fund, Inc. (811–1259) wherein counsel for the Fund represented that because Israel Discount Bank maintained a branch office in New York, service of process could be made upon the Bank at the New York branch, jurisdiction over the Bank would be acquired with respect to a cause of action arising out of an act or breach committed in Israel or New York, and any judgment obtained in New York could satisfied from the assets of the Bank's New York branch or from the assets of the Bank located in Israel. *See also* Banking Act, *supra* note 9, 12 U.S.C. 3105(a), subjecting U.S. branches of foreign banks to reserve requirements.

[36] The custody agreement or amendments thereto should be filed as an exhibit to the company's registration statement on Form N–1A (17 CFR 239.15A, 17 CFR 274.11A) or Form N–2 (17 CFR 239.14, 17 CFR 275.11a–1).

The provisions of the model custody agreements with qualified U.S. custodians which are appended to the staff's guidelines for the preparation of the registration statement for an investment company should be incorporated to the extent practicable in custody agreements governing foreign custodial arrangements (*See* Appendices A and B to Investment Company Act Release No. 7221 (June 29, 1972) (37 FR 12790).

[37] *See* Chase application as amended, at p. 6; *see also* rule 17f–1(b)(2) with respect to custody of securities by member firms; *see also* Exchange Act Release No. 10429 (October 12, 1973) (38 FR 29217) publishing the Commission's guidelines for placement by brokers or dealers of customer securities in foreign depositories, clearing agencies or banks for purposes of rule 15c3–3 under the Exchange Act (17 CFR 240.15c3–3); *see also* rule 404b–1 (29 CFR § 2550.404b–1) adopted by the Department of Labor under section 404(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(b)) permitting a fiduciary to entrust care over a plan's assets to a U.S. broker or dealer which in turn maintains the custody of such assets in a foreign depository, clearing agency or bank.

[38] It should be noted, however, that, with the advent of dematerialization abroad, *e.g.*, the French SICOVAM system in which ownership of securities

Continued

The directors should consider a requirement in the custody agreement that the custodian maintain adequate records with respect to the company's assets. Where the company deposits its assets directly with a foreign entity, the books of that entity should identify the assets as belonging to the company. The directors should also consider, subject to the constraints of foreign law, incorporating provisions in the custody agreement which would afford the company's independent public accountants access to the records kept by the custodian with respect to the company's assets.[39]

The custody agreement should also provide that the foreign custodian would furnish periodic reports to the company with respect to its assets, including but not necessarily limited to auditors' reports on internal accounting controls (as they relate to custody of the company's assets) and notification of any transfer to or from the company's account.[40]

Re-evaluation of Custody Agreement

Since the conditions pursuant to which investment company assets are held abroad, and the risks associated therewith, may be subject to change, paragraph (a)(2) of the revised proposed rule provides that the directors of a U.S. investment company must establish a system to monitor foreign custody arrangements made under the rule and that at least annually a majority of the directors must review and approve the continuance of such arrangements as consistent with the best interests of the company and its shareholders.[41] Paragraph (b) contains the same stipulation for the directors of Canadian companies. This clause has been reworded to make clear that, after instituting a foreign custody arrangement, the directors have an obligation not only to review that arrangement periodically but also to establish a reporting system that will alert them to a material change in circumstances.

2. *Involvement of U.S. intermediary.* The Commission has not revised the original proposal to allow investment company directors to delegate to a qualified U.S. intermediary responsibility for the selection of foreign custodians and for the contracts negotiated with those custodians. The Commission agrees with general commentator reaction that a qualified U.S. bank or member firm may have more expertise in this area and may have established relationships and operating procedures with foreign custodians which can be used in servicing its investment company clients. The revised proposed rule would of course permit the directors to consult any expert with respect to their company's foreign custodial arrangements. However, the Commission believes that the directors should retain the ultimate responsibility for approving each of those arrangements.

The Commission considered the alternative of allowing investment company directors to delegate selection and negotiation to a qualified U.S. intermediary. Under this alternative, delegation of responsibility would be permitted so long as that intermediary was a qualified U.S. bank with at least $200 million stockholders' equity or a member of a national securities exchange ("member firm") with at least $50 million net capital.[42] The directors would be required to determine generally that maintaining the company's assets in the care of eligible foreign custodians is consistent with the best interests of the company and its shareholders. The directors would also be required to approve, as consistent with the company's and its shareholders' best interests, a written contract between the company and the intermediary which provides that the intermediary will exercise reasonable care in the selection of any foreign custodian, oversee the maintenance of the company's assets by the foreign custodian, and indemnify the company in the event of any loss.[43] Specific comment is requierd on this alternative.

III. Conclusion

In summary, the revisions that have been made in proposed rule 17f–5 modify its scope to: (i) Allow a U.S. company to keep cash and cash equivalents as well as foreign securities with an eligible foreign custodian; (ii) define foreign securities to include securities which may be sold in the United States if the primary trading market is abroad; (iii) make foreign trust companies as well as foreign banks and foreign securities depositories "eligible foreign custodians"; (iv) require that, to be an "eligible foreign custodian", a foreign banking institution or trust company must have minimum stockholders' equity of $400 million (US$ or the equivalent of US$). (This requirement replaces the earlier proposal that such institutions be regulated by foreign banking authorities); (v) exempt a majority-owned foreign direct or indirect subsidiary of a U.S. bank or bank-holding company from the $400 million stockholder' equity requirement and instead require that the U.S. parent bank or bank-holding company have minimum stockholders' equity of $200 million; and (vi) substitute a requirement that a foreign securities depository or clearing agency operate a national or transnational system for handling securities or equivalent book-entries for a requirement that such entities be regulated by a foreign government or agency thereof. Canadian management investment companies registered under the Act pursuant to the conditions of rule 7d–1 would be permitted to keep foreign securities, cash and cash equivalent in the custody of overseas branches of qualified U.S. banks. Conforming amendments to rules 7d–1 and 17f–4 under the Investment Company Act are proposed to reflect these changes.

In addition, specific comment is requested on whether to allow investment company directors to delegate to a qualified U.S. intermediary the responsibility of selecting foreign custodians and negotiating the contracts with those custodians. In such cases, the intermediary would have to be a qualified U.S. bank with minimum stockholders' equity of $200 million or a member firm with minimum net capital of $50 million. The directors would also have to determine generally that the maintenance of the company's assets with eligible foreign custodians would be consistent with the best interests of the company and its shareholders and approve a written agreement which requires the intermediary to exercise

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is evidenced by book entries rather than share certificates, physical segregation of securities may no longer be feasible.

[39] *See* Chase application as amended, at p. 7.

[40] The Commission understands that it is common practice for investment companies to request standard asset holding reports on either a weekly or monthly basis.

[41] *See* Chase application as amended, at p. 5; *see also* rule 17f–1(d) with respect to custody of securities by member firms and rule 17f–4 (c)(3) and (d)(5) with respect to custody of securities by registered clearing agencies and by the Federal Reserve/Treasury book-entry system.

[42] Approximately 67 U.S. banks presently have at least $200 million stockholders' equity (*see supra* note 30). According to FOCUS reports on form X–17A–5 filed with the Commission pursuant to rule 17a–5 under the Exchange Act, 23 member firms had at least $50 million net capital as of June 30, 1983.

[43] Until 1981, this indemnification requirement was a standard condition of exemptive orders granting U.S. investment companies permission to establish foreign custody arrangements. *See* notices of applications and orders cited *supra* in note 14. The 1981 order granting exemptive relief to Chase to establish foreign custodial arrangements for its investment company clients required indemnification only in the event of the fraud, willful misconduct or negligence of Chase or foreign custodians selected by Chase. Subsequent applicants have made similar representations. *See supra* note 16.

reasonable care in the selection of each foreign custodian, oversee the maintenance of the company's assets by that custodian, and indemnify the company in the event of any loss.

List of Subjects in 17 CFR Part 270

Accountants, Accounting, Fraud, Investment companies: Investment, Securities, Variable annuities, Variable life insurance; Securities: Business development companies, Investment, Surety bonds: Bonding.

Test of Reproposed Rule

PART 270—[AMENDED]

It is proposed to amend Part 270 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

Note.—Arrows indicate proposed additions; brackets indicate proposed deletions).

1. By reviewing paragraph (b)(8)(v) of § 270.7d–1 to read as follows:

§ 270.7d–1 Specification of conditions and arrangements for Canadian management investment companies requesting order permitting registration.

* * * * *

(b) * * *

(8) * * * *

(v) ►Except as provided in rule 17f–5 (17 CFR 270.17f–5)◄ applicant will appoint, by contract, a bank, as defined in section 2(a)(5) and having the qualification described in section 26(a)(1), to act as trustee of, and maintain in its sole custody in the United States, all of applicant's securities and cash, other than cash necessary to meet applicant's current administrative expenses. Said contract will provide, *inter alia*, that said custodian will

(A) Consummate all purchases and sales of securities by applicant, other than purchases and sales on an established securities exchange, through the delivery of securities and receipt of cash, or *vice versa* as the case may be, within the United States, and (B) redeem in the United States such of applicant's shares as shall be surrendered therefor, and (C) distribute applicant's assets, or the proceeds thereof, to applicant's assets, or the proceeds thereof, to applicant's creditors and shareholders, upon service upon the custodian of an order of the Commission or court directing such distribution as provided in paragraphs (b) (3) and (5) of this section.

* * * * *

2. By revising paragraph (b) of § 270.17f–4 to read as follows:

§ 270.17f–4 Deposits of securities in securities depositories.

* * * * *

(b) A registered management investment company (investment company) or any qualified custodian may deposit all or any part of the securities owned by the investment company ►in a foreign securities depository or clearing agency in accordance with rule 17f–5 (17 CFR 270.17f–5) or◄ in a (1) clearing agency registered with the Commission under section 17A of the Securities Exchange Act of 1934 (clearing agency), which acts as a securities depository, or (2) the book-entry system as provided in Subpart O of Treasury Circular No. 300, 31 CFR 306, Subpart B of 31 CFR Part 350, and the book-entry regulations of federal agencies substantially in the form of Subpart O, in accordance with the following paragraph of this rule.

* * * * *

3. By adding § 270.17f–5 to read as follows:

§ 270.17f–5 Custody of investment company assets outside the United States.

(a) Any management investment company registered under the Act, and incorporated or organized under the laws of the United States, may place and maintain the company's foreign securities, cash and cash equivalents in the care of an eligible foreign custodian, *Provided That:*

(1) Prior to the placing of any such assets with such foreign custodian, a majority of the board of directors of the company shall have:

(i) Determined that maintaining such assets in a particular country or countries is consistent with the best interests of the company and its shareholders;

(ii) Determined that maintaining such assets with a particular foreign custodian is consistent with the best interests of the company and its shareholders; and

(iii) Approved, as consistent with the best interests of the company and its shareholders, a written contract between the company and such foreign custodian which will govern the manner in which such custodian will maintain the company's assets; and

(2) The board of directors establishes a system to monitor such foreign custody arrangements and a majority of the board of directors, at least annually, reviews and approves the continuance of such arrangements as consistent with the best interests of the company and its shareholders.

(b) Any mangement investment company, incorporated or organized under the laws of Canada and registered under the Act pursuant to the conditions to rule 7d–1, may place and maintain the company's foreign securities, cash and cash equivalents in the care of an overseas branch of a qualified U.S. bank, *Provided That:*

(1) Prior to the placing of any such assets with such overseas branch, a majority of the board of directors of the company shall have determined that maintaining such assets in a particular country or countries is consistent with the best interests of the company and its shareholders;

(2) The board of directors establishes a system to monitor such foreign custody arrangements; and

(3) A majority of the board of directors, at least annually, reviews and approves the continuation of such arrangements as consistent with the best interests of the company and its shareholders;

(c) As used herein, (1) "Foreign Securities" include: securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country and certificates of deposit, evidences of indebtedness and other similar securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof or by any agency thereof or any securities issued by any entity organized under the laws of the United States or of any state thereof which have been issued and sold primarily outside the United States.

(2) "Eligible Foreign Custodian" means:

(i) A banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof and that has shareholders' equity in excess of $400,000,000 (U.S.$ or the equivalent of U.S.$); or

(ii) A majority-owned direct or indirect subsidiary, incorporated or organized under the laws of a country other than the United States, of a qualified U.S. bank or bank-holding company organized under the laws of the United States that has shareholders' equity in excess of $200,000,000; or

(iii) A securities depository or clearing agency, incorporated or organized under the laws of a country other than the United States, which operates the central system for handling of securities or equivalent book-entries in that country; or

(iv) A securities depository or clearing agency, incorporated or organized under the laws of a country other than the United States which operates a transnational system for the central handling of securities or equivalent book-entries.

(3) "Qualified U.S. Bank" means (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company organized under the laws of any state or of the United States, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the prupose of evading the provisions of this rule, or (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph. The entities described in clauses (A), (B), (C) and (D) must have an aggregate capital, surplus, and undivided profits of a specified minimum amount, which shall not be less than $500,000.

Instructions: The provisions of rule 17f–5 set forth determinations which the directors of the registered investment management company must make in connection with approving foreign custody arrangements. Those determinations should be made only after consideration of any matters which the directors, in carrying out their fiduciary duties, would find relevant. For a discussion of factors which the directors should consider in making their determinations, see Investment Company Act Release No. —, ——. In complying with rule 17f–5, in addition to any other relevant factors, consideration should be given to the following:

1. With respect to the selection of the country where the company's assets will be maintained, the directors of U.S. and Canadian investment companies should consider:

a. Whether applicable foreign law would restrict the access afforded the company's independent public accountants to books and records kept by an eligible foreign custodian located in that country;

b. Whether applicable foreign law would restrict the company's ability to recover its assets in the event of the bankruptcy of an eligible foreign custodian located in that country;

c. Whether applicable foreign law would restrict the company's ability to recover assets that are lost while under the control of an eligible foreign custodian located in that country;

d. The likelihood of expropriation, nationalization, freezes, or confiscation of the company's assets;

e. Whether difficulties in converting the company's cash and cash equivalents to U.S. dollars are reasonably foreseeable; and

f. Whether any such risks may be mitigated by obtaining insurance or by obtaining assurances of indemnification; and

2. With respect to the selection of a foreign custodian, the directors of a U.S. investment company should consider:

a. Whether the foreign custodian would provide a level of safeguards for maintaining the company's assets not materially different from that provided by the company's U.S. custodian in maintaining the company's securities in the United States;

b. Whether the foreign custodian has branch offices in the United States in order to facilitate the assertion of jurisdiction over and enforcement of judgement against such custodian; and

c. In the case of a foreign securities depository, the number of participants in, and operating history of, the depository.

3. With respect to approval of the custody agreement, the directors of a U.S. investment company should consider whether the custody agreement provides that:

a. The company's assets would not be subject to any right, charge, security interest, lien or claim of any kind in favor of the foreign custodian or its creditors except a claim of payment for their safe custody or administration;

b. Beneficial ownership for the company's assests would be freely transferable without the payment of money or value other than for safe custody or administration;

c. The company's certificated assets would be maintained in an account which contains only the assets of the company;

d. Adequate records would be maintained by the foreign custodian identifying the assets as belonging to the company;

e. The company's independent public accountants would be afforded access to the records maintained by the foreign custodian with respect to the company's assets or, if access is not practicable pursuant to applicable foreign law, the accountants would be provided with confirmations of the contents of such records;

f. The foreign custodian would furnish periodic reports to the company with respect to the safekeeping of the company's assets, including, but not necessarily limited to, notification of any transfer to or from the company's account; and

g. To the extent practicable under applicable foreign law, the foreign custodian would indemnify the company in the event of the custodian's bankruptcy or other financial failure.

4. The directors of U.S. investment companies should ensure that the amount of cash and cash equivalents maintained in the care of eligible foreign custodians is limited to an amount reasonably necessary to effect the company's foreign securities transactions. The directors of Candian investment companies should make a similar finding with respect to the amount of cash and cash equivalents which the company maintains in overseas branches of qualified U.S. banks.

5. The extent of a U.S. or Canadian company's exposure to loss and the potential effect thereof upon shareholders should be disclosed, if material, in the company's prospectus.

Statutory Basis

Proposed rule 17f–5 is revised pursuant to sections 6(c) (15 U.S.C. 80a–6(c)) and 38(a) (15 U.S.C. 80a–37(a)) of the Act.

Dated: January 17, 1984.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–1927 Filed 1–23–84; 8:45 am]

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17 CFR Parts 270 and 274

[Release Nos. 33–6505, 34–20570, IC–13725; File No. S7–4–84]

Exemption for Acquisition by Registered Investment Companies of Securities Issued by Persons Engaged Directly or Indirectly in Securities Related Businesses

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments and proposed form amendments.

SUMMARY: The Commission is publishing for public comment rule amendments that would permit registered investment companies, or companies controlled by registered investment companies, to acquire securities issued by persons engaged directly or indirectly in certain securities related businesses, under certain conditions. The Commission is also proposing related disclosure requirements and the rescission of a rule that would be superseded by the proposed amendments. The proposed action is intended to give investment companies greater flexibility with regard to investments that, in the absence of exemptive relief, are prohibited under the Investment Company Act of 1940.

DATE: Comments must be received on or before March 19, 1984.

ADDRESSES: Send comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. (Reference to File No. S7–4–84). All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Puretz (202–272–2048), or

Elizabeth K. Norsworthy, Chief (202-272-2048), Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for public comment proposed amendments to rule 12d-1 (17 CFR 270.12d-1) under section 12(d)(3) (15 U.S.C. 80a-12(d)(3)) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("Act"), which would permit registered investment companies, or companies controlled by registered investment companies, to acquire securities issued by persons that, directly or indirectly, are brokers, dealers, engaged in the business of underwriting, or either investment advisers of investment companies or investment advisers registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*) ("Advisers Act") (hereinafter such person are referred to as "securities related businesses" and the activities associated with such businesses are referred to as "securities related activities"). Existing rule 12d-1 permits investment companies to purchase securities of issuers that engage only partially in securities related activities. The proposed rule would permit investment companies also to purchase securities of issuers substantially or primarily engaged in such activities under certain conditions.

The Commission is concurrently proposing the rescission of rule 2a-3, which presently excludes a bank from the term "investment adviser" of an investment company as used in section 12(d)(3) so long as the bank is not the investment adviser of the investment company acquiring its securities. Amendments to form N-1A, the registration statement for open-end investment companies, and form N-1R, the annual report for management investment companies, are also being proposed. The proposed amendments to form N-1A would require disclosure of any investment policy that would permit a company to acquire securities of: (i) Broker-dealers or underwriters that sell or distribute its shares; or (ii) broker-dealers that execute its portfolio transactions. The proposed amendments to form N-1R would require a company to identify any broker-dealer or underwriter whose securities the company has acquired that also regularly sells or distributes its shares or executes its portfolio transactions. Technical amendments to the registration statement forms and annual report forms for other types of investment companies would require the same disclosure.

Background

Section 12(d)(3) of the Act prohibits any registered investment company and any company or companies controlled by such registered investment company from purchasing or otherwise acquiring any security issued by or any other interest in the business of any person who is a broker, a dealer, either an investment adviser to an investment company or an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"), or engaged in the business of underwriting.[1] The Commission has construed section 12(d)(3) to appy to the purchase or acquisition of any security issued by or any interest in the business of any person engaged directly or indirectly in a securities related business. Prohibited purchases or acquisitions can occur not only when a security or interest is originally purchased or acquired, but also when an investment company holds securities of an issuer that later acquires an interest in a securities related business by merger, consolidation, reorganization, or otherwise.[2] Because of the breadth of the prohibition, the Commission adopted rule 12d-1 in 1964 to permit investment companies to purchase securities of issuers that are engaged only partially in securities activities.[3] The rule permits the purchase of securities of issuers that derive no more than 15 percent of their gross revenues from securities related businesses, subject to certain conditions. The Commission in 1944 also adopted a narrow exemption from section 12(d)(3) in the form of rule 2a-3. That rule excludes banks from the term "investment adviser" of an investment company as used in section 12(d)(3), unless the bank acts as the company's own investment adviser.[4]

The legislative history of section 12(d)(3) states the section's prohibitions in unambiguous terms, but describes the reasons for such prohibitions less clearly. At the Senate hearings prior to adoption of the Act, David Schenker, the Commission's Chief Counsel for the Investment Trust Study, stated:

> Section 12(c)(2) [which became section 12(d)(3)] merely states that an investment company cannot buy an interest in a brokerage firm, a distributing company, or an investment banking house. It goes further and says that if it is engaged in the underwriting business itself—if engaged in that business through a wholly owned subsidiary—it is permissible to do so.
>
> You can see the reason for that. They may not want to subject all the assets of the investment trust to the risks of the underwriting business. So we see no difficulty if they avail themselves of the corporate fiction and limit their liabilities to the amount of money they want to invest. So we say, if you want to go into the underwriting business and want to do it through the wholly-owned subsidiary, there is no difficulty with that situation.[5]

Mr. Schenker's testimony suggests, and the Commission's staff has stated, that the purpose of section 12(d)(3) was principally to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses.[6] In 1940, securities related businesses, for the most part, were organized as private partnerships. By investing in such businesses, investment companies would expose their shareholders to potential losses which were not present in other types of investments: if the business failed, the investment company as a general partner would be held accountable for the partnership's liabilities; if the business floundered, the investment company would be locked into its investment.[7]

However, if risk prevention was the only purpose for section 12(d)(3), the section could have permitted investment companies to limit their liability by purchasing common stock in corporations engaged in securities related businesses. Restricting investment company purchases to the acquisition of interests in an

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[1] These prohibitions do not apply to the purchase or acqisition of securities issued by or interests in a corporation that is wholly owned by one or more registered investment companies, where such corporation is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, or related activities, and the corporation's gross income is principally derived from such activities. Section 12(d)(3) (A) and (B).

[2] Investment Company Act Release No. 3542 (September 21, 1962) [release stating views of the Commission on purchases of securities in contravention of section 12(d)(3)].

[3] Investment Company Act Release No. 4044 (September 4, 1964) [29 FR 12915] [rule adoption].

[4] Investment Company Act Release No. 606 (January 5, 1944) [9 FR 337] [rule adoption].

[5] Hearings on S. 3580 Before a Subcommittee of the Senate Committee on Banking and Currency ["1940 Senate Hearings"], at 243 (1940). *See also* S. Rep. No. 1775, 76th Cong., 3d Sess. at 15-16 (1940) ["Senate Committee Report"]; H.R. Rep. No. 2639, 76th Cong., 3d Sess., at 16 (1940).

[6] *See* Investment Company Act Release No. 10666 (April 18, 1979) [44 FR 25128] (Division of Investment Management position permitting repurchase agreements with broker-dealers under section 12(d)(3) under certain conditions).

[7] *See, e.g.*, Securities and Exchange Commission, *Study of Unsafe and Unsound Practices of Brokers and Dealers—Report and Recommendations* (December 1971), at 28, 42, finding that during the 1967-1970 period under review, many broker-dealers had "inadequate and impermanent capital in relation to the needs of their businesses".

incorporated underwriting subsidiary wholly owned by the company and other investment companies makes sense only if another purpose of the section was to prevent potential conflicts of interest. In fact, section 12(d)(3) has been interpreted broadly as one of several provisions, which, taken together, were designed to prevent investment companies from being organized, operated, managed, or their portfolio securities selected in the interests of brokers, dealers, underwriters, and investment advisers, whether or not those entities are affiliated persons of the companies.[8] Viewing the section as one of several designed to curtail interrelationships between investment companies and brokers, dealers, underwriters, and investment advisers, the Commission staff has stated that its practical effect is to eliminate the possibility of certain reciprocal practices between investment companies and securities related businesses.[9]

Whatever view is taken of the original purpose of section 12(d)(3), the Commission believes that dramatic changes in the securities industry since 1940 warrant a re-examination of the section's prohibitions. While the section may have been designed to protect investment companies from entrepreneurial risks, and from being managed in the interests of affiliated persons or more generally in the interests of brokers, dealers, underwriters and investment advisers, evidence indicates that today the section often prevents investment companies from making investments that may be in the best interests of their shareholders.

Over the past decade, an increasing number of securities related businesses have incorporated, enabling investors in those businesses to limit their liability to the amount of their original investment. While some of these corporations continue to be closely held, a number have chosen to raise capital through offerings of their securities to the public.[10]

Commission records indicate that there are at least 40 publicly-held broker-dealers, investment advisers, or parent corporations whose primary source of revenue is from securities related business. Staff research reveals that from January through September 1983, at least fourteen companies that are engaged in securities related activities made or registered initial public offerings, the value of which is expected to exceed $300 million.[11]

Over the past decade, an increasing number of businesses have become involved in securities related activities through mergers with or acquisitions of securities related businesses. In attempts to offer customers and clients a full range of products and services, several publicly held companies that have not traditionally engaged in securities related activities have now entered the financial services industry.[12] Some financial services industry participants—banks, thrift institutions, and their holding companies—have branched out to offer discount brokerage services by acquiring existing broker-dealers or establishing new broker-dealers.[13] This has brought investment company investments in these diversified issuers within the prohibitions of section 12(d)(3). The conditions of rule 12d–1 may significantly limit the ability of investment companies to invest in such issuers absent further exemptive relief.[14] For example, two issuers recently applied for exemptive relief from section 12(d)(3) and rule 12d–1 to permit investment companies to purchase or retain their securities, so long as the gross revenues they derived from securities related businesses did not exceed 25 percent of their total gross revenues.[15]

In view of these developments, the Commission believes that investment companies should have broader exemptive relief from the prohibitions of section 12(d)(3) as soon as possible. The proposed amendments would broaden the exemptive relief presently available under rule 12d–1 for investment company investments in issuers engaged only partially in securities related activities and would permit investment companies, for the first time, to acquire securities of issuers that are primarily engaged in such activities. The rescission of rule 2a–3 is proposed because the exemptive relief proposed

[8] Prevention of such abuses is a purpose of the Act as stated in section 1(b)(2) [15 U.S.C. 80a–1(b)(2)]. *See Pacific Coast Mortgage Company*, 22SEC 829, 832 (1946), in which the Commission stated, "[T]he rationale of Section 12(d)(3) * * * is obviously intended to prevent operating investment companies from engaging in diverse financial activities in conjunction with persons other than investment company * * *."

[9] Such reciprocal practices include the possibility that an investment company might purchase securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Similarly, the staff has expressed concern that an investment company might direct brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. *Report of the Division of Investment Management Re: Letters from Certain Securities Industry Firms Requesting Modification of, or Exemption from, Section 12(d)(3) of the Investment Company Act of 1940*, attached to letter to Harry A. Jacobs, Jr., Chairman of the Board of the Bache Group, Inc., (pub. avail. November 30, 1979).

[10] Until 1970, when it amended its constitution, the New York Stock Exchange did not permit its members to be publicly owned. Similarly, until 1972, the National Association of Securities Dealers ("NASD") took the position that a member could not underwrite its own securities. The NASD changed its position in 1972 when the Board of Governors adopted Schedule E, which specifies standards for distributions of their own securities by members and affiliates. NASD, Notice to Members (March 30, 1972) (formal notice of effectiveness of Schedule E). After the removal of these restrictions, several broker-dealers started making public offerings of their securities, initiating a trend that has recently gained momentum.

[11] The Commission staff reported total industry capital of $15.6 billion in 1982. Staff Report Executive Summary: The Securities Industry in 1982 (October, 1983). A survey by Institutional Investor ranking top broker-dealers disclosed that the top ten firms had a total capital base of approximately $6.4 billion in 1982, with equity capital of approximately $5.1 billion. Institutional Investor, "Ranking America's Biggest Brokers," at 273–86 (April, 1983).

[12] *See* American Express Co., Investment Company Act Release No. 12987 (Jan. 21 1983) [48 FR 4081] (application for relief from section 12(d)(3) and rule 12d–1, which reflects American Express's merger with Sherson Loeb Rhodes, Inc., and Shearson's acquisition of Foster & Marshall, Inc., and The Robinson-Humphrey Co., Inc.); Kemper Corp., Investment Company Act Release No. 13249 (May 17, 1983) [48 FR 23339] (application for relief from section 12d(3) and rule 12d-1, which reflects Kemper Corporation's acquisition or proposed acquisition of Blunt, Ellis & Loewi, Inc., Prescott, Ball & Turben, Inc., and Bateman Eichler, Hill Richards, Inc.). *See also Regional Brokers: Endangered Species*, New York Times, May 24, 1983, at D–5; Heinemann, *American Express: Symbol of Change*, New York Times, July 13, 1983, at D–21.

[13] Securities Exchange Act Release No. 20357 (November 14, 1983) [48 FR 51930] proposing rule 3b–9 under the Securities Exchange Act of 1934 (the "Exchange Act"). *See also Securities Industry Association v. Board of Governors of the Federal Reserve System*, No. 83–4019, slip op. (2d Cir., July 15, 1983) (affirming a Federal Reserve Board order authorizing a bank holding company to acquire a retail discount brokerage firm); Comptroller of the Currency, *Decision on the Application by Security Pacific National Bank to Establish an Operating Subsidiary to Be Known as Security Pacific Discount Brokerage Services, Inc.*, Fed. Banking L. Rep. (CCH), ¶99,284 (August 26, 1982) Comptroller's approval of application by a national bank to establish an operating subsidiary to engage in discount brokerage); Federal Home Loan Bank Board, Resolution No. 82–327 (May 6, 1982) (resolution approving application by three savings and loan associations to establish a service corporation that would conduct discount brokerage activities). *See also Bankers as Brokers*, Business Week, April 11, 1983, at 70; Gruber, *More Bankers Double as Discount Brokers*, Chicago Tribune, section 23 at 6, September 7, 1983.

[14] *See* Rule 12d–1(b) [17 CFR 270.12d–(b)], requiring disposal or reduction of interest over the limits of the rule for the continued ownership of subject securities. *See also* Investment Company Act Release No. 3542 (September 21, 1962), requiring divestiture of prohibited interests.

[15] American Express Co., and Kemper Corp., *supra* note 12. In their applications, American Express and Kemper stated that, as of March 31, 1982, investment companies held approximately 3 percent and 9.4 percent, respectively, of their outstanding common stock.

under section 12d(3) would, in effect, supersede the exemptive relief presently provided by rule 2a–3. Proposed amendments to form N–1A would require an open-end investment company in its registration statement to disclose any investment policy permitting acquisition of securities of: (i) Broker-dealers or underwriters whose securities it has acquired that sell or distribute the company's shares; or (ii) broker-dealers that execute the company's portfolio transactions. Proposed amendments to form N–1R would require a management investment company in its annual report to identify any broker-dealer or underwriter whose securities it has acquired that also regularly sells or distributes the company's shares or executes the company's portfolio transactions.

Discussion

1. Amendments to rule 12d–1

a. *Blanket exemption.* Where the portion of an issuer's gross revenues attributable to securities related activities is below a certain level, the Commission believes that the acquisition of securities of that issuer should not be deemed to be an acquistion within the scope of section 12(d)(3)'s prohibitions. Under the proposed amendments, if 15% or less of an issuer's gross revenues are attributable to securities related activities, the prohibitions of section 12(d)(3) would not apply unless, after the acquisition, the investment company would control the issuer.[16] Specific comment is requested, however, on whether this gross revenues test should be replaced by a test based on the definition of "significant subsidiary" contained in section 1.02(v) of regulation S–X [17 CFR 310.1–02(v)]. This formulation would state that the blanket exemption would apply when investment companies acquire the securities of issuers that do not commit a significant amount (10%) of assets to conducting securities related activities or receive a significant amount (10%) of income from such activities.

Existing rule 12d–1 also uses a gross revenues test to identify issuers whose securities are eligible for purchase under the rule. The proposed amendments would change the manner in which that test is applied in several significant respects. The existing rule states that, for securities to be eligible for purchase, the issuer must have derived 15% or less of its gross revenues from securities related businesses for each of its three most recent fiscal years or, if lesser, since its organization. The proposed amendments eliminate the three-year requirement and simply state that, for its securities to be eligible for purchase without conditions, the issuer must have derived 15% or less of its total gross revenues from securities related businesses during its most recent fiscal year.

To simplify compliance, the proposed amendments would also change the definition of gross revenues. The existing rule defines gross revenues to include consolidated gross revenues, plus the issuer's ratable share of revenues from any unconsolidated investee companies that engage in securities related activities. In view of the difficulty that investment companies presently encounter in attempting to ascertain the extent to which an issuer's unconsolidated revenues come from investing in companies engaged in securities related activities, the proposed amendments would require investment companies to look only to the issuer's gross revenues from its own securities related activities and from the securities related activities of enterprises of which it owns 20% or more of the voting or equity interest. An investment company would no longer have to ascertain the amount of investment income that an issuer derives from investee companies while taking into account the issuer's revenues from significant unconsolidated subsidiaries that are accounted for by the equity method.[17]

The phrase "securities related activities" is used in the revision instead of the phrase "securities related businesses" used in the existing rule. Under the existing rule, if an issuer's subsidiary derives some, but not all, of its revenues from securities related activities, it is unclear whether all of the subsidiary's revenues must be deemed to be derived from securities related activities. The use of the phrase "securities related activities" should make clear that, in such cases, a subsidiary's revenues need not be counted in the aggregate, but may be segregated to identify that portion directly attributable to its role as a broker, dealer, underwriter, or investment adviser.[18]

The proposed rule states that in determining the extent to which an issuer's gross revenues are derived from securities related activities, an investment company may rely on the issuer's annual report to shareholders,[19] the issuer's periodic reports[20] and registration statements filed with the Commission, or may obtain equivalent information from the issuer's chief financial officer. In contrast to this proposed provision, existing rule 12d–1 requires an acquiring company to rely on "published financial information" without specifying the nature of that information and allows an acquiring company to obtain equivalent information from a "responsible financial officer" of the issuer only in the absence of published financial information.

Most significantly, the proposed amendments would not longer require an investment company to monitor or to

[16] Under section 2(a)(9) of the Act,

"[a]ny person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent * * * of the voting securities of a company shall be presumed to control such company. Any person who does not so own more than 25 percent * * * of the voting securities of any company shall be presumed not to control such company * * *. Any such presumption may be rebutted by evidence, but * * * shall continue with a determination to the contrary made by the Commission by order either on its own motion or on application by an interested person."

[17] In contrast to investee companies in which an issuer holds less than a 20% interest, investee companies in which an issuer holds a 20–49% interest are accounted for by the equity method and are identified in the issuer's financial statements. Financial Accounting Standards Board, *Accounting Standards*, Volume II, Section 182 (June 10, 1982).

[18] Where an issuer is a subsidiary of a corporation engaged direct or indirectly in securities related activities, and an investment company knows or has reason to know that the proceeds of securities issued by the subsidiary are to be used to finance the business operations of the parent or its other subsidiaries, then the subsidiary's securities would be deemed to be issued by the parent. The acquisition of such securities would be prohibited under section 12(d)(3), and would be exempted under proposed rule 12d–1 only to the extent that securities issued directly by the parent corporation would be eligible for purchase under the rule.

[19] Pursuant to rules 14a–3 [17 CFR 240.14a–3] and 14c–3 [17 CFR 240.14c–3] under the Exchange Act, an issuer with securities registered under section 12 of that Act must furnish shareholders and mail to the Commission an annual report to shareholders before or at the time of trasmitting proxy material or an information statement with respect to the annual election of directors. The annual report must contain specified financial statements and supplementary financial data with respect to the issuer.

[20] These periodic reports include an issuer's annual report on form 10–K [17 CFR 249.310] and, in some instances, an investment adviser's registration statement on form ADV. Pursuant to sections 13(a) [15 U.S.C. 78m(a)] and 15(d) [15 U.S.C. 78o(d)] of the Exchange Act, an issuer with securities registered under section 12 of the Act or under the Securities Act of 1933 must file an annual report with the Commission. The form prescribed for that report—form 10K—requires the submission of certain financial information and supplementary financial data with respect to the issuer. Pursuant to instruction G of form 10–K, such information may be incorporated by reference to the issuer's annual report to shareholders.

A registered investment adviser must provide its balance sheet on schedule G of form ADV at the end of each fiscal year if the adviser has custody or possession of clients' funds or securities, or requires prepayment of advisory fees six months or more in advance and in excess of $500 per client. Form ADV, part II, item 13.

divest securities acquired in reliance on the rule. Rather, the proposed amendments would require compliance with the rule's conditions only at the time of acquisition. Accordingly, if a company were to rely on the blanket exemption in acquiring securities from an issuer that derived 15% or less of its gross revenues from securities related activities, and a year later that issuer's revenues from such activities exceeded 15%, the company could continue to hold those securities in reliance on the blanket exemption.

b. *Conditions.* Where an investment company intends to acquire securities of issuers that derive more than 15% of their gross revenues from securities related activities, the proposed amendments would permit the company to acquire up to 5 percent of any class of outstanding equity securities and up to 10 percent of the total principal amount of outstanding debt securities of an issuer.[21] By confining this limitation to the adquiring company and by permitting the acquisition of securities of issuers primarily or significantly engaged in securities related activities, the proposed amendments would notably expand the limitation presently in effect with respect to acquisitions of securities of issuers engaged in securities related businesses. Existing rule 12d–1 limits not only the amount of securities that may be held by the acquiring investment company, but also the amount that may be held by all other investment companies having the same investment adviser or principal underwriter and similar related companies. The existing rule also limits aggregate holdings of such affiliated investment companies to 10% of the outstanding voting stock of or "other proprietary interest"[22] in issuers that derive 15% or less of their gross revenues from securities related activities. In contrast, while the proposed amendments would limit an investment company's acquisitions to no more than 5% of any class of outstanding equity securities and no more than 10% of the principal amount of outstanding debt securities, these limitations are addressed to the equity and debt securities of issuers that derive more than 15%, rather than 15% or less, or their gross revenues from securities related activities.

The proposed amendments would permit an investment company to invest up to 5% of the value of its total assets or, if lower, the maximum percentage permitted by its investment policies or restrictions, in the outstanding debt or equity securities of any one issuer. This condition is modeled after a condition contained in recent exemptive orders from section 12(d)(3) and rule 12d–1.[23]

In view of Congress' apparent liquidity concerns, the proposed amendments would also impose qualitative conditions upon an investment company's acquisition of securities of issuers engaged in securities related businesses. An equity security could be purchased if it is a "margin security" as defined in Regulation T issued by the Board of Governors of the Federal Reserve System (12 CFR 220.2(f)). Margin securities include securities registered on a national securities exchange and securities that appear on the Federal Reserve's periodically published "OTC margin stock" list.[24] A debt security could be purchased if it is an "investment grade security" as determined by at least one nationally recognized statistical rating organization, or in the case of any debt security that is not rated, of comparable quality as determined by the investment company's board of directors.[25] "Investment grade" typically includes the four highest rating categories for debt securities, within which there may be sub-categories or gradations.[26]

Comment is requested on whether these proposed standards serve a useful purpose or whether they could be eliminated. Comment is also requested on an alternative formulation of a standard for equity securities. Instead of stating that such securities should be marginable, the rule could state that such securities should either be listed on a national securities exchange or designated as national market system securities under rule 11Aa2–1 of the Exchange Act (17 CFR 240.11Aa2–1).

Under the proposed amendments, these quantitative and qualitative tests would be applied only at the time of acquisition. Unlike the present rule, the proposed amendments would not require the company to monitor its continued compliance with the relevant precentages or to sell all or a portion of the securities it has acquired due to changes in an issuer's business. Any new acquisition would, of course, be subject to the limitations described above.

To prevent potential conflicts of interest, the proposed rule would not permit an investment company to purchase securities issued by its own investment adviser, promoter, principal underwriter, or their affiliated persons that are also securities related businesses, unless otherwise permitted under section 12(d)(3) (A) and (B).[27] The rule would also not permit an investment company to purchase a general partnership interest in a securities related business.

To clarify the way in which the revised rule should be applied to options, warrants, rights or convertible securities, the proposed amendments state that, although the exercise of such instruments would not be considered a purchase or acquisition, the conditions of the rule are to be applied as though such options, warrants, or rights had been exercised.

To avoid any confusion as to the conditions pursuant to which an investment company may enter into a repurchase agreement with a broker or dealer, a note to the rule states that investment companies will still be expected to comply with the Division of Investment Management's amended no-action position set forth in Investment

[21] In the revision, the definition of "equity security" is based on the definition contained in rule 3a11–1 under the Securities Exchange Act [17 CFR 240.3a11–1]. The revised rule defines "debt security" to include all securities of an issuer other than equity securities.

[22] Rule 12d–1 does not define the phrase "proprietary interest." *See* letter from Fried, Frank, Harris, Shriver & Jacobson re SMC Investment Corporation (pub. avail. April 30, 1972), questioning the meaning of that phrase.

[23] *See* American Express Co. and Kemper Co., *supra* note 12.

[24] The Federal Reserve Board determines whether securities traded over-the-counter will be included on its OTC margin stock list on the basis of whether such securities have the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. Specific criteria for eligibility are set forth at 12 CFR 220.17, and a precise definition of "margin security" is set forth at 12 CFR 220.2(f).

[25] Rule 2a–7 [17 CFR 270.2a–7] places similar responsibility on an investment company's board of directors to determine whether unrated money market instruments meet the high quality standard set forth in that rule for funds using the amortized cost valuation method or the penny-rounding method of pricing. For a discussion of the procedures to be followed by the board in making such determinations, see Investment Company Release No. 13380 (July 11, 1983) [48 FR 32555] (adoption of rule 2a–7).

[26] Similarly, an investment grade criterion is used to determine the eligibility of non-convertible debt or preferred securities for registration on form S–3 under the Securities Act. *See also* rule 10f–3(c) [17 CFR 270.10f–3(c)] (investment grade criterion for an exemption from section 10(f) [15 U.S.C. 80a–10(f)] to purchase municipal securities during an underwriting syndicate).

[27] Under sections 12(d)(3) (A) and (B), an investment company is permitted to own, along with other investment companies, an underwriting subsidiary. *See* discussion *supra* at pp. 5–6 and note 1. Of course, an investment company would be required to apply for exemptive relief from section 17, as well as section 12(d)(3) of the Act, when contemplating the purchase of such securities directly from, or as a joint participant with, the company's investment adviser, promoter, principal underwriter or their affiliated persons.

Company Act Release No. 13005 (February 2, 1983) (48 FR 5894). In that release, the Division stated that it would not recommend to the Commission that any enforcement action be taken under section 12(d)(3) against an investment company with respect to repurchase agreements entered into with brokers or dealers, provider each agreement is fully collateralized during the entire term of the agreement [28] and that investment company boards of directors evaluate the creditworthiness of the brokers or dealers with which they propose to enter into repurchase agreements.

2. Rescission of Rule 2a–3

Rule 2a–3 presently excludes a bank as defined in section 2(a)(5) of the Act [29] from the term "investment adviser" of an investment company as used in section 12(d)(3) except in cases where an investment company is acquiring the securities of a bank that is its own investment adviser. In view of the broad exemption that would be afforded by the proposed amendments for the acquisition of securities of any issuer engaged in any securities related activity, rule 2a–3 would in effect be superseded by the adoption of those amendments. Comment is requested, however, as to whether there is any reason to continue to distinguish banks that act as investment advisers to investment companies from other issuers engaged in securities related activities.

3. Amendments to Form N–1A and N–1R

In the belief that investment company shareholders should be aware of any investment policy that would permit the company to acquire securities of broker-dealers or underwriters that sell or distribute the investment company's shares or that execute its portfolio transactions, the Commission is proposing to amend form N–1A, the registration statement form for open-end investment companies, to require that disclosure.

In addition, the Commission is proposing to amend form N–1R, the annual report for management investment companies, to require a company to identify any broker-dealers or underwriters whose securities it has acquired which also regularly sell or distribute the company's shares or execute its portfolio transactions.[30]

While an investment company need not forego acquiring securities of a broker-dealer or underwriter that happens to sell or distribute the company's shares or execute its portfolio transactions, the company's investments should be determined by its investments objectives. Similarly, although an investment company should be able to allocate brokerage to a broker-dealer whose securities it has acquired, the company's allocation of brokerage should be based on best price and execution.

4. Request for comments

The Commission requests public comment on whether the proposed revision to rule 12d–1 should be adopted as proposed. Specific comment is requested on whether the "15% or less of gross revenues" test should be replaced by a "significant subsidiary" test modeled on the definition of significant subsidiary contained in regulation S–X. Specific comment is also invited on whether the conditions in the proposed revision, particularly the quality conditions, are appropriate, whether more restrictive conditions are needed, or whether less restrictive conditions would be adequate. In addition to those issues discussed above, specific comment is invited on whether the revised rule should restrict the extent to which an investment company may concentrate its investments in issuers engaged in securities related activities.[31]

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Test of Proposed Rule and Form

It is proposed to amend Parts 270 and 274 of Chapter II, Title 17 of the Code of Federal Regulations as set forth below:

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

§270.2a–3 [Amended]

1. By proposing to remove § 270.2a–3.

2. By proposing to revise § 270.12d–1 to read as follows:

§ 270.12d–1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

(a) For purposes of section 12(d)(3) of the Act, the acquisition by a registered investment company, or any company or companies controlled by such registered investment company (hereinafter, such company or companies are referred to as the "acquiring company"), of any security issued by any person that, in its most recent fiscal year, derived 15% or less of its total gross revenues from securities related activities shall not be deemed an acquisition of securities issued by a securities related business unless the acquiring company would control such person after the acquisition.

(b) The acquisition by an acquiring company of any security issued by a securities related business (also referred to as "issuer") shall be exempt from the provisions of section 12(d)(3) of the Act,

Provided That:

(1) Immediately after the acquisition of any equity security of the issuer, the acquiring company owns not more than 5 percent of the outstanding securities of that class of the issuer's equity securities,

(2) Immediately after the acquisition of any debt security, the acquiring company owns not more than 10 percent of the outstanding principal amount of the issuer's debt securities,

(3) Immediately after any such acquisition, the acquiring company has invested not more than 5 percent of the value of its total assets or, if lower, the maximum percentage permitted by its investment policies and restrictions, in securities of the issuer,

(4) Any equity security of the issuer acquired by the acquiring company is a "margin security" as defined in Regulation T issued by the Board of Governors of the Federal Reserve System (12 CFR 220.2(f)), and

(5) Any debt security of the issuer acquired by the acquiring company is an "investment grade security" as determined by at least one nationally recognized statistical rating organization (typically the four highest rating

[28] This was the initial no-action position taken by the Division in Investment Company Act Release No. 10666. *See supra* note 6.

[29] Section 2(a)(5) of the Act [15 U.S.C. 80a–2(a)(5)] defines "bank" to include "(A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of the Act . . . ."

[30] This amendment to form N–1R is one of several amendments to that form which the Commission expects to propose in the near future. At the present time, under rule 45a–1 [17 CFR 270.45a–1], exhibits in registration statements or periodic reports that call for the names and addresses of dealers to or through whom principal underwriters of registered investment companies are currently offering securities are accorded confidential treatment, provided the registrant follows the filing procedures set forth in paragraph (b) of that rule.

[31] A registrant is required to disclose a policy of concentrating in a given industry if the registrant has invested more than 25% of its assets in issuers in that industry. See from N–1A, Part A, Item 4(a)(ii)(B)(2).

categories, within which there may be sub-categories or gradations), or in the case of any debt security that is not rated, of comparable quality as determined by the acquiring company's board of directors.

(c) Notwithstanding the provisions of paragraphs (a) and (b), no registered investment company shall acquire (1) a general partnership interest in a securities related business, or (2) any security issued by its investment adviser, promoter, or principal underwriter or any affiliated person of such investment adviser, promoter, or principal underwriter that is a securities related business, unless otherwise permitted under section 12(d)(3) (A) and (B).

(d) For purposes of this rule,

(1) "Securities related activities" are a person's activities as a broker, a dealer, from the business of underwriting, or as a registered investment adviser.

(2) An issuer's gross revenues from its own securities related activities and from the securities related activities of enterprises of which it owns 20% or more of the voting or equity interest should be considered in determining the degree to which an issuer is engaged in securities related activities. Such information may be obtained from the issuer's annual report to shareholders, the issuer's periodic reports or registration statement filed with the Commission, or the issuer's chief financial officer.

(3) A "securities related business" is a person who directly or indirectly is a broker, a dealer, engaged in the business of underwriting, or an investment adviser registered under the Investment Advisers Act of 1940, as amended.

(4) "Equity security" shall be as defined in Securities Exchange Act Rule 3a11-1 [17 CFR 240.3a11-1].

(5) "Debt securities" shall include all securities of an issuer other than equity securities.

(6) Determination of the percentage of a purchasing company's ownership of any class of outstanding equity securities of an issuer shall be made in accordance with the procedures described in rule 16a-2 under the Securities Exchange Act [17 CFR 240.16a-2].

(7) Where an acquiring company is considering acquiring or has acquired options, warrants, rights or convertible securities of a securities related business, the determinations required by paragraph (b) shall be made as though such options, warrants, rights or conversion privileges had been exercised.

(8) The following transactions will not be deemed to be an acquisition of securities of a securities related business:

(i) Receipt of stock dividends on securities acquired in compliance with this rule;

(ii) Receipt of securities arising from a stock-for-stock split on securities acquired in compliance with this rule;

(iii) Exercise of options, warrants, or rights acquired in compliance with this rule; and

(iv) Conversion of convertible securities acquired in compliance with this rule.

Note.—It is not intended that this rule should supersede the requirements prescribed in Investment Company Act Release No. 13005, dated February 2, 1983, with respect to repurchase agreements with brokers or dealers.

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

3. By proposing to add paragraph (a)(ii)(E) to item 4 of Form N-1A described in § 274.11A to read as follows:

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

* * * * *

(a) * * *

(ii) * * *

(E) Whether the registrant has a policy of permitting investment in securities issued by any broker-dealer or underwriter that sells or distributes the registrant's shares or a policy permitting investment in securities issued by any broker-dealer that executes the registrant's portfolio brokerage transactions.

* * * * *

4. By proposing to add this paragraph to Item 41 of Form N-1R described in § 274.101 to read as follows:

§ 274.101 Form N-1R, annual report of registered management investment company under the Investment Company Act of 1940 and the Securities Exchange Act of 1934.

* * * * *

Item 41 * * *

Identify any broker-dealer or any underwriter whose securities the registrant has acquired which also regularly sold or distributed the registrant's shares or executed its portfolio transactions.

* * * * *

Statutory Basis

Revised rule 12d-1 would be adopted and rule 2a-3 would be rescinded by the Commission pursuant to the authority granted the Commission in sections 6(c) (15 U.S.C. 80a-6(c)) and 38(a) (15 U.S.C. 80a-37(a)) of the Act. The proposed amendments to forms N-1A and N-1R would be adopted pursuant to the authority granted the Commission in sections 7, 10, and 19 of the Securities Act of 1933 [15 U.S.C. 77g, 77j, and 77s), sections 13, 15(d), and 23(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78m, 78o(d), and 78w(a)] and sections 8, 30 and 38 of the Investment Company Act of 1940 [15 U.S.C. 80a-8, 80a-29, 80a-37).

Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments to rule 12d-1. The analysis states that the proposed amendments may have a significant beneficial economic impact on small investment companies and small issuers engaged directly or indirectly in the business of a broker-dealer, an underwriter, or a registered investment adviser. Such entities would no longer need to file applications for exemptive relief to permit investment company acquisitions of securities of issuers that derive more than 15% of their total gross revenues from securities related businesses. A copy of the Analysis may be obtained by contacting Jeffrey S. Puretz, Office of Regulatory Policy, Securities and Exchange Commission, Room 5103, 450 Fifth Street, NW., Washington, D.C. 20549.

Dated: January 17, 1984.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1862 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

21 CFR Part 1020

[Docket No. 82N-0274]

Overview of the Costs and Benefits of the Diagnostic X-ray Equipment Performance Standard; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability and invitation to submit comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document

prepared by FDA's National Center for Devices and Radiological Health (NCDRH) entitled "An Overview of the Costs and Benefits of the Diagnostic X-ray Equipment Performance Standard (21 CFR 1020.30–32)." In addition, FDA invites interested persons to review the document and to submit written comments and suggestions for use in preparation of a final version of the document.

DATE: Comments, data, and information by April 23, 1984.

ADDRESSES: The draft document is available for examination in, and comments, data, and information are to be submitted to, the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Single copies of the draft may be obtained by submitting a written request to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Harvey Rudolph, National Center for Devices and Radiological Health (HFZ–83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3426.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 16, 1982 (47 FR 51710), FDA announced that it had selected the performance standard for diagnostic X-ray systems and their major components (21 CFR 1020.30–1020.32) as a high priority rule for review under the agency's program to identify regulations that impose significant cost burdens and, for such rules, to explore alternative measures for protecting the public health. This retrospective review is required by the Regulatory Flexibility Act (Pub. L. 96–354) and Executive Order 12291. FDA invited all interested persons (e.g., the public, X-ray equipment manufacturers or dealers, health care practitioners, and State program personnel) to submit comments, quantitative data, and qualitative information concerning the economic cost or other impacts that may be attributed to the standard and to suggest alternative approaches that would ensure the radiation safety of diagnostic X-ray systems. The announcement also encouraged interested persons to provide comments on significant public health benefits and to identify any other benefits directly attributable to the standard.

NCDRH has prepared an outline of the current costs and benefits of the standard. From this outline it developed a draft document entitled "An Overview of the Costs and Benefits of the Diagnostic X-ray Equipment Performance Standard (21 CFR 1020.30–32)," which presents and analzes data, information, and views from interested persons, data from FDA's compliance test program, and Nationwide Evaluation of X-ray Trends surveys. Also, the results of a committee assessment of the public health values of the requirements currently included in the standard are included. The specially created committee used the "delphi method" of surveying 17 scientific experts familiar with X-ray standards to rank and assess the public health values of the regulatory requirements in the standard. NCDRH expects that, with the information provided by a final version of the document, it can make informed decisions regarding alternative radiation protection programs and changes to specific regulatory requirements in the standard.

The draft document is on file in the Dockets Management Branch (address above) and is available for public review between 9 a.m. and 4 p.m., Monday through Friday. Single copies of the draft document may be obtained by submitting a written request to the contact person listed above in this notice. Interested persons are invited to review the draft document and to submit written comments on it. Suggestions for changes should be supported by rationale and background data. Any person responding to this notice, as well as any person responding to the notice of November 16, 1982, will receive a copy of the final version of the cost/benefit document when it has been prepared.

Interested persons may, on or before April 23, 1984, submit to the Dockets Management Branch written comments, data, or information regarding this draft document. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this notice. All comments received will be considered in developing a final document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84–1832 Filed 1–23–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Public Comment and Opportunity for Public Hearing on the Modification to the Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of certain program amendments submitted by the State of Arkansas as a modification to the Arkansas Permanent Regulatory program (hereinafter referred to as the Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to changes in Arkansas' Surface Coal Mining and Reclamation Code for (1) permit fees and bonding requirements for coal exploration operations and (2) inspections.

This notice sets forth the times and locations that the Arkansas program and the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments must be received on or before 4:00 p.m., February 23, 1984.

If requested, a public hearing on the proposed modifications will be held on February 15, 1984, beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand delivered to: Robert L. Markey, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103.

If a public hearing is held its location will be at: The Trade Winds Inn, U.S. Highway 71, North, at 11th Street, Fort Smith, Arkansas 66701.

FOR FURTHER INFORMATION CONTACT: Robert L. Markey, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 581–7927.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Arkansas program, the proposed modifications to the program, a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM Offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103

Office of Surface Mining, Reclamation and Enforcement, Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240

Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in the support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Tulsa, Oklahoma, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business February 8, 1984. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons schedule to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those schedule. This hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed in **"ADDRESSES"** by constacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administative Record.

II. Background on the Arkansas State Program

On February 19, 1980, Arkansas submitted its proposed regulatory program to OSM. On November 21, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 4 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the November 21, 1980, **Federal Register** (45 FR 77003–77017).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Arkansas program can be found in the November 21, 1980 **Federal Register** notice.

III. Submission of Program Amendment

By a letter dated December 7, 1983, Arkansas submitted to OSM pursuant to 30 CFR 732.17, certain revisions to its regulations for permit fees, coal exploration operations and inspections.

In the amendment, Arkansas proposes to amend Part 771 of its regulations pertaining to permit fees. The State proposes to require that a request for a coal exploration approval for the removal of more than 250 tons of coal be accompanied by a $250 review fee and a $250 administration and enforcement fee.

Additionally, Arkansas proposes to add new language to Part 776 to its bond requirements for exploration operations extracting more than 250 tons of coal. A performance bond in the amount of not less than $5,000 will be paid to the Department after the request for approval to conduct such an operation but before the Department approves the request.

Arkansas also modified Part 842 of its regulations pertaining to inspections. The State proposes to establish an inspection frequency for *inactive* surface coal mining and reclamation operations of one complete inspection per calendar quarter. Additionally, the State is proposing to conduct aerial inspections. The proposed regulation provides that any potential violation observed during an aerial inspection shall be investigated on site within three calendar days. The regulation further provides that if the observed potential violation presents any indication of a condition requiring a cessation order that the site shall be investigated immediately.

The Secretary seeks public comment on these proposed modifications to the Arkansas program. If these amendments are approved, they will become part of the Arkansas program.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 904

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 17, 1984.

James R. Harris,

Director, Office of Surface Mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

[FR Doc. 84–1876 Filed 1–23–84; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 754

[OPTS-62030; TSH-FRL 2476-6]

2-Methoxyethanol and 2-Ethoxyethanol and Their Acetates; Initiation of Regulatory Investigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: This notice announces EPA's intent to start developing regulations under the authority of the Toxic Substances Control Act (TSCA) to reduce exposure to two glycol ethers and their acetates: 2-methoxyethanol (2-ME); 2-ethoxyethanol (2-EE); 2-methoxyethanol acetate (2-MEA); and, 2-ethoxyethanol acetate (2-EEA). Their respective CAS Registry numbers are 109-86-4, 101-80-5, 110-49-6, and 111-15-9. Because of their toxicity, evidence of human exposure to concentrations above levels currently recommended by the American Conference of Governmental Industrial Hygienists, and the potential for significant numbers of individuals to become exposed due to their high production volume and multiple uses, EPA is exploring regulatory options to reduce or eliminate the risks of exposure to these four chemical substances. The Agency invites interested parties to submit data and comments relevant to the control of exposure to 2-ME, 2-EE, 2-MEA, and 2-EEA.

DATE: All comments must be received by March 26, 1984.

ADDRESS: Since some comments may contain Confidential Business Information (CBI), all comments should be sent in triplicate to: Document Control Office (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-62030. Comments received on this ANPR, except those containing CBI, will be available for review 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: EPA intends to start developing regulations under TSCA for four chemical substances: 2-methoxyethanol (2-ME); 2-ethoxyethanol (2-EE); 2-methoxyethanol acetate (2-MEA); and, 2-ethoxyethanol acetate (2-EEA). These are known by a number of common names which can be found in the Registry of Toxic Effects of Chemical Substances (Ref. 1) and by the following trade names: Cellosolve®, Dowanol®, Ektasolve®, Glycol ester®, Poly-Solv®, Prist®, Oxitol®, and Jeffersol® (Ref. 2).

A number of animal studies indicate that adverse reproductive and fetotoxic effects are associated with these chemical substances at concentrations to which humans may be exposed. EPA is concerned about both short-term and chronic exposure of pregnant women, either as workers or as household consumers, to these chemical substances. EPA is also concerned about the exposure of males to these substances, both from short-term and chronic exposure. EPA has also made a preliminary review of the toxicity of some potential substitutes for these four ethers, and while some exhibit toxic effects, they appear to be of less concern than the effects of the glycol ethers that are the subject of this ANPR.

I. Production and Uses

Over 400 million pounds of the four substances were produced in the U.S. in 1981, with domestic consumption accounting for approximately 85 percent of the use and the remaining 15 percent being exported. Eight major firms produce one or more of the four substances. Approximate 1981 consumption in the United States for each substance was: 90 million pounds of 2-ME, 170 million pounds of 2-EE, 3 million pounds of 2-MEA, and 100 million pounds of 2-EEA (Ref. 2).

One major use of 2-ME is as a deicing additive for military jet fuels. A second use, of almost equal volume, is as a general solvent for applications in industrial and commercial products that require quick drying properties. 2-MEA is used as a solvent with oils and natural resins. It is also used as a solvent for nitrocellulose in preparation of plastics and fast drying lacquers. Some 2-EE is used as a solvent for coatings and inks. However, most 2-EE is used to make 2-EEA, which is employed in the production of surface coatings (Ref. 2).

II. Health Concerns

It has been known for some time that all four substances have toxic effects on the blood, kidneys, liver, central nervous system, and on reproductive systems. However, these effects had been demonstrated only in animals and only at exposure levels of 300 parts per million (ppm) and above (Ref. 3). However, recent animal studies have raised, and then confirmed, an Agency concern that inhalation and dermal exposure to lower levels of these chemicals may pose a serious risk of fetotoxic effects and a risk of adverse reproductive effects on males.

All four of these chemcial substances have caused fetotoxic effects (both fetal malformations and fetal deaths) after exposure of pregnant test animals, and testicular damage and decreased fertility in exposed male test animals. This information was provided to EPA by private firms under section 8(e) of TSCA and by the National Institute for Occupational Safety and Health (NIOSH). NIOSH provided EPA with new toxicology data in 1981 (Ref. 4) and the Chemical Manufacturer's Association (CMA) provided EPA with further data in 1982 and 1983 (Refs. 5, 6, 7, 8, 9).

In recent animal studies of inhalation exposures (Refs. 5, 6, 7, 8, 9, 10, 11), 2-ME caused fetotoxic effects after exposures to a concentration of only 10 ppm in rabbits and 50 ppm in rats and mice under standard developmental test protocols. Testicular damage was observed in rabbits after 12 weeks of exposures to 100 ppm for 6 hours a day. Partially reversible sterility was demonstrated in rats after exposure to 300 ppm. 2-EE clearly showed fetotoxic effects after exposure to 175 ppm in rabbits and 250 ppm in rats under standard developmental test protocols.

These cited data are consistent with other data presented in a report published by the European Chemical Industry Ecology and Technology Center (ECETOC) on these substances—both recent inhalation and dermal exposure studies, and earlier studies of oral exposure. The ECETOC report provides evidence that all four substances have reproductive effects at higher doses. Further, they show that acetates are as toxic as ethers when compared on a molecular basis (Ref. 3).

Given the limited number of test animals exposed to a given dose and the relatively high background levels for the effects, the tests could be expected only to demonstrate a statistically significant effect for exposure levels at which a large proportion of the exposed animals were affected. Because the tests have not established the minimum dose at which toxic effects exist, the Agency is concerned that there may be a risk of

toxic effects in humans at exposure levels below those reported in the studies cited above. The Agency will examine a number of approaches that may be used to evaluate the likely risk at low levels of exposure.

Based on the information presented above, the Agency is concerned about potential reproductive toxicity from short-term as well as chronic exposure to both sexes. The very nature of fetal development and teratogenesis leads the Agency to be concerned about exposures of short duration.

Developmental toxicants act on fetal cells at very specific points in development—specific developmental stages that may last for only a few hours. It may be that exposure of only a few hours to these substances could produce a teratogenic effect if it occurred at the critical time.

III. Exposure

EPA is concerned that numerous exposure situations pose the potential for exposure to levels that present a significant risk of reproductive toxicity. Such exposure may occur from product formulation and from occupational and consumer use of products.

There are existing occupational exposure standards for each of the four chemical substances. The Occupational Safety and Health Administration (OSHA) 8-hour permissible exposure limits (PELs) for these substances are: 25 ppm for 2–ME and for 2–MEA; 200 ppm for 2–EE; and 100 ppm for 2–EEA. The American Conference of Governmental Industrial Hygienists (ACGIH) intends to recommend threshold limit values (TLVs) of 5 ppm for each of the four substances. The current ACGIG TLVs are: 25 ppm for 2–ME and for 2–MEA; and 50 ppm for 2–EE and for 2–EEA (Ref. 10).

Both the OSHA standards and the ACGIH TLVs currently in effect were based on blood, kidney, liver, and central nervous system toxicity; current studies of reproductive effects were not available for consideration at the time these standards were set.

At the present time, EPA does not have comprehensive data on exposure or the extent of the current use of 2–EE, 2–EEA, 2–ME or 2–MEA. The Agency's preliminary modeling results suggest, however, that use of products containing two percent glycol ethers to coat a flat surface may produce a one-hour average exposure level of serious concern. Historical data indicate that various products have contained significantly more than two percent concentrations of glycol ethers and their acetates. Examples of such products include inks, paints, lacquers, and use directly as a solvent. Current concentrations and uses are not known.

There are uncertainties associated with the modeling of these uses. EPA will therefore seek to validate the exposure model by measuring experimental exposures, and will obtain more information on the current uses of glycol ethers. EPA is interested in public comments on this issue.

OSHA monitoring data suggest that occupational exposure may be at significant levels. Between 1979 and 1982, OSHA collected monitoring data from over 51 different plants at which these solvents were being used. The average 8-hour time-weighted averages (TWAs) for worker exposure to 2–ME, 2–MEA, 2–EE, and 2–EEA were 9.3, 0.9, 4.3, and 2.7 ppm, respectively. Although these TWAs are below current OSHA standards, they are at levels near or above future recommended ACGIH values. In addition, there was significant variation in the data; 8-hour TWAs were observed for these chemical substances of as much as 60.6, 8.4, 85.3, and 50.4 ppm, respectively (Ref. 2). Peak exposure levels for periods of less than eight hours could have been even greater.

EPA's primary concern, on the basis of available information, is with occupational and product user exposures. The Agency does not believe there is significant exposure from use as a deicing agent in some jet fuels or as a chemical intermediate. Nor is the Agency aware of significant releases to the general environment. Our current intent is to concentrate on occupational and user exposure; however, we will reconsider this position if we receive information suggesting that other sources of exposure are significant.

The three potentially exposed populations that the Agency has identified are:

1. *Consumers.* Numerous products containing these substances have been available for consumer use (Ref. 2). Among these products were automobile touch-up paints, epoxy paints, and cleaning solutions. We also assume that many trade products were and are used by consumers. There is no survey of the current use of 2–ME, 2–EE and their acetates in specific consumer products. It is unlikely that a survey could be definitive, because of the continually changing composition of these products. While it is important to learn which products contain these chemicals, it appears that at least for some uses it will not be crucial to know the concentrations used because even low concentrations appear to produce exposure levels of concern.

2. *Trade users.* There are many products used in a very wide variety of trades that may contain these substances. These are inks used in printing and finishing; and paints, varnishes, stains, lacquers, paint removers, and cleaning solvents used by woodworkers, painters, furniture finishers, metal workers and auto body shops. There is not systematic survey of the number of workers actually exposed or their exposure levels. Therefore, the Agency is particularly concerned about trade users engaged in painting, staining, etc.

3. *Industrial workers.* There are two classes of industrial workers who may be exposed to 2–ME, 2– EE, and their acetates. These are workers in an industrial setting using products and workers manufacturing the substances and formulating the products. It should be noted that workplace surveys show the highest exposures to industrial painters and stainers using products rather than to workers formulating products. Both classes of workers will frequently, but not always, have access to engineering control equipment, such as spray booths, hoods, and other forced ventilation, as well as to personal protective equipment to control exposure. In some industrial uses there may be sufficient exposure control so that the health risk is not sufficient to warrant regulatory action.

The exact number of exposed individuals in each category is unknown but potentially large (greater than one million). The exact duration of exposures is also unknown, but it is probably sizable (greater than 10 hours per week) among trade and industrial workers. Many of these users are not likely to know the potential hazards associated with these chemicals. It is estimated that 100,000 industrial workers are exposed to 2–ME in occupational settings and that 400,000 are exposed to 2–EE (Ref. 11). We do not have estimates of the number of consumer or trade users exposed to these chemicals. But, as noted above, consumer and trade workers are potentially exposed to these chemicals through a variety of products. The Agency is concerned about the possible risk to anyone that uses products, other than jet fuel or chemical intermediates, containing 2–ME, 2–EE, and their acetates. To the extent that these chemicals are currently used in products, our information leads to the conclusion that almost all consumer and trade users will face a significant risk of adverse health effects from using these products

IV. Regulatory Investigation

EPA is considering regulation under section 6 of TSCA to control any unreasonable risks from the manufacture, processing, distribution in commerce, and use of 2–ME, 2–EE, 2–MEA, and 2–EEA. EPA has also consulted with OSHA and the Consumer Product Safety Commission on possible actions under their legal authorities.

Section 6 of TSCA provides for a number of alternative controls for reducing human exposure to chemical substances which pose an unreasonable risk to health or the environment. Control alternatives under this section include a total or partial ban on the manufacture, processing, or use of a substance; regulating a substance's concentration in products; labeling requirements; requirements for engineering controls for handling a substance; or requirements for quality controls on the manufacture or processing of a substance. EPA solicits comments on which if any of the above alternatives would be most appropriate for these chemicals. However, the Agency is especially interested in comments on whether it is appropriate to impose a partial or total ban on the manufacture of 2–ME, 2–EE, 2–MEA, or 2–EEA.

To determine whether an unreasonable risk exists and what types of controls might be needed, the Agency will consider the risks and benefits of known uses of these four chemicals, and, for those uses, the economic impact of regulations which might be developed. The suitability of substitutes will also be considered.

To this end, the Agency is seeking comments and available data in five major areas: extent and nature of exposure; substitutes for these chemical substances; the economic impact of alternative means of regulating the four chemical substances; sources of, and ways to control exposure; and, the toxicity of these chemical substances.

1. *Substitutes.* The Agency has identified a number of substances that, based on their chemical properties (e.g., solvency, evaporation rates, etc.), may be potential substitutes for these four substances (Ref. 2). EPA believes that substitution is feasible, but it recognizes that mixtures of substitute chemicals may be required and that firms may need to conduct testing and research in order to reformulate products or test alternative products.

EPA seeks further, more detailed, information on the identity, use, availability, and suitability of substitute solvents, mixtures of solvents, and products. The Agency is particularly interested in learning about specific uses for which there are not suitable substitutes.

2. *Economics and benefits.* In determining whether an unreasonable risk exists, the Agency must consider the costs and benefits of continued use of these four substances. EPA must consider the costs of substitution and the potential risks of the substitutes themselves. For that reason, the Agency seeks information on the costs and toxicity of various substitute solvents and products. We seek information on the process and equipment changes (and the associated costs) that would be required for substitution, other costs of changing over to substitutes, the time required to switch to substitutes, and the expected impact on the regulated industry of the possible control actions indicated above. In addition, the Agency needs to identify and better characterize both the uses and users of these four substances.

3. *Exposure.* Exposure is an important component of determining whether the manufacture, processing, distribution, or use of these substances poses an unreasonable risk. There are a number of steps during manufacture, use, and disposal when exposure can occur with either manual or automated handling. We believe available monitoring data, although limited, are sufficient to establish that significant human exposure to these substances can and does occur. We solicit additional monitoring data for the industrial, consumer, and trade uses of 2–ME, 2–EE, 2–MEA, and 2–EEA. Levels of exposure associated with each type of use being investigated are sought to determine the risks of each type of use and the regulatory options that will be appropriate for each type of use. We also solicit monitoring data for the disposal of wastes containing the four glycol ethers.

We will also examine ways to reduce or control exposure by applying engineering controls and altering handling practices. To facilitate this examination, EPA seeks information on current and alternative work practices, engineering controls, and waste disposal practices, including the use of enclosed systems. Information is also sought on whether and what types of personal protective equipment is used, whether adequate equipment is available and effective, and whether such equipment is reasonable to purchase and place in each work setting. Information is also sought on the benefits or utility of labeling requirement.

4. *Toxicity.* The Agency welcomes information on three issues relating to toxicity. First, we seek comment on how to estimate the likely reproductive effects on humans of exposures to concentrations at or below the levels tested in the animal studies. Second, the Agency seeks data on any non-reproductive toxic effects likely to be significant at exposure levels of 5 ppm and lower. Third, we seek comment on the relationship of the frequency and duration of exposure to the toxicity of these substances.

The Agency solicits information in each of these areas and any other relevant issues. EPA will consider all information supplied in response to this notice in determining the best course of action regarding 2–EE, 2–ME, 2–EEA, and 2–MEA.

V. Confidential Business Information

Information submitted as comments to this notice may be claimed confidential by marking any part or all of that information as "CBI." However, health and safety studies cannot be held confidential except as allowed under section 14(b) of TSCA. Information submitted as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A sanitized copy of any comments containing CBI should be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record

EPA has established a record for this proceeding (docket number OPTS 62030). Nonconfidential information, along with a complete index, is available for inspection in the Office of Toxic Substances Reading Room from 8:00 a.m. to 4:00 p.m. on working days in Room E–107, 401 M St., SW., Washington, D.C. 20460. This record includes basic information considered by the Agency in developing this ANPR. The Agency will supplement the record with additional information as it is received. The public record will include:

1. This notice.

2. All comments on this ANPR.

3. All relevant supporting documents and studies.

4. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include any inter- or intra-agency memoranda unless specifically noted in the index of this record.)

VII. References

(1) NIOSH. Registry of Toxic Effects of Chemical Substances. 1980 Edition.

(2) USEPA. Glycol Ethers and Their Acetates: Uses and Substitutes. July 1983.

(3) European Chemical Industry, Ecology and Technology Centre (ECETOC). Technical Report. 1982.

(4) USDHHS, PHS, CDC, NIOSH. Letter from B.D. Hardin to David Williams, EPA. Washington, DC. February 25, 1981.

(5) The Dow Chemical Company, Midland, MI. Letter from E.H. Blair to Document Control Officer, EPA, Washington, DC. 8EHQ-0982-0384/0386 Supplement) September 30, 1982.

(6) Miller RR, Calhoun, LL, Yano BL. TSCA sec. 8(e) Submission 8EHQ-0281-0384, submitted by Dow Chemical Company. Ethylene Glycol Monomethyl Ether: 13-Week Vapor Inhalation Study in Male Rabbits. Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. 1981.

(7) Miller RR, Ayres JA, Young JT. TSCA sec. 8(e) Submission 8EHQ-0182-384 follow-up, submitted by Dow Chemical Company. Ethylene Glycol Monomethyl Ether: 13-Week Vapor Inhalation Study with Rats and Rabbits. Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. 1982.

(8) CMA. Ethylene Glycol Monoethyl Ether (EE): Teratogenicity Study in Rats. Chemical Manufacturers Assn., Washington, DC. Report No. CTL/P/761. April 14, 1983.

(9) CMA. Ethylene Glycol Monoethyl Ether (EE): Inhalation Teratogenicity Study in Rabbits. Chemical Manufacturers Assn., Washington, DC. Report No. CTL/P/776. April 21, 1983.

(10) ACGIH. American Conference of Governmental Industrial Hygienists—Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment with Intended Changes for 1982.

(11) USDHHS, PHS, CDC, NIOSH. Telecon with Dave Sundin by C. Matthiesen, about data from NOHS 1980. Projected Workers Exposed to Chemicals. April 1983.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605))

List of Subjects in 40 CFR Part 754

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Solvents.

Dated: January 13, 1984.

Alvin L. Alm,

Acting Administrator.

[FR Doc. 84-1903 Filed 1-23-84; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1625

Procedures Governing Denial of Refunding

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the Corporation's regulations governing denial of refunding. This revision is required to comply with provisions of the Corporation's 1984 appropriation, Pub. L. 98-166. This proposed rule changes the time limits in the current rule to conform with those mandated by the appropriations bill, and places the burden of proof in denial of refunding proceedings on the recipient as required by Congress.

DATES: Comments must be received on or before February 23, 1984.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, NW., Room 620, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Alan R. Swendiman, General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: Pub. L. 98-166, which appropriates the Corporation's funding for 1984, sets new requirements for all denial of refunding proceedings involving 1984 funds. To a considerable extent, these requirements are compatible with the final rule 45 CFR Part 1625 published November 30, 1983 (48 FR 54196ff), but two provisions of Pub. L. 98-166 require further changes in the Corporation's denial of refunding procedures.

First, Pub. L. 98-166 requires that all denial of refunding proceedings be completed within 90 days of which 30 days are allowed for the recipient to appeal, 30 days for the hearing, and 30 days for the Corporation's final decision. Accordingly, the overall 90 day deadline is inserted into § 1625.1 and he recipient is given 30 days rather than 10 days to request review of a proposed denial of refunding.

A number of deadlines have been shortened to ensure that the Corporation can complete the proceedings within the new statutory limits. In § 1625.5, the Corporation has 5 rather than 7 days to notify the recipient of the name of the presiding officer and in § 1625.6, the President has 5 rather than 10 days to rule on any objection to the presiding officer. In § 1625.8, the hearing is required to begin at the earliest practical date, rather than no less than 20 days after the date of the notice to the recipient, and the presiding officer is given a maximum of 10 days after the hearing to make a recommended decision. In § 1625.11, the President is required to make a final decision within 10 days of receipt of a request for review of the recommended decision.

The second significiant change mandated by Pub. L. 98-166 is that the burden of proof is transferred wholly to the recipient. Accordingly, § 1625.9 is amended to incorporate the actual statutory language.

Finally, several changes in terminology, such as the use of "proposed denial" rather than "preliminary determination" in §1625.4, are adopted to conform more closely to the terminology of Pub. L. 98-166.

List of Subjects in 45 CFR Part 1625

Administrative practice and procedure, Legal services.

For the reasons set forth in the preamble, 45 CFR Part 1625 is proposed to be amended as follows:

PART 1625—[AMENDED]

1. The authority citation for Part 1625 is revised as follows:

Authority: Sec. 1006(b) (1) and (3), 1007(a) (1), (3) and (9), 1007(d), 1008(e), 10011, Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b) (1) and (3), 2996(f)(a) (1), (3), and (9), 2996f(d), 2996f(d), 2996g(e), 2996(j); Pub. L. 98-166, 97 Stat. 1071.

2. Section 1625.1 is revised to read as follows:

§ 1625.1 Purpose.

This part is intended to provide a full, fair, impartial, and flexible process for reaching a final determination within 90 days when there is reason to believe that refunding of a grant or contract should be denied. At the same time, this part seeks to avoid unnecessary and precipitous disruption in the delivery of legal assistance to eligible clients.

3. Section 1625.4 is revised to read as follows:

§ 1625.4 Proposed denial.

(a) When there is reason to believe that refunding should be denied, the Corporation shall serve a written notice of denial upon the recipient, which shall state the grounds for the proposed action, and shall identify, with reasonable specificity, any facts or documents relied upon as justification for that action.

(b) The written notice shall advise the recipient that it may, within 30 days of receipt thereof make written request for a review of the proposed denial in accordance with the procedures under this part.

(c) The written notice shall also advise the recipient of its right to receive interim funding, and to request termination funding under §§ 1625.14 and 16.

(d) If the recipient advises the Corporation it will not seek review, or if it fails to request review within the time prescribed in paragraph (b) of this section, the proposed denial shall become final.

§ 1625.5 [Amended]

4. In § 1625.5 the first line is amended by substituting "5 days" for "7 days" in line 1.

§ 1625.6 [Amended]

5. In § 1625.6 the first line of paragraph (c) is amended by substituting "5 days" for "10 days".

§ 1625.8 [Amended]

6. In § 1625.8 paragraph (a) is revised as follows:

(a) The hearing shall commence at the earliest practical date and shall be completed within 30 days of receipt of the recipient's request for review under § 1625.4(b).

* * * * *

7. Section 1625.9 is revised as follows:

§ 1625.9 Burden of Proof.

The recient shall have the burden of showing cause why the Corporation's proposed action to deny refunding should not be taken.

§ 1625.10 [Amended]

8. In § 1625.10 paragraph (a) is revised as follows:

(a) Within 10 days after conclusion of the hearing or after final submissions, if any, the presiding officer shall issue a written recommended decision:

(1) Granting refunding; or

(2) Granting refunding subject to any modification or condition that may appear necessary and appropriate on the basis of information disclosed at the hearing or adduced from the record; or

(3) Denying refunding.

* * * * *

§ 1625.11 [Amended]

9. In § 1625.11 paragraph (c) is revised as follows:

* * * * *

(c) Within 10 days of receipt of such request, the President shall adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1625.10(b).

* * * * *

§ 1625.12 [Amended]

10. In § 1625.12 paragraph (b) is revised as follows:

* * * * *

(b) Request in extension of time shall be considered in light of the overall objective that the procedures prescribed by this part shall be concluded within 90 days of the notice of denial.

* * * * *

Dated: January 19, 1984.

Alan R. Swendiman,

General Counsel.

[FR Doc. 84-1878 Filed 1-23-84; 8:45 am]

BILLING CODE 6820-35-M

Notices

Federal Register
Vol. 49, No. 16
Tuesday, January 24, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Sterile Fly Rearing Facility, Oahu, Hawaii; Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment for construction and operation of a sterile fruit fly rearing facility on Oahu, Hawaii. This 35,000 square foot building will be constructed on a 5 acre portion of the University of Hawaii Waimanalo Agricultural Research Station. This facility will be used as a standby rearing laboratory to provide sterile flies to the U.S. mainland in the event of a medfly outbreak. It also will be one component of a comprehensive program to eradicate fruit flies from the State of Hawaii, if such a program is undertaken.

On the basis of the assessment APHIS has determined that the proposed project will not cause any significant local, regional, or national impacts on the environment. Based upon this Finding of No Significant Impact (FONSI), it has been determined that the preparation and review of an Environmental Impact Statement (EIS) is not needed for this project.

Copies of this environmental assessment have been sent to the Environmental Protection Agency, appropriate State and local agencies, and other interested parties.

FOR FURTHER INFORMATION CONTACT: Copies of the environmental assessment are available upon request from Mr. Dennis Wilmeth, Environmental Protection Specialist, APHIS, ASD, Room 260, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, Area Code (301) 436–8775.

SUPPLEMENTARY INFORMATION: The environmental assessment indicates that no endangered or threatened species will be affected by the proposed project. The historic "Tai-Lee" irrigation ditch that bounds the site also will not be affected. Because the site is not located on a public road and dense vegetation surrounds it, the project will not be a visual intrusion into the rural character of the area.

The proposed project is consistent with State and county planning policies for the Waimanalo area. Operation of the facility will not create any significant noise levels, odors, or air pollution. Solid waste from the media used to feed and grow the flies will be used as animal and/or fish food. Utility and public services are adequate to support the facility. Traffic will increase when the facility is operational, but local roads have adequate capacity. The site is not located in a 100-year flood plain.

One and possibly two Cesium-137 irradiators will be used to sterilize fruit flies at the facility. These irradiators will be operated in strict compliance with Nuclear Regulatory Commission rules.

Implementation of the proposed project will not be initiated until 30 days after publication of this notice in the **Federal Register.**

Done at Washington, DC, this 13 day of January, 1984.

Bert W. Hawkins,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 84–1953 Filed 1–23–84; 8:45 am]
BILLING CODE 3410–34–M

Soil Conservation Service

Clay County Schools Land Critical and Drainage Area Treatment RC&D Measure Plan, West Virginia

AGENCY: Soil Concervation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines. (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Clay County Schools Critical Area Treatment and Land Drainage RC&D Measure, Clay County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505 telephone 304–291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns land critical and drainage area treatment. The planned works of improvement will be installed on three school sites scattered areound Clay County. Conservation practices include diversions, vegetative and lined waterways, subsurface drains, drop structures, rock riprap, fencing and seeding.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Rollin N. Swank,

State Conservationist.

January 16, 1984.

[FR Doc. 84-1893 Filed 1-23-84; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Announcement of Proposed Collection of Information Under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35)

Agency Clearance Officer From Whom a Copy of the Collection of Information and Supporting Documents Is Available: Robin A. Caldwell (202) 673-5922.

New

Title of the Collection of Information: War Air Service Program Questionnaire.

Agency Form Number: None.

How Often the Collection of Information Must Be Filed: One time basis. Who is Asked or Required to Report: Certificated and essential air service carriers.

Estimate of Number of Annual Responses: 220.

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 1,760.

Robin A. Caldwell,

Chief, Information Management Division, Office of Comptroller.

January 11, 1984.

[FR Doc. 84-1906 Filed 1-23-84; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended January 13, 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.

Date filed	Docket No.	Description
Jan. 9, 1984	41928	Eastern Air Lines, Inc., Miami International Airport, Miami, Florida 33148. Application of Eastern Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for amendment of its certificate of public convenience and necessity for Route 165 so as to authorize service between the terminal point Miami, Florida and the terminal point London, England. Conforming Applications, Motions to Modify Scope and Answers may be filed by February 6, 1984.
Jan. 10, 1984	41932	Transportes Aereos Bolivianos, c/o Michael Goldman, Verner, Liipfert, Gernhard and McPherson, Suite 1000, 1660 L Street, NW., Washington, D.C. 20036. Application of Transportes Aereos Bolivianos pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests renewal of its foreign air carrier permit, issued pursuant to Order 79-1-127, authorizing non-scheduled cargo service as follows: Between a point or points in Bolivia; the intermediate points Lima, Peru; Caracas, Venezuela; Panama City, Panama; and the co-terminal points Miami, Florida, and Houston, Texas. Additionally, T.A.B. seeks renewal of its authority, contained in its permit, to provide cargo charter trips in foreign air transportation. T.A.B. asks that its permit be renewed for a period of unlimited duration. Answers may be filed by February 7, 1984.
Jan. 11, 1984	41935	British Airways Board and British Airways PLC, c/o William C. Clarke, Barrett Smith Schapiro Simon & Armstrong, 26 Broadway, New York, New York 10004. Application of British Airways Board and British Airways PLC requests the Board to issue an order transferring the foreign air carrier permit of British Airways Board to British Airways Plc, effective April 1, 1984, and authorizing British Airways Plc to use the trade name "British Airways," together or in conjunction with the initials "BOAC". Answers may be filed by February 8, 1984.
Do	41937	Seagreen Air Transport, Limited, c/o David B. Ortman, 304 Capital Gallery East, 600 Maryland Avenue, SW Washington, D.C. 20024. Application of Seagreen Air Transport, Limited pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests renewal and amendment of its foreign air carrier permit, issued by Order 79-1-125 in Docket 25608. Seagreen also applies for renewal of its foreign air carrier permit, issued by Order 79-1-125 in Docket 31006. Answers may be filed by February 8, 1984.
Jan. 12, 1984	41425	Alaska Juneau Aeronautics, Inc. d.b.a. Wings of Alaska, c/o Robert N. Jacobsen, 1873 Shell Simmons Drive, Suite 119, Juneau, Alaska 99801. Application of Alaska Juneau Aeronautics, Inc. d.b.a. Wings of Alaska pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled interstate air transportation of persons, property and mail within the State of Alaska between Juneau and Hoonah, Excursion Inlet, Gustavus, Haines and Skagway. Answers may be filed by February 9, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-1909 Filed 1-23-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41478]

Michigan Peninsula Airways; Fitness Investigation; Reconvened Hearing

The hearing in this case commenced on January 10, 1984. At the request of the applicant the hearing was adjourned after the first day.

The hearing will reconvene at the Civil Aeronautics Board on January 30, 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 13, 1984.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 84-1910 Filed 1-23-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41035]

Dominion Intercontinental Airlines, Inc. Fitness Investigation; Hearing

Notice is hereby given that the hearing in the above-entitled proceeding will be resumed on February 2, 1984, at 9:30 a.m. (local time), Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C. January 17, 1984.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 84-1907 Filed 1-23-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Lawler, Matusky & Skelly Engineers; Modification No. 1 to Permit No. 377

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the Regulations Governing Endangered Species Permits (50 CFR Part 222), Scientific Research Permit No. 377 issued to Lawler, Matusky & Skelly Engineers, Pearl River, New York, on May 3, 1982 (47 FR 19730), is modified to extend the period of authorized taking for two years.

Accordingly, Section B-8 is deleted and replaced by: "8. This permit is valid with respect to the taking authorized herein until December 31, 1985."

This modification is effective on January 1, 1984.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: January 17, 1984.

Roland Finch,

Director, Office of Fisheries Management, F/M1 National Marine Fisheries Service.

[FR Doc. 84-1869 Filed 1-23-84; 8:45 am]

BILLING CODE 3510-22-M

J. M. Terhune; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Dr. J. M. Terhune (P333).

b. Address: Department of Biology, University of New Brunswick, Saint John, New Brunswick, Canada E2L-4L5.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Harbor seals (*Phoca vitulina*); *unspecified.*

4. Type of Take: Passive marking for long term population studies.

5. Location of Activity: St. Croix Islands and adjacent reefs Gulf of Maine.

6. Period of Activity: One year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: January 17, 1984.

Roland Finch,

Director, Office of Fisheries Management, F/MI National Marine Fisheries Service.

[FR Doc. 84-1870 Filed 1-23-83; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee has been scheduled as follows: Wednesday and Thursday, 14-15 March 1984, Rosslyn, VA.

The entire meeting, commencing at 0900 hours each day is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on SIGINT Support to Naval Operations.

Dated: January 19, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-1954 Filed 1-23-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army, Corps of Engineers

Intent to Prepare a Draft Site-Specific Environmental Impact Statement (EIS) for a Proposed Flood Control Project, Lake Darling, Souris River, North Dakota

AGENCY: U.S. Army Corps of Engineers, St. Paul District, DOD.

ACTION: Notice of Intent ot Prepare a Draft Environmental Impact Statement (EIS).

SUMMARY: The 1982 Energy and Water Development Act authorized the Corps of Engineers to raise Lake Darling by approximately 4 feet and to implement work on upstream and downstream flood control measures. Congress also directed the Corps to take no further action to construct the Burlington Dam until it expressly directs the Corps to do so. When Congress directs the Corps to take this action, the EIS and supplement for the Burlington Dam project will be completed and coordinated. Congress also directed the Corps of Engineers to expeditiously prepare and submit a

report on the mitigation needs related to Lake Darling.

Features considered to be part of the authorized project are a 4-foot raise of Lake Darling; levee improvements at Velva, Sawyer, and six subdivision areas between Burlington and Minot; flood protection measures at Renville County Park and McKinney Cemetery; relocation of roads and railroads affected by the lake raise; flood proofing, relocation, or acquisition of rural residences downstream of the dam; modification of U.S. Fish and Wildlife Service structures in the Upper Souris and J. Clark Salyer National Wildlife Refuges; mitigation measures; compensation to Canada for altered return flows; and a flood warning system for the Gassman Coulee near Minot.

The draft EIS on the proposed project will address the site-specific impacts of the Lake Darling Dam raise and the upstream and downstream flood control features other than the Velva levee feature. It will discuss impacts in more detail than the earlier Lake Darling programmatic EIS, and it will supplement data gaps identified in the programmatic EIS. The programmatic EIS, prepared under the "tiering" process discussed in 40 CFR 1502.20 and 1508.28, was the first protection of the environmental documentation for the Lake Darling project. It presented sufficient information regarding the general impacts of the Lake Darling-Souris River project as a whole so that a reasoned judgment could be made on the merits of the action at that stage of planning. A second EIS, a site-specific EIS for the flood control features at Velva, North Dakota, accompanied the programmatic EIS when it was distributed to the public. The Velva EIS discussed the site-specific impacts of the Velva levee feature. The site-specific Lake Darling EIS is the third EIS for the Lake Darling project.

Significant issues identified to date include carp control; effects on wildlife, vegetation, water quality, erosion, agricultural lands, recreational resources, and cultural resources; mitigation; land acquisition; transportation interruptions; and population displacements. The programmatic EIS discussed these issues generally while the Lake Darling site-specific EIS will examine them in depth. The mitigation report directed by Congress will also be part of the site-specific EIS.

The scoping process for the draft site-specific EIS will be initiated by letter to all concerned Federal, State, and local agencies; affected Indian tribes; and other interested private organizations an individuals. Anyone who has and interest in participating in the scoping process and the development of the EIS is invited to contact the St. Paul District, Corps of Engineers, as soon as possible. We hope to accomplish the scoping task by letter. Because of the geographical distances between interested parties, we believe that this is the most practical and efficient method. However, if interest is sufficient at the end of the scoping process, we will hold a meeting, after contacting all parties who have expressed an interest in the project.

Our review of the project will comply with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations (40 CFR 1500–1508), and applicable Corps of Engineers and other regulations and guidance.

The estimated date for public availability of the Lake Darling site-specific EIS is July 1984.

Questions concerning the proposed action and draft EIS can be directed to: Robbin Blackman, Chief, Environmental Analysis Section, Environmental Resources Branch, Planning Division, 1135 U.S. Post Office and Custom House, St. Paul, Minnesota 55101.

Dated: January 10, 1984.

Edward G. Rapp,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84–1892 Filed 1–23–84; 8:45 am]

BILLING CODE 3710–CY–M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee, Pacific Basin Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Pacific Basin Task Force will meet on February 14–16, 1984, at the following places: February 14 at Rand Corporation, 1700 Main Street, Santa Monica, California; February 15 at CINCPAC, Camp H.M. Smith, Hawaii; and February 16 at CINCPACFLT, Pearl Harbor, Hawaii. The meetings will be from 9 a.m. to 5 p.m. each day. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions of key issues related to United States national security interests and naval strategies in the Pacific and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Telephone number (703) 756–1205.

Dated: January 18, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 84–1830 Filed 1–23–84; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Diffusion Network Program; Application Notice Establishing Closing Dates for Fiscal Year 1984

AGENCY: Office of Educational Research and Improvement, Department of Education.

ACTION: Application notice establishing closing dates for transmittal of certain fiscal year 1984 applications for the National Diffusion Network program.

SUMMARY: The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and closing dates for transmittal of applications for new State Facilitator grants and non-competing continuing Developer Demonstrator grants under the National Diffusion Network program.

Organization of Notice

This notice contains two parts. Part I includes the list of application announcements and closing dates covered by this notice. Part II consists of the individual application announcements for each program.

The Secretary has published a Notice of Proposed Rulemaking (NPRM) for the National Diffusion Network program in the Federal Register at 48 FR 57090 on December 27, 1983. Applicants are to prepare their applications in accordance with the NPRM. Following the expiration of a forty-five (45) day comment period on the proposed regulations, the Secretary will publish final regulations to govern awards for fiscal year 1984. If there are any substantive changes made when the

final regulations are published, applicants will be given the opportunity to amend or resubmit their applications.

Intergovernmental Review

On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why not; and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review:

Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Georgia
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming
Virgin Islands
District of Columbia
Puerto Rico
Northern Mariana Islands

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. However, for this program, if the specific States in which developer Demonstrator applicants may work have not been determined, this requirement need not be accomplished now. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by April 1, 1984 for Developer Demonstrator Projects—Continuing (84.073B); and May 8, 1984 for State Facilitator Projects—New (84.073C) to the following address:

The Secretary, U.S. Department of Education, Room 4181, (84.073B or 84.073C) 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone Number (202) 245-7913. (Proof of mailing will be determined on the same basis as applications.)

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

Applicants should note specifically the instructions for the transmittal of applications included below:

Transmittal of applications: Applications for new State Facilitator projects must be mailed or hand delivered on or before March 9, 1984. Each late applicant for a new State Facilitator grant will be notified that its application will not be considered.

Applications for noncompeting continuing Developer Demonstrator projects should be mailed or hand delivered by March 1, 1984. If a noncompeting continuing Developer Demonstrator application is late, the Department of Education may lack sufficient time to review it with other noncompeting continuing applications. If this is the case, the Secretary may decline to accept it.

Applications delivered by mail: Applications must be addressed to the Department of Education, Application Control Center, Attention: (insert appropriate CFDA Number), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: Hand-delivered applications must be taken to the Department of Education, Application Control Center (Room 5673, Regional Office Building 3), 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new State Facilitator grant that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Part I—Programs and Closing Date

CFDA No.	Program	Closing date
84.073B	Developer demonstrator projects—continuing.	Dec. 1, 1984.
84.073C	State facilitator projects—new.	Dec. 9, 1984.

Part II—Application Notices

National Diffusion Network Program

Applications are invited for new State Facilitator and noncompeting continuing Developer Demonstrator projects under the National Diffusion Network program.

Authority for this program is contained in Section 583 of the Education Consolidation and Improvement Act of 1981 (Pub. L. 97–35), (20 U.S.C. 3851).

The purpose of the program is to promote the widespread installation across the nation of rigorously evaluated, exemplary educational programs.

The program issues awards to State educational agencies, local educational agencies, institutions of higher education, and other nonprofit institutions or agencies.

Available Funds: The estimated amount available for new and continuation awards included in this announcement will be $7,665,000. This estimate does not bind the Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

84.073B—Continuing Developer Demonstrator Projects

Closing Date: March 1, 1984.

Program Information: Developer Demonstrator projects disseminate a specific exemplary educational program nationwide. Only Developer Demonstrator projects funded in FY 1982 and 1983 are eligible for funding. No funds are available for program development.

Available Funds: The average grant is expected to be about $57,000.

Application forms: Application forms will be sent to eligible applicants by the Department of Education.

84.,073C—New State Facilitator Projects

Closing Date: March 9, 1984.

Program Information: State Facilitator projects disseminate a wide variety of exemplary educational programs within the State served. Only one award will be made in each State, the District of Columbia, Puerto Rico and the Virgin Islands. Projects should be designed for four year periods.

Available Funds: Awards will be based primarily on student population in each State. The average award is expected to be about $85,000.

Application Forms: Application forms will be available on January 30, 1984 and may be obtained by writing to the National Diffusion Network, U.S. Department of Education, 400 Maryland Avenue, SW., Room 613 Brown Building, Washington, D.C. 20202. Applications must be prepared and submitted in accordance with the regulations, instructions and forms included in the application package. The Secretary urges applicants not to submit information that is not requested. (Approved OMB #1850–0066, Expiration Date October, 1986.

Applicable Regulations: Regulations applicable to these programs include the following:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78 and 79.

(b) Regulations governing the National Diffusion Network Program, as proposed for codification in 34 CFR Part 796, published in the **Federal Register** at 48 FR 57090 on December 27, 1983, when published as final regulations, will govern awards for fiscal year 1984.

Applicants should prepare their applications based on the proposed rules. If there are any substantive changes when the final regulations are published, applicants will be given the opportunity to amend or resubmit their applications.

Further Information: Ms. Lois N. Weinberg, Education Program Specialist, National Diffusion Network, U.S. Department of Education, 400 Maryland Avenue, SW., Room 613 Brown Building, Washington, D.C. 20202. Telephone: (202) 653–7006.

(Catalog of Federal Domestic Assistance Number 84.073, National Diffusion Network Program)

Dated: January 20, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84–2022 Filed 1–23–84; 8:45 am]

BILLING CODE 4000–01

DEPARTMENT OF ENERGY

Contract Award; Authur Anderson and Co.

AGENCY: Department of Energy.

ACTION: Notice of contract award.

SUMMARY: In accordance with Department of Energy (DOE) Procurement Regulations relating to organizational conflicts of interest, 41 CFR 9–1.5409, published in the **Federal Register** on January 11, 1979 (44 FR 2556), DOE gives public notice that a contract had been awarded and subsequent information by the contractor to DOE has revealed the existence of a potential organizational conflict of interest. Upon careful analysis of the subsequent information, DOE will continue to retain the contractor for performance of the full statement of work because this is determined to be in the best interest of the United States.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Croxton, Office of Inspector General, Room 5A–179, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–1945.

Findings, Mitigation and Determination

Under section 19 of the Federal Nonnuclear Energy Research and Development Act, Pub. L. 93–577, and section 33 of the Federal Energy Act of 1974, Pub. L. 93–275, the Department of Energy is subject to strict requirements intended to avoid organizational conflicts of interest in the award and performance of contracts for technical and management support services. An organizational conflict of interest (OCI) is considered to exist when a contractor "has past, present, or currently planned interests, that, either directly or indirectly, through a client relationship, relate to the work to be performed under a Department contract and which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage." DOE Procurement Regulations, 41 CFR 9–1.5403. Pursuant to these statutory provisions, a contract may not be awarded unless the Secretary or his designee has made a determination that it is unlikely that an OCI would exist, or that a conflict has been avoided after inclusion of appropriate conditions in the contract. If an OCI is determined to exist and cannot be avoided, the contract may be awarded only if the Secretary or his designee determines that award would be in the best interest of the United States and includes appropriate provisions in the contract to mitigate the OCI. If, after award, a possible OCI is subsequently identified, the Secretary or his designee must determine whether or not it would be in the best interests of the Government to terminate the contract.

Based on the following findings and determination, the existing contract described below will continue to remain in full force, after taking into account the existence of an Organizational Conflict of Interest, because the procurement is determined to be in the best interests of the United States, pursuant to the authority of Department of Energy Procurement Regulation 41 CFR 9–1.5410. Any comments should be provided within 5 days after publication of this notice.

Findings

1. The Department of Energy (DOE) accomplishes a major part of its mission through contractors that operate Government-owned facilities under long term cost-type contracts. These

contractors, usually referred to as integrated contractors, account for and report on DOE funds, property, and cost of operations in accordance with DOE accounting and reporting systems and procedures. For Fiscal Year 1982, the combined obligations of the 45 integrated contractors was $7.9 billion.

The DOE Office of Inspector General is responsible for performing financial and compliance audits of these integrated contractors. Staffing limitations prevent the Office of Inspector General staff from performing financial statement examinations at many of the integrated contractors. To fulfill its audit oversight responsibility, the Inspector General sought to supplement audit coverage by engaging independent public accountants (IPA's) to perform financial and compliance audits of several integrated contractors.

2. Therefore, a competitive procurement (DE–RP01–831G00031, Financial and Compliance Audit Coverage on Selected Contractors) was initiated in June 1983 to solicit IPA assistance. Offerors were requested to propose on ten groupings (designated A through J) of integrated contractors. Each group contained two integrated contractors, for a total of 20 of the Department's 45 integrated contractors. A separate contract would be awarded in September 1983 for each of the ten groupings.

Under the DOE contracts, IPA's shall perform a financial and compliance audit (subject to scope limitations established by the IG) of the financial statements (balance sheet, related statement of operations, and Voucher Accounting for Net Expenditures Accrued) for fiscal years ending September 30, 1983 and/or 1982 in accordance with applicable standards prescribed in the General Accounting Office *Standards for Audit of Governmental Organizations, Program, Activities and Functions—1981 Revision* (GAO Standards). The compliance examination is directed toward determining whether the integrated contractor has complied with the terms of the contract between DOE and the integrated contractor.

3. Based on a comprehensive evaluation of its technical proposal, Arthur Andersen & Co. (AA) had been recognized as possessing the required auditing, staffing and background experience for performing financial and compliance audits of integrated contractors. In addition, AA proposed the lowest overall cost for the two integrated contractors contained in Group G:

Stone & Webster Engineering Co.
The Rust Engineering Co.

4. AA submitted the necessary Organizational Conflict of Interest statement as part of the required proposal package. The AA statement certified that neither integrated contractor was a client and that no organizational conflict of interest existed regarding the proposed work.

5. To aid in the information gathering process, oral discussions were held with all proposers who had submitted technically acceptable proposals. Questions were posed concerning the nature of their business and how various aspects (e.g., organizational, financial, past or current contracts) would contribute to a possible organizational conflict of interest.

Responses in the orals were followed by best and final offer submissions from the contractors. Analyses of this information and comparisons with the work to be performed under the contract were made.

6. Based on the technical and cost evaluations, the disclosure statement and subsequent information obtained in the orals, the Department of Energy awarded a fixed-price contract, DE–AC01–831G00031, dated September 27, 1983 to AA for audits of the two integrated contractors contained in Group G.

7. By letter of October 3, 1983, AA notified DOE that while performing normal internal processing procedures for new clients they discovered that they had made an error in their initial conflict of interest disclosure statement. That is, the AA personnel who had performed the initial review for potential conflicts failed to discover that the Rust Engineering Company (Rust) was a subsidiary of Wheelabrator-Frye, Inc. (Wheelabrator). In accordance with 41 CFR 9.1.5405, AA now states that they are currently engaged and have been engaged in the past, as the independent external auditor of the financial statements of Rust. The latter statements are consolidated with the financial statements of its parent, Wheelabrator, which is also a client of AA. AA represents to DOE that their relationship with Rust and Wheelabrator will not impact their performance of the Rust audit.

8. Based on an evaluation of the facts contained in AA's second disclosure statement and subsequent written and verbal information obtained from AA, the Department of Energy believes that there is a minor conflict of interest under 41 CFR 9–1.5410 although AA meets the independence standards set by the GAO and AICPA as described below. In performing an audit under the broad requirements contemplated by this procurement, particularly the heavy emphasis on contractual compliance, AA may find, and be expected to pursue and report to the IG, items of noncompliance with the terms of the DOE contract. Any questioned items (such as questioned costs) would be of potential detriment to the parent organization (Wheelabrator) if subsequently sustained by the DOE contracting officer.

9. As noted above, however, AA meets the high standards of independence that are set by the American Institute of CPA's (AICPA). The AICPA Code of Professional Ethics requires IPA's to be independent when expressing an opinion of financial statements, notwithstanding the fact that the IPA is remunerated by the auditee. In fact, independence in such audits is the very cornerstone of the profession.

GAO Standards state that "public accountants will be considered independent if they are independent under the AICPA Code of Professional Ethics." Additionally, GAO Standards consider three general classes of impairments to independence: personal, external and organizational. None of these conditions was considered to exist so as to affect AA's ability to do their work and report their findings impartially.

In view of the above, the Department of Energy believes that the national interest would not be served by termination of the Arthur Andersen & Co. contract award in accordance with 41 CFR 9–1.5410 and subsequent award to another IPA at a potentially higher price.

Mitigation

While the Department believes that the degree of actual conflict of interest is minor, the contract had nevertheless, been drafted in such a way that anomalies in performance may be detected. The contract calls for:

(a) An advance review of AA's compliance audit plan by the Office of Inspector General;

(b) Submission of monthly progress reports by AA to the Office of Inspector General;

(c) Attendance by representatives of the Office of Inspector General at formal conferences between AA and the auditee;

(d) Delivery of audit workpapers by AA. These workpapers will be reviewed by the Office of Inspector General;

(e) Inclusion in the contract of the organizational conflict of interest

special clause entitled "Organizational Conflicts of Interest."

Determination

In the light of the above Findings and Mitigations and in accordance with 41 CFR 9-1.5410, continuation of the existing contract award is considered to be in the best interest of the United States.

Dated: January 17, 1984.

James R. Richards,

Inspector General.

[FR Doc. 84-1875 Filed 1-23-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee.

Date and Time: 9:00 a.m.—5:00 a.m., February 9-10, 1984.

Location: GA Technologies, Inc., Building 15, Conference Room 206 E, San Diego, California.

Contact: Rosalie Weller, U.S. Department of Energy, Office of Fusion Energy, Mail Stop G-226, ER-50, Washington, D.C. 20545, Telephone Number: (301)-353-3347.

Purpose of the Committee: To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Agenda Outline

1. DOE Response to MFAC Findings and Recommendations in the First Six Charge Areas—Trivelpiece, Clarke.
2. Summary of ERAB Fusion Panel Recommendations—Roddis.
3. Fusion Program Strategy and Budgets—Trivelpiece, Clarke.
4. TFTR and JET Status and Plans—Furth, Wuster.
5. MFTF-B Status and Plans—Fowler.
6. TFCX Conceptual Design Status and Plans—Furth, Schmidt.
7. Role of Industry in Fusion: Review of Charge to Panel—Davidson.

Interim Report on Panel #7 Activities—Forsen.

8. Equity in International Cooperation Programs—Clarke.
9. New Charge Areas to MFAC—Clarke, Davidson.
10. MFAC Discussion.
11. Other Business.
12. Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Rosalie Weller at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available approximately 30 days following the meeting.

Issued at Washington, D.C., on January 18, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84-1874 Filed 1-23-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP84-1-001]

ANR Pipeline Company; Tariff Filing

January 19, 1984.

Take notice that on January 12, 1984, ANR Pipeline Company ("ANR"), formerly Michigan Wisconsin Pipe Line Company, tendered for filing with the Federal Energy Regulatory Commission ("Commission") First Revised Sheet Nos. 19g, 19h and 19i, which comprise Rate Schedule EUT-1, to Original Volume No. 1 ot its F.E.R.C. Gas Tariff.

Rate Schedule EUT-1 sets forth the terms pursuant to which ANR will perform transportation pursuant to § 157.209 of the Commission's Regulations, under transportation agreements with end users which provide for rates which do not include an "Added Incentive Charge" as authorized by § 175.209(f) of the Commission's Regulations.

ANR has requested that Rate Schedule EUT-1 be accepted for filing and become effective on August 5, 1983, pursuant to Commission Order Nos. 234-B and 319, pertaining to Docket Nos. RM81-19 and RM81-29, respectively, which became effective on August 5, 1983.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before 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 part wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-1911 Filed 1-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-102-000]

Bethlehem Steel Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

January 20, 1984.

On December 13, 1983, Bethlehem Steel Corporation of 8th and Eaton Avenues, Bethlehem, Pennsylvania 18016, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations.

The topping-cycle cogeneration facility consists of two topping-cycle generators: An extraction turbine generator rated 25,000 kW and a topping turbine generator rated 9,275 kW. Both generators are driven by 850 psig, 850°F steam which results from the burning of coke oven gas, a by-product of production of coke in the coke oven batteries, supplemented by approximately 11% natural gas. The steam output is used for process requirements at the Lackawanna Plant. The facility is located at Bethlehem's Lackawanna Plant in Erie County, New York.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such

petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-1912 Filed 1-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-201-000]

Cleveland Electric Illuminating Co.; Filing

January 19, 1984.

The filing Company submits the following:

Take notice that on January 10, 1984, Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, provided for transmission by CEI of approximately 40 MW of power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI requests an effective date of December 14, 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, 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 February 3, 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. 84-1914 Filed 1-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-203-000]

Cleveland Electric Illuminating Co.; Filing

January 20, 1984.

The filing Company submits the following:

Take notice that on January 10, 1984, Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 45 MW of power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI requests an effective date of December 7, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 6, 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. 84-1916 Filed 1-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-202-000]

Cleveland Electric Illuminating Co.; Filing

January 20, 1984.

The filing Company submits the following:

Take notice that on January 10, 1984, Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 50 MW of power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI requests an effective date of December 21, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 6, 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. 84-1915 Filed 1-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7406-000]

Cook Industries, Inc.; Notice Suspending 120-Day Period for Action on Small Hydro Exemption

January 17, 1984.

Cook Industries, Inc. has filed an application for exemption for the proposed Coltrane Mill Hydroelectric Project No. 7406, to be located on Deep River in Randolph County, North Carolina. The application was filed pursuant to section 408 of the Energy Security Act of 1980 and § 4.101 *et seq.* of the Commission's regulations.

Additional time is required in order to ensure that all issues in this proceeding have been considered. Accordingly, the 120-day period for Commission action is suspended pursuant to § 4.105(b)(5)(iv).

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-1917 Filed 1-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA84-1-000]

Public Service Company of New Mexico; Proceeding Under Part 41 of the Commission's Regulations

January 19, 1984.

Take notice that on November 17, 1983, Public Service Company of New Mexico (PNM) filed a letter in response

to a letter order of the Commission issued on October 4, 1983. In the October 4 letter order, the Commission noted PMN's disagreement with respect to Correcting Entry No. 7 and part of Compliance Exception No. 4 of the Commission staff's audit of the company's books and records. The disputes involve (1) PNM's accounting for amounts received from Tucson Electric Power Company related to the San Juan Electric Generating Unit No. 2, and (2) classification of social and service club dues. In the November 17 letter, PNM stated that it consents to the disposition of the above issues in accordance with the shortened procedures provided for under Part 41 of the Commission's regulations.

Therefore, any interested party, including the Commission staff, may file a brief as prescribed in sections 41.3 through 41.5 of the Commission's regulations. A brief may be accompanied by a notice of intervention in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The following procedural schedule is established:

(1) Initial briefs and notices of intervention shall be due no later than 30 days after the date of publication of this notice in the Federal Register; and

(2) Reply briefs shall be due no later than 20 days thereafter.

All briefs and notices of intervention must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-1918 Filed 1-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-217-004]

Transcontinental Gas Pipe Line Corporation; Proposed Change in FERC Gas Tariff

January 19, 1984.

Take notice that on January 13, 1984, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2: First Revised Sheet Nos. 2219 and 2231.

Transco states that subject filing reflects a partial revision of its Rate Schedule X-226, which is a transportation agreement with United Gas Pipe Line Company (United), dated December 28, 1979, as amended July 15, 1982, and initially authorized by the Commission in a certificate issued in Transco, Docket No. CP80-217 on July 24, 1980. In the amendatory agreement dated July 15, 1982, Transco and United agreed to revise their transportation arrangement to reduce the minimum allowable heating value of gas delivered to Transco at High Island Block 154 from 1,000 to 950 Btu's. Transco redelivers equivalent quantities to United at Starks, Calcasieu Parish, Louisiana or Inez, Victoria County, Texas. A copy of the instant filing has been served upon United.

The tariff sheets are proposed to become effective July 15, 1982.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 27, 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-1919 Filed 1-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7622-000]

WP, Inc.; Notice Granting Late Intervention

January 20, 1984.

An untimely motion to intervene has been filed by the following petitioner: Point No Point Treaty Council.

This motion has been filed with respect to the application set forth below:

Snow Creek
Project No. 7622-000

The petitioner has legitimate interests under the law which are not adequately represented by other parties. It appears to be in the public interest to allow the petitioner to appear in this proceeding.

Pursuant to § 375.302 of the Commission's regulations, 18 CFR 375/302 (1983), the movant is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Federal Power Act, 16 U.S.C. 791a-825r. Participation of the intervenor shall be limited to matters set forth in its motion to intervene. The admission of the intervenor shall not be construed as recognition by the Commission that it might be aggrieved by any order entered in this proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-1922 Filed 1-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7640-000]

WP, Inc.; Notice Granting Late Intervention

January 20, 1984.

An untimely motion to internene has been filed by the following petitioner: National Marine Fisheries Service.

This motion has been filed with respect to the application set forth below:

French Cabin Creek
Project No. 7640-000

The petitioner has legitimate interests under the law which are not adequately represented by other parties. It appears to be in the public interest to allow the petitioner to appear in this proceeding.

Pursuant to §375.302 of the Commission's regulations, 18 CFR 375.302 (1983), the movant is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Federal Power Act, 16 U.S.C. 791a-825r. Participation of the intervenor shall be limited to matter set forth in its motion to intervene. The admission of the intervenor shall not be construed as recognition by the Commission that it might be aggrieved by any order entered in this proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-1921 Filed 1-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-82-000]

Capco Financial Services Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

January 20, 1984.

On December 6, 1983, Capco Financial Services Inc. of 880 Johnson Ferry Road N.E., Suite 330, Atlanta, Georgia, 30342, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations.

The wind facility is located at Edom Hills, San Gorgonio Pass, Riverside County, California. The facility will have 11 wind turbine generators each

rated 185 kilowatts resulting in a power production capacity of 2 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-1913 Filed 1-23-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $348,614.19 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving C. K. Smith & Company, Inc. brought by the DOE's Office of Special Counsel.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0172.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order relates to a consent order entered into by C. K. Smith & Company, Inc. 44 FR 39241 (July 5, 1979).

The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Smith pursuant to the consent order. The DOE has tentatively decided that Applications for Refund should be accepted from firms and individuals that purchased No. 2 heating oil from Smith during the period November 2, 1973 through February 28, 1975. The Proposed Decision and Order provides that in order to recieve a portion of the settlement funds, a purchaser must furnish the DOE with evidence that it was injured by the allegedly unlawful prices for No. 2 heating oil charged by Smith. This evidence should include specific documentation concerning the date, place, price, and volume of product purchased, indicate whether the increased costs were absorbed by the claimant or passed through to other purchasers, and state the extent of any injury alleged to have been suffered. According to the Proposed Decision and Order, the amount of the refund will generally be a pro rata share of the $348,614.19 fund made available by Smith.

The Proposed Decision points out that the Smith consent order provided that the firm was to make direct refunds or provide credit memoranda to eleven named customers. The Proposed Order further states that the Smith audit file does not indicate whether Smith effected these refunds. Consequently, these named customers may apply for refunds in this proceeding if they did not receive the appropriate refund from Smith as provided for in the Smith consent order. These customers are set forth in Appendix I of the Proposed Decision and Order.

The Proposed Decision also indicates that exhibits to a Proposed Remedial Order issued to Smith identified several other customers who were allegedly overcharged by the firm, but who were not specifically granted refunds pursuant to the consent order. Consequently, the Proposed Decision provides that these customers may also apply for refunds. These customers are identified in Appendix II to the Proposed Decision and Order.

To receive refunds, the Smith customers identified in the Appendices to the Proposed Order will be required to state that they purchased No. 2 heating oil from Smith during the audit period, to indicate the volumes of product purchased from Smith and to state that they are entitled to receive refunds in the amount indicated. Until a final Decision and Order is issued, no claims for refund can be accepted. Applications for Refund therefore should not be filed at this time. Appropriate public notice, including notice published in the **Federal Register**, will be given when the submission of claims is authorized. No less than 90 days from publication of such notice in the **Federal Register** will be provided for the filing of claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to sumbit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: January 17, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

November 4, 1983.

Special Refund Procedures

Name of Petitioner: C. K. Smith & Company, Inc.
Date of Filing: October 13, 1983
Case Number: HEF-0172

Under the procedural regulations of the Department of Energy, the Office of Special Counsel (OSC) of the Economic Regulatory Administration may request the Office of Hearings and Appeals to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. See 10 CFR, Part 205, Subpart V.

In accordance with these regulatory provisions, the OSC filed a Petition for the Implementation of Special Refund Proceedings in connection with a consent order entered into with C. K. Smith & Company, Inc. (Smith). Smith is a "reseller-retailer" of No. 2 heating oil as that term was defined in 10 CFR 212.31 and 6 CFR 150.352. An audit of Smith's records revealed possible pricing violations with respect to the

firm's sales of that product during the period November 2, 1973 through February 28, 1975. On May 25, 1978 a Proposed Remedial Order (PRO) was issued to Smith in connection with these alleged violations. In order to settle all claims and disputes between Smith and the DOE regarding Smith's sales of No. 2 heating oil the audit during period, Smith and the DOE entered into a consent order on May 30, 1979, in which Smith agreed to pay $348,614.19 to the DOE. Notice of the consent order was published in the Federal Register. 44 FR 39241 (July 5, 1979).

Jurisdiction and Authority To Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR, Part 205, Subpart V. The Subpart V process is intended to be used in situations where the DOE is unable to readily identify persons who are entitled to refunds or unable to readily ascertain the amounts that such persons are entitled to receive as a result of enforcement proceedings. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement,* 9 DOE ¶82,553 (1983); *Office of Enforcement,* 9 DOE ¶82,508 (1981); *Office of Enforcement,* 8 DOE ¶82,597 (1981).

After reviewing the record developed in the Smith case, we have concluded that the implementation of a Subpart V proceeding is appropriate in this instance because there is a significant degree of difficulty in identifying and locating most of the persons who were injured by the alleged Smith overcharges. Further, as a result of decontrol of petroleum products, price rollbacks are no longer an effective means of refunding money to purchasers who were overcharged in the past. See Exec. Order No. 12287, 46 FR 9909 (1981).

Proposed Refund Procedures

In so far as possible the $348,000 consent order fund should be distributed to Smith customers who satisfactorily demonstrate that they have been adversely affected by the alleged Smith overcharges during the relevant period. To the extent that resellers of Smith product can establish that they absorbed the alleged overcharges rather than pass them on to their customers, they will be entitled to receive a portion of the consent order funds. In order to qualify for a refund, these resellers will be required to demonstrate that during the period covered by the consent order they would have kept their prices for petroleum products or goods and services at the same level had the alleged overcharges not occurred. While there are a variety of means by which a claimant could make this showing, a reseller should generally demonstrate that at the time it purchased the No. 2 heating oil from Smith, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, the reseller must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.

With respect to purchasers who are ultimate consumers of Smith product, we believe that the above showing should not be necessary in order for a customer to qualify for a refund. Customers in this group might include government entities, businesses and individuals that purchased Smith product to heat their residences. In order to establish a claim, this type of purchaser need only demonstrate that it purchased a specific quantity of No. 2 heating oil which was sold by Smith during the relevant time period.

Furthermore, the type of showing referred to above may also be too complicated and burdensome for resellers which purchased relatively small amounts of No. 2 heating oil from Smith. For example, such firms may lack the records necessary to prove that they did not pass on the alleged Smith overcharges to their own customers. Therefore, any firm claiming a refund based on average purchases of less than 50,000 gallons of No. 2 heating oil per month or less than 600,000 gallons per year from Smith need not make a detailed showing of injury. Such applicants will only be required to submit proof of the amount of No. 2 heating oil purchased from Smith during the consent order period. See *Office of Enforcement,* 8 DOE ¶82,597 (1981).

Calculation of Refund Amounts

We must further determine the proper method for dividing the Smith funds among successful refund applicants. The size of the available fund is likely to be less than the amount needed to make full restitution to successful claimants in this proceeding. We have therefore decided to generally follow the volumetric approach adopted in *Office of Special Counsel,* 9 DOE ¶82,545 (1982). Such an approach will permit each successful claimant to receive a pro rata share of the total available fund. The Smith refund pool will therefore be divided as follows. We will multiply the number of gallons of Smith product purchased by a qualified applicant by a factor using the total amount of the consent order fund ($348,614.19) as the numerator and using Smith's total sales in gallons of No. 2 heating oil during the consent order period (15,876,925.3) as the denominator. Thus, the successful applicant's refund share will generally be equal to the number of gallons of No. 2 heating oil it purchased from Smith, multiplied by $.02196/gallon ($348,614.19 ÷ 15,876,925.3).

In the May 30, 1979 consent order accompanying the instant Application, the OSC identified 11 customers who were allegedly overcharged by Smith during the consent order period. The consent order stated that Smith was to provide refunds to those customers by cash or credit memorandum. These customers, and the refund amounts as indicated in the Smith consent order, are set forth in Appendix I to this Decision. The refund to be returned to each of these customers is approximately 55 percent of the total violation alleged in a Proposed Remedial Order (PRO) issued to Smith on May 25, 1978. That 55 percent share is approximately equal to the amount of the Smith refund ($348,614.19) divided by the total violation alleged in the Smith PRO ($661,697.59).

However, the Smith audit file does not indicate whether the firm actually, effected any of the refunds to these customers. Consequently, any of these customers which has not received a refund as set forth in the consent order may apply for a refund in this Subpart V proceeding. These customers will be required to confirm that they purchased No. 2 heating oil from Smith during the consent order period, that they did not receive a refund from Smith as set forth in the consent order, and that they are otherwise entitled to receive a refund in the amount set forth in the consent order. This confirmation should be submitted after the issuance of a final Decision and Order in this proceeding.

Furthermore, Exhibit A attached to the Smith PRO specifically identifies several additional Smith customers that were allegedly overcharged during the audit period and the dollar amounts of the alleged overcharges. Since these customers were not granted refunds in the Smith consent order, we will also consider granting these specifically-named customers a refund equal to 55 percent of the total amount of the alleged overcharges set forth in Exhibit

A to the PRO. The names of all Smith customers identified in that Exhibit are set forth in Appendix II to this Proposed Decision and Order. That Appendix also indicates the amounts of the overcharges alleged in the PRO. In order to receive a refund, customers named in Appendix II, who were not granted a refund pursuant to the Smith consent order, will be required to confirm that they purchased No. 2 heating oil from Smith during the relevant period and indicate the volumes purchased from Smith. This information should be submitted after issuance of a final Decision and Order in this proceeding. These customers may then be entitled to receive a refund equal to 55 percent of the amount listed in Appendix II. Finally, the refund of any other Smith customer that is able to establish an injury in a specific dollar amount will not necessarily be limited to the volumetric refund method described above. We will consider granting such a customer a refund equal to 55 percent of the amount of the overcharge alleged in the PRO.

We note, however, that Smith employees, officers and stockholders are listed among the allegedly overcharged customers in Appendix II. In view of the fact that the Smith settlement amount ($348,614.19) is approximately 55 percent of the total violation alleged in the Proposed Remedial Order issued to Smith ($661,697.59), it is likely that those individuals retained some of the benefits of the alleged Smith overcharges. We therefore see no basis for granting these individuals any refunds in this proceeding. Consequently, any refund applicant in this proceeding will further be required to state that it was not a Smith employee, officer, stockholder, affiliate or subsidiary during the November 2, 1973 through February 28, 1975 audit period.

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order in this proceeding. Applicants not specifically named in Appendix I or II to this Decision and Order will be requested to provide all relevant information necessary to establish a claim, including specific documentation concerning the date, place, price, and volume of product purchased, the retention of increased costs, and the extent of any injury alleged. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the Smith consent order, we intend to widely publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register**, notice may be provided in publications in the area in which Smith marketed No. 2 heating oil during the period covered by the consent order. An effort may also be made to obtain a list of the names and addresses of affected customers from Smith. We will consider at a future date the appropriate disposition of any funds remaining after all successful claimants have been paid.

It is therefore ordered that: The $348,614.19 refund amount supplied by C. K. Smith & Company, Inc. will be distributed in accordance with the foregoing determination.

Appendix I

CUSTOMERS NAMED IN C. K. SMITH CONSENT ORDER

Customers	Refund amount
Nellie Bernstein, 28 William Street, Worcester, Massachusetts 01609	$1,543.60
Worcester City Institution, Worcester City Hall, 459 Main Street, Worcester, Massachusetts 01608	4,198.56
Worcester Country Club, 2 Rice Street, Worcester, Massachusetts 01604	67.82
Paul Caine, 1194 Main Street, Worcester, Massachusetts 01603	108.30
Boylston School District, Main Street, Boylston, Massachusetts 01505	36.91
John Barone, Executive Director, Worcester Housing Authority, 40 Belmont Street, Worcester, Massachusetts 01605	5,822.95
John Linde, 150 B Worcester Street, North Grafton, Massachusetts 01526	5.27
Mr. & Mrs. Gross (no address availeble)	116.40
Paul S. Agerholm, 36 Dean Street, Worcester, Massachusetts 01609	56.96
Town of Westboro, Town Hall, Westborough, Massachusetts 01581	42.17
Superintendent of Schools (no address availeble)	86.87
Total	12,085.81

Appendix II

ALLEGED OVERCHARGES NOV. 2, 1973 THROUGH FEB. 28, 1975 AS SET FORTH IN C. K. SMITH PROPOSED REMEDIAL ORDER

Customer	Alleged overcharge
Regular Retail	$208,630.12
Smith employees	1,445.20
Smith officers and stockholders	444.31
Bernstein	2,806.55
Worcester City Inst.	7,633.75
Small comm. accts.	1,262.73
Worcester Country Club	123.30
Paul Caine	196.91
Boylston School Dept.	67.10
Worcester Housing Auth.	10,587.19
John Linde	9.58
Other comm. accts.	1,323.21
Westborough State Hosp.	0
Mr. and Mrs. Gross	211.64
Paul S. Agerholm	103.56
Town of Westboro	76.68
Supt. of Schools	157.94
Schussler Rest Home	69.83
Buckley & Scott #1	2,602.32
Buckley & Scott #2	290.01
Buckley & Scott #3	387.34
Buckley & Scott #4	963.20
Buckley & Scott #5	0
Code 12 (wholesale) consumers	237,908.57
Code 12 other dealers	184,396.25
Total violation alleged	661,697.59

[FR Doc. 84-1873 Filed 1-23-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals solicits applications concerning refunds of $4,600,000 in consent order monies. This money is presently being held in escrow following the settlement of enforcement proceedings involving Mustang Fuel Corporation brought by the DOE's Office of Special Counsel.

DATE AND ADDRESS: Applications must be filed within 90 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All applications should conspicuously display a reference to case number HEF-0011.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Final Decision and Order set out below. The Final Decision relates to a consent order entered into by Mustang Fuel Corporation, 47 FR 57026 (December 26, 1982).

The Final Decision and Order sets forth the procedures and standards that the DOE has formulated to distribute the consent order funds provided by Mustang. The DOE has decided that the refund process will take place in two stages. In the first stage, the DOE will consider claims for refunds made by firms and individuals that demonstrate that they actually purchased Mustang product during the consent order period. Furthermore, a Mustang customer that

purchased large volumes of natural gas liquids (NGLs) from Mustang's Calument gas plant during the consent order period must provide evidence that it was injured by the alleged Mustang overcharges. However, small purchasers applying for refunds need submit only proof of the amount purchased from Mustang during the consent order period.

The second stage of the refund process will take place only in the event that the meritorious first stage applicants do not deplete the consent order funds. The Final Decision and Order holds that the governments of states and territories in which Mustang marketed NGLs would be the most appropriate recipients of the consent order monies. Comments addressing apportionment plans for consent order monies during the second stage of the refund process will be received concurrently with first stage applications.

All first stage applications and comments should be submitted within 90 days of publication of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: January 17, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

November 3, 1983.

Special Refund Proceedings

Name of Petitioner: Office of Enforcement, Economic Regulatory Administration: In the Matter of Mustang Fuel Corporation
Date of Filing: January 7, 1983
Case Number: HEF-0011

Under the regulations of the Department of Energy, the Office of Special Counsel (formerly the Economic Regulatory Administration's Office of Enforcement and hereinafter referred to as OSC) may request the Office of Hearings and Appeals (OHA) to formulate and implement procedures for distributing funds received as a result of an enforcement proceeding in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, the OSC filed a Petition for the Implementation Special Refund Procedures in connection with a Consent Order entered into with Mustang Fuel Corporation and its subsidiary Mustang Gas Products Company (hereinafter referred to as Mustang). Pursuant to the Consent Order Mustang agreed to make refunds for alleged violations of the DOE price regulations in the amount of $4,600,000. The funds have been paid to the Department of Energy and are now being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their distribution.

I. Background

Mustang is a "gas plant operator" as that term is defined in 10 CFR § 212.162, and a "refiner" within the meaning of 10 CFR § 212.31. During the relevant time period, Mustang was therefore subject to the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150, Subpart L and 10 CFR Part 212, Subparts E and K. Those regulations governed the maximum prices that could lawfully be charged in the first sales of natural gas liquids and products (NGLs). The regulations also governed the purchase and resale of NGLs by gas plant operators and refiners.

The funds involved in this proceeding were obtained as a result of a consent order that Mustang entered into with the DOE in settlement of alleged violations of the DOE regulations identified above. In an audit of Mustang's Calumet gas processing plant, the OSC found possible overcharges with respect to sales of NGLs during the period from September 1973 through June 1976. Mustang Gas Product Company operates and owns 50 percent of the plant. The remaining 50 percent of the plant is owned by Amoco Production Company (Amoco). According to the record in this proceeding, Amoco marketed all of the products produced at the Calumet plant and paid Mustang its share of the revenues.

In order to settle all claims and disputes between the parties, Mustang agreed to pay $4,600,000 to the DOE. The parties further agreed that this amount would be distributed by the agency pursuant to 10 CFR Part 205, Subpart V. Notice of the Proposed Consent Order was published in the **Federal Register**. *See* 47 FR 51182 (November 12, 1982). The Proposed Consent Order was finalized without modification. *See* 47 FR 57326 (December 23, 1982).

II. Jurisdiction

The procedural regulations of the Department of Energy set forth guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process is most appropriately used in situations where the Department of Energy is unable to readily identify persons who are entitled to refunds or to readily ascertain the amounts that such persons are entitled to receive as a result of enforcement proceedings. 10 CFR § 205.280. For a more detailed discussion of Subpart V, *See Office of Special Counsel for Compliance*, No. DFF-0003 (March 13, 1981) (proposed decision), 46 FR 17643 (1981); *Office of Enforcement*, No. BEF-0021 (March 13, 1981) (proposed decision), 46 FR 17639 (1981) (hereinafter referred to as *Alcoa*).

After reviewing the record developed in this case, we have concluded that the implementation of Subpart V proceedings is appropriate. There is a significant degree of difficulty in ascertaining the persons who were injured by the alleged overcharges in the present case, and the level of refunds that such persons should receive. During the period covered by the consent order, NGLs were subject to a comprehensive price regulation scheme which could be utilized to facilitate the channeling of refunds to persons who were injured. However, on January 28, 1981, the President exempted crude oil and all refined petroleum products from the DOE regulatory program. Exec. Order No. 12287, 46 FR 9909 (1981). To direct refund monies to the parties actually affected by the alleged overcharges in the absence of a comprehensive price regulations system, a determination must be made regarding the extent to which the higher costs were passed through to downstream customers. In short, the persons eligible to share in the consent order funds are not readily identifiable, and the amounts of the refunds that persons should receive are not readily ascertainable. Under these circumstances, we believe that Subpart V provides the most useful mechanism for devising a procedure to compensate persons who were actually injure by alleged pricing violations. The Office of Hearings and Appeals will therefore exercise jurisdiction over the funds received from Mustang in settlement of the proceeding underlying the Petition for Implementation of Special Refund Proceedings filed by the OSC in this matter.

III. Authority to fashion refund procedures

In several prior decisions involving Petitions for the Implementation of Special Refund Procedures we have

discussed the OHA's authority to establish procedures to distribute funds obtained as a result of settlement agreements. *See, e.g., Office of Enforcement,* 9 DOE ¶ 82,508 at 85,046–49 (1981) (hereinafter cited as *Coine*); *Office of Enforcement,* No. DFF–0006 (March 5, 1981) (proposed decision), 46 FR 15320, 15322–23 (1981) (hereinafter cited as *Vickers*). Subpart V of the DOE procedural regulations, 10 CFR Part 205, authorizes the Office of Hearings and Appeals, upon request by the appropriate enforcement official, to fashion special procedures to distribute refunds obtained as part of settlement agreements. 10 CFR 205.281, 205.282. The special refunds procedures are part of an overall regulatory program and are intended to implement several different statutes. Congress provides for mandatory price controls on crude oil, residual fuel oil, and refined petroleum products in the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751 (1976). NGLs are included within the definition of petroleum products and were therefore subject to the provisions of the DOE price regulations during the periods covered by the consent orders. *See Mobil Oil Corp. v. FEA,* 566 F.2d 87 (Temp. Emer. Ct. App. 1977).

The authority to enforce the regulations governing the pricing of petroleum products such as NGLs was first exercised by the Cost of Living Council under the Economic Stabilization Act (ESA), 12 U.S.C. 1904 note (1970), then delegated in turn to the Federal Energy Office, the Administrator of the Federal Energy Administration, and finally, in 1977, to the Secretary of Energy. Federal Energy Administration Act (FEAA) section 5, 15 U.S.C. section 765 (1974); Department of Energy Organization Act (DOE Act), section 301(a), 42 U.S.C. 7151(a) (1979). To carry out these statutory mandates, the regulations of the Cost of Living Council, the Federal Energy Office, the Federal Energy Adminsitration, and the Department of Energy have provided throughout the existence of the price control program for the issuance of remedial orders "requiring a person to cease a violation or to eliminate or compensate for the effects of a violation, or both." 6 CFR 155.81(b) (1973); 10 CFR 205.1 (1974) (defining "remedial order").

As we have noted in previous Subpart V decisions, the DOE's equitable power to order restitution is designed to accomplish two independent purposes: disgorgement of the fruits of a regulatory violation from the wrongdoers, and providing refunds to persons injured by the regulatory violation. *Vickers; see also Sauder v. DOE,* 648 F. 2d 1341 at 1348 (Temp. Emer. Ct. App. 1981).

IV. Proposed Decision and Order

On June 20, 1983, this Office issued a Proposed Decision and Order in this matter in which we tentatively formulated a procedure for distributing the Mustang refund monies. *In the Matter of Mustang Fuel Corporation,* Case No. HEF–0011 (Proposed Decision and Order, June 20, 1983) (Proposed Order). In the Proposed Order, we explained that based upon our prior experience with Subpart V cases, the distribution of funds should generally take place in two stages. *See, e.g., Alcoa, supra; Vickers, supra.*

In the first stage, those claimants who satisfactorily demonstrate that they had been injured as a result of the alleged overcharges in sales of NGL's by Mustang would receive refunds. We determined that in addition to showing that they maintained a bank of unrecovered costs during the overcharge period, such applicants would be required to demonstrate actual injury. We noted, however, that this stringent requirement might discourage smaller downstream purchasers who found the expense involved in preparing a refund application prohibitive. Consequently, the proposed order set a threshold level, based on our decision in *Vickers, Office of Enforcement* 8 DOE 82,597 (1981), of 50,000 gallons per month, or 600,000 gallons per year. Applicants whose purchases were under this threshold level are not required to prove actual injury. Rather, only proof of the amount of product they purchased from Mustang during the consent order period is necessary.

Next, the Proposed Order recommended and OHA has decided to adopt a requirement requested by the OSC that all applicants provide an election of remedies statement, to the effect that any purchaser accepting a refund from the Mustang consent order funds thereby agrees to waive its right to bring a private lawsuit under section 210 of the Economic Stabilization Act, 12 U.S.C. 1904 note.

We further recognized in the Proposed Order that to the extent that the first stage recipients did not deplete the consent order funds, a second stage proceeding would be necessary to complete the disbursement of the funds. As of the date of issuance of the Proposed Order, four states (Vermont, Maine, Indiana, and California) and the National Consumer Law Center, Inc. had submitted comments on the method of disbursement during the second stage refund proceedings. The comments uniformly advocate that the state governments, as opposed to the federal treasury, are the most appropriate recipients of second stage refund monies, and could best direct those funds to benefit the allegedly overcharged end-users in the particular state. *See Palo Pinto Oil and Gas,* 10 DOE ¶ 85,049 (1983).

Finally, we determined in the Proposed Order that we should accept and consider comments regarding the first and second stage refund plans prior to issuing a final decision in this matter. We specified that such comments must be submitted within 30 days after publication of the Proposed Order in the **Federal Register.** The record indicates that the Proposed Order and comments solicitation were published in the **Federal Register** on June 27, 1893. 48 FR 29597 (1983).

V. Application for Refund Procedure

We adhere to our determination that the two-step process described in the Proposed Order is the most efficacious means for distributing the Mustang consent order funds. Therefore, in keeping with the first stage of the refund process, we will accept applications from firms and individuals which either purchased product directly from Mustang, or purchased product that was originally produced by Mustang during the consent order period, within 90 days from the date of publication of this Decision and Order in the **Federal Register.** See 10 CFR 205.283. We will consider all applications, although we may later impose a lower dollar limit on claims. See 10 CFR 205.286(b). Applications made on behalf of a class of claimants will be considered on a case-by-case basis. Our evaluation of class applications will be generally guided by Federal Rule of Civil Procedure 23, which governs class actions in Federal courts. An application must be in writing, signed by the applicant, and specify which case it pertains to, by firm name and case number. If the applicant is not a first purchaser from the firm, it should indicate from whom the NGLs were purchased and indicate what basis the applicant has for its belief that the NGLs which it purchased originated from the natural gas processing plants named in the consent order.

Any application for a refund in excess of $100 must be filed in duplicate, and a copy of the application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. Any applicant who believes that his application contains

confidential information must so indicate on the first page of his application and submit two additional copies of his application from which the information that the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application shall indicate whether the applicant or any person acting on these instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying enforcement proceeding. Each application shall also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. See 10 CFR 105.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by the OHA for additional information concerning the Application. All applications should be sent to Consent Order Refund Proceeding, Office of Hearing and Appeals, Department of Energy, Washington, D.C. 20585. All Applications for Refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

In order to assist applicants in establishing eligibility for a portion of the consent order funds, the following section discusses the showing that should be made by refiners, resellers, retailers and end-users of the NGLs covered by the consent order:

A. Each applicant should report its volume of purchasers of NGLs by calendar quarter for the period of time for which it is claiming it was injured by the alleged overcharges.

B. If the applicant is a large reseller, it must submit evidence that it did not pass on the overcharges to its customers.

C. Applicants who were small purchasers under the threshold level of 50,000 gallons per month or 600,000 gallons per year need submit only proof of the amount of product purchased from Mustang's Calumet gas plant during the consent order period.

D. Each applicant should specify how it used the NGLs as a petrochemical producer, refiner, reseller or ultimate user.

E. If the applicant is a refiner or reseller, it should state whether it maintained banks or unrecouped product cost increases from the date of the violation through January 27, 1981. It should furnish the OHA with quarterly bank calculations for the entire period.

F. The applicant must state whether it or any of its affiliates have any other Applications for refunds which might affect its level of banks.

G. The applicant should report whether it is or has been involved as a party in DOE or private, 210 (of the Economic Stabilization Act) actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. See 10 CFR 205.9(d).

VI. Distribution of the Remainder of the Consent Order Fund

Regarding the second stage of the refund process, all the comments received to date support the finding set forth in *Palo Pinto* that state governments are the most appropriate conduits for second stage refund monies. In this Decision, we are not implementing the second-state refund procedure. Such a step would be difficult to take before the analysis and processing of Applications for Refund filed in the first stage of the distribution of the Consent Order funds to claimants, since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme. However, we will accept comments specifically addressing apportionment plans to divide the residual consent order monies, in the event that the meritorious claims in the first stage do not deplete the funds.

It is therefore ordered that: (1) The refund amount provided by Mustang Fuel Corporation will be distributed in the manner set forth in the foregoing decision.

(2) This is a final Order of the Department of Energy.

Dated: November 3, 1983.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-1871 Filed 1-23-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed Week of December 23 through December 30, 1983

During the Week of December 23 through December 30, 1983, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: January 13, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 23 through Dec. 30, 1983]

Date	Name and location of applicant	Case No.	Type of submission
July 6, 1983	Gulf Oil Corporation, Houston, Texas	HRZ-0186	Interlocutory Order. If granted: The Office of Hearings and Appeals would recuse itself from further consideration of a Proposed Remedial Order issued to Gulf Oil Corporation (Case No. HRO-0159) and an independent administrative law judge would be appointed in its place.
Dec. 19, 1983	Cotton Petroleum, Washington, D.C	HEF-0486	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the September 7, 1983, order of the U.S. District Court of Oklahoma issued to Cotton Petroleum Corporation.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Dec. 23 through Dec. 30, 1983]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 29, 1983	Crown Central Petroleum Corporation, Washington, D.C	HRD-0196, HRH-0196	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Crown Central Petroleum Corporation in response to a Proposed Remedial Order (Case No. HRO-0198) issued to the firm.

REFUND APPLICATIONS RECEIVED

[Week of Dec. 23 through Dec. 30, 1983]

Date	Name of refund proceeding/name of refund applicant	Case No.
Dec. 28, 1983	Amoco/Brown's Standard.	RF21-12260
Do	Amoco/Julius' Standard.	RF21-12261
Do	Amoco/Jack L. Frakes.	RF21-12259
Dec. 27, 1983	Amoco-William H. Matschke.	RF21-12257
Dec. 28, 1983	Amoco/Brink's American Service.	RF21-12258
Dec 29, 1983	Belridge West Virginia	RQ6-41

[FR Doc. 84-1872 Filed 1-23-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41013 TSH-FRL 2484-7]

Thirteenth Report of the Interagency Testing Committee to the Administrator, Receipt of Report and Request for Comments Regarding Priority List of Chemicals

Correction

In FR Doc. 83-32686 beginning on page 55674 in the issue of Wednesday, December 14, 1983, make the following corrections:

1. On page 55683, third column, under **Physical and Chemical Information"** the entry for "Melting Point" should read "r 20°C".

2. Insert a degree mark "°" instead of a minute symbol "'" in the lines for "Boiling Point", "Vapor Pressure" and "Specific Gravity".

BILLING CODE 1505-01-M

[Docket No. AD-FRL 2509-3]

Confidentiality Agreements; Policy Memorandum

AGENCY: Environmental Protection Agency.

ACTION: Notice of Policy Memorandum Regarding Confidentiality Agreements Under Section 114 of the Clean Air Act.

SUMMARY: Reproduced below is a copy of a memorandum, with attachments, in which the EPA Assistant Administrator for Air and Radiation summarizes EPA policy regarding execution of confidentiality agreements under Section 114 of the Clean Air Act.

EFFECTIVE DATE: December 16, 1983.

FOR FURTHER INFORMATION CONTACT: Donald F. Walters, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (MD-11), Research Triangle Park, North Carolina 27711, 919-541-5641.

SUPPLEMENTARY INFORMATION: The memorandum reproduced below, which was issued to Office Directors and the 10 EPA Regional Administrators on December 16, 1983 (date of policy memorandum), reviews aspects of existing EPA regulations and procedures with respect to confidential treatment of information claimed to be trade secret. EPA considers this memorandum to state "nationally applicable" Agency policy. It does not, however, constitute "regulations promulgated, or final action taken, by the Administrator" under Section 307(b)(1) of the Act (42 U.S.C. 7607(b)(1)).

Dated: December 14, 1983.

Sheldon Meyers,

Acting Assistant Administrator for Air and Radiation.

On December 16, 1983 (date of policy memorandum), the Assistant Administrator for Air and Radiation issued the following memorandum:

Memorandum on Confidential Treatment of Certain Information for Use With Section 114 Information Requests

1. Pursuant to the provisions of Section 114 of the Clean Air Act as amended, (*source*) (hereinafter "the source") will provide information requested by the Environmental Protection Agency (EPA) in the course of carrying out its responsibilities. Such information may be forwarded either to EPA or to an authorized representative (contractor) (hereinafter the "contractor") designated by EPA to assist EPA in carrying out such responsibilities pursuant to Contract No. ——— with EPA. The information requested may be either documentary (e.g., written responses to questions, photographs, records or charts) or non-documentary (e.g., oral communications, taking of photographs, or visual observations). EPA and the contractor recognize that the source may consider the information so provided, or some part of it, to be confidential within the meaning of Section 114 and 18 U.S.C. 1905. The source may assert a claim of confidentially under the procedures established in Part 2 of Title 40 of the Code of Federal Regulations (40 CFR Part 2) by noting such claim on documentary material provided to EPA or to the contractor. The EPA will note such claim when submitting such information to the contractor. The contractor will note such claim when submitting the information to EPA. Moreover, the source may notify the EPA or the contractor that it considers all or part of non-documentary information provided to EPA or to the contractor to be confidential. The EPA will note said claim of confidentiality in any reports or documents submitted to the contractor which utilize such non-documentary information. The contractor will note said claim of confidentiality in any reports or documents submitted to EPA which utilize such non-documentary information. Any material or information claimed as confidential will be treated by the contractor as confidential in accordance with its contract and will be treated by EPA in accordance with the provisions of 40 CFR Part 2. Any material or information for which a claim of confidentiality is not made may be made available to the public by EPA without notice to the source.

2. The provisions in the contractor's contract with EPA concerning the use and disclosure of confidential information are included therein for the benefit of, and shall be enforceable by, both EPA and the source.

The provisions of Contract No. ——— between EPA and the contractor provide:

a. The contractor and its employees will: (i) use the information claimed to be confidential only for purposes of carrying out the work required by the contract: (ii) not disclose the information to anyone other than EPA employees without the prior written approval of the Assistant General Counsel for Contracts and General Administration; and (iii) return to the EPA Contracting Officer all copies of the information, and any abstracts or excerpts therefrom, upon request by the Contracting Office, whenever the information is no longer required by the contractor for the performance of the work or upon completion of the contract.

b. The contractor will obtain a written agreement to honor the provisions of paragraph 2(a) from each of its employees who will have access to the information before the employee is allowed access.

c. The contractor will not use any information claimed to be confidential to compete with the source.

d. Before entering into any subcontract that will involve either the disclosure to a subcontractor by the contractor of information claimed to be confidential, or the

collection of information by a subcontractor, the contractor will obtain the written consent of the EPA Contracting Officer, after a written determination by the appropriate EPA program office.

3. Any contract between the contractor and a subcontractor for work involving access to information described herein will include the requirements contained in Paragraph 2 (a), (b) and (c) above; and, the subcontractor will be subject to the terms set forth in Paragraphs 1 and 4 in the same manner as if it were the contractor.

4. It is intended that this memorandum be consistent with and not exceed the provisions of 40 CFR Part 2 and the provisions of Contract No. ———. This memorandum does not address information not obtained from the source. Nothing in this memorandum relieves the contractor of any liability it may independently have to the source as a manner of statutory or common law from injury to the source arising from the contractor's release of information in a manner which exceeds its authority under 40 CFR Part 2 and its contract with EPA.

U.S. Environmental Protection Agency
By: ———
Date: ———
Company
By: ———
Date: ———
Contractor
By: ———
Date: ———

Memorandum on Confidential Treatment of Certain Information for Use With Site Visits by EPA Authorized Contractor Representatives Under Authority of Section 114 of the Clean Air Act

1. Pursuant to the provisions of Section 114 of the Clean Air Act, as amended, (*source*) (hereinafter "the source") will provide, or give access to, information requested by the Environmental Protection Agency (EPA) in the course of carrying out its responsibilities. Such information and such access will be provided to EPA and to its duly authorized representative (contractor) (hereinafter "the contractor") designated by EPA to assist EPA in carrying out such responsibilities pursuant to Contract No. ——— with EPA. The information requested may be either documentary (e.g., records, photographs or charts) or non-documentary (e.g., oral communications, taking of photographs, or visual observations): EPA and the contractor recognize that the source may consider the information so provided, or some part of it, to be confidential within the meaning of Section 114 and 18 U.S.C. 1905. The source may assert a claim of confidentiality under the procedures established in Part 2 of Title 40 of the Code of Federal Regulations (40 CFR Part 2) by noting such claim on documentary material provided to the contractor or to EPA. The contractor will note such claim when submitting the information to EPA. The EPA will note such claim when submitting such information to the contractor. Moreover, the source may notify the contractor or EPA that it considers the nondocumentary information provided to EPA or to the contractor to be confidential. The contractor will note said claim of confidentiality in any reports or documents submitted to EPA which utilize such non-documentary information. The EPA will note said claim of confidentiality in any reports or documents submitted to the contractor which utilize such non-documentary information. Any material or information claimed as confidential will be treated by the contractor as confidential in accordance with its contract and will be treated by EPA in accordance with the provisions of 40 CFR Part 2. Any material or information for which a claim of confidentiality is not made may be made available to the public by EPA without notice to the source.

2. The provisions in the contractor's contract with EPA concerning the use and disclosure of confidential information are included therein for the benefit of, and shall be enforceable by, both EPA and the source.

The provisions of Contract No. ——— between EPA and the contractor provide:

a. The contractor and its employees will: (i) Use the information claimed to be confidential only for purposes of carrying out the work required by the contract; (ii) not disclose the information to anyone other than EPA employees without the prior written approval of the Assistant General Counsel for Contracts and General Administration; and (iii) return to the EPA Contracting officer all copies of the information, and any abstracts or excerpts therefrom, upon request by the Contracting Officer, whenever the information is no longer required by the contractor for the performance of the work or upon completion of the contract.

b. The contractor will obtain a written agreement to honor the provisions of paragraph 2(a) from each of its employees who will have access to the information, before the employee is allowed access.

c. The contractor will not use any information claimed to be confidential to compete with the source.

d. Before entering into any subcontract that will involve either the disclosure to a subcontractor by the contractor of information claimed to be confidential, or the collection of information by a subcontractor, the contractor will obtain the written consent of the EPA Contracting Officer, after a written determination by the appropriate EPA program office.

3. Any contract between the contractor and a subcontractor for work involving access to information described herein will include the requirements contained in Paragraph 2(a), (b) and (c) above; and, the subcontractor will be subject to the terms set forth in Paragraph 1 and 4 in the same manner as if it were the contractor.

4. It is intended that this memorandum be consistent with and not exceed the provisions of 40 CFR Part 2 and the provisions of Contract No. ———. This memorandum does not address information not obtained from the source. Nothing in this memorandum relieves the contractor of any liability it may independently have to the source as a matter of statutory or common law from injury to the source arising from the contractor's release of information in a manner which exceeds its authority under 40 CFR Part 2 and its contract with EPA.

U.S. Environmental Protection Agency
By: ———
Date: ———
Company
By: ———
Date: ———
Contractor
By: ———
Date: ———

[FR Doc. 84-1452 Filed 1-23-84; 8:45 am]
BILLING CODE 6560-50-M1A%

[OW-FRL-2460-3]

Brunswick Shale and Sandstone Aquifer of the Ridgewood Area, New Jersey; Final Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Pursuant to Section 1424(e) of the Safe Drinking Water Act, the Administrator of the U.S. Environmental Protection Agency (EPA). has determined that the Brunswick Shale and Sandstone Aquifer, underlying the Ridgewood Area, is the sole or principal source of drinking water for Ridgewood, Midland Park, Glen Rock, and Wyckoff, New Jersey, and that the aquifer, it contaminated, would create a significant hazard to public health. As a result of this action, Federal financially assisted projects constructed in the Ridgewood Area and its streamflow source zone (upstream portions of Ho Ho Kus Brook and Saddle River Run drainage basins) will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Water Supply Branch, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Damina J. Duda, Water Supply Branch, 26 Federal Plaza, New York, New York 10278 (212) 264-1800.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 1424(e) of the Safe Drinking Water Act (42 U.S.C., 300f, 300h-3(e), Pub. L. 93-523), the Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Brunswick Shale and Sandstone aquifer of the Ridgewood Area is the sole or principal source of drinking water for Ridgewood, Midland Park, Glen Rock, and Wyckoff, New Jersey. Pursuant to Section 1424(e), Federal financially assisted projects constructed in the Ridgewood Area and its streamflow source zone (upstream portions of Ho Ho Kus Brook, and

Saddle River Run drainage basins) will be subject to EPA review.

I. Background

Section 1424(e) of the Safe Drinking Water Act state:

(e) If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaiminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On July 4, 1979, the Committee to keep Our Water Pure petitioned EPA to designate the Brunswick Shale and Sandstone Aquifer of the Ridgewood Area as sole source aquifer. On January 15, 1980, EPA published a notice in the Federal Register announcing a public comment period and setting a public hearing date. A public hearing was conducted on February 28, 1980, and the public was allowed to submit comments on the petition until March 28, 1980.

11. Basis for Determination

Among the factors to be considered by the Administrator in connection with the designation of an under Section 1424(e) are: (1) Whether the aquifer is the area's sole or principal source of drinking water, and (2) whether contamination of the aquifer would create a significant hazard to public health.

On the basis of information available to this Agency, the Administrator has made the following findings, which are the basis for the determination noted above:

1. The Brunswick Shale and Sandstone Aquifer of the Ridgewood Area is the "sole source" of drinking water for the approximately 68,820 residents of Ridgewood, Midland Park, Glen Rock, and Wyckoff, New Jersey.

2. There is no existing alternative drinking water source or combination of sources which provides fifty percent or more of the drinking water to the designated area.

3. The Brunswick formation is a soft red shale interbedded with coarse grained sandstone. The aquifer is overlain by permeable unconsolidated glacial and recent deposits. As a result of permeable soil characteristics, the Brunswick Shale and Sandstone Aquifer of the Ridgewood Area is highly susceptible to contamination through its recharge zone from a number of sources, including but not limited to, chemical spills, leachate from landfills, stormwater runoff, highway deicers, faulty septic systems, wastewater treatment systems, and waste disposal lagoons. The aquifer is also susceptible to contamination to a lesser degree from the same sources, through its streamflow source zone. Since ground water contamination can be difficult or impossible to reverse and since the aquifer in this area is solely relied upon for drinking water purposes by the population of the Ridgewood Area, contamination of the aquifer could pose a significant hazard to public health.

III. Description of the Brunswick Shale and Sandstone Aquifer of the Ridgewood Area, Its Recharge Zone and Its Streamflow Source Zone

The Brunswick Shale and Sandstone Aquifer is a soft red shale interbedded with coarse grained sandstone. The formation, located in northern New Jersey, is fairly large, extending south into Pennsylvania and north into New York. Igneous intrusions which form the Watchung Mountains and the Palisades, also form the western and eastern boundaries of the Burnswick formation, respectively. The area in which Federal financially assisted projects will be subject to review is the portion of the Brunswick Shale and Sandstone Aquifer in the Ridgewood Area, its streamflow source zone, and its recharge zone.

For the purposes of this designation, the Brunswick Shale and Sandstone Aquifer of the Ridgewood Area is considered to include the entire municipalities of Ridgewood, Midland Park, Glen Rock, and Wyckoff, New Jersey. It's recharge zone is considered to be one and the same with this area. The streamflow source zone is that portion of the drainage basins of Ho Ho Kus Brook and Saddle River Run located upstream of the Ridgewood area. This includes all or a portion of the following New Jersey municipalities: Waldwick, Allendale, Ramsey, Mahwah, Franklin Lakes, Ho Ho Kus, Saddle River, Upper Saddle River, Woodcliff Lake, Hillside, Washington, Montvale, as well as Ramapo Township, New York.

IV. Information Utilized in Determination

The information utilize in this determination includes the petition, written and verbal comments submitted by the public, and various technical publications. The above data is available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region II, Water Supply Branch, 26 Federal Plaza, New York, New York 10278.

V. Project Review

EPA Region II is working with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures have been developed through which EPA will be notified of proposed commitments by Federal agencies for projects which could contaminate the Brunswick Shale and Sandstone Aquifer, upon which the Ridgewood Area is dependent for its sole source water supply. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should the Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be entered into. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible on any existing or future State and local control mechanisms in protecting the ground water quality of the Brunswick Shale and Sandstone Aquifer on which the Ridgewood Area is dependent for its sole source water supply. Included in the review of any Federal financially assisted project will be coordination with the State and local agencies. Their comments will be given full consideration and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VI. Summary and Discussion of Public Comments

Most comments were generally in favor of designation. Two local governments submitted resolutions in support of designation. Only two commenters expressed any reservations regarding the designation.

One commenter expressed concern that the proposed designation would provide protection which is duplicative of State and local controls and may lead to unnecessary bureaucratic delays of

projects. Although a number of ground water protection measures are available at the Federal, State and local level, none of these, either, individually or collectively, permit EPA to act as directly as would a sole source designation in the review and approval of Federal financially assisted projects. In addition, EPA feels that the sole source project review process will foster integration rather than duplication of environmental review efforts. Memoranda of Understanding have been negotiated with various Federal agencies, with the purpose of streamlining the review process and mimimizing project delays.

One commenter expressed concern that the area proposed for sole source designation could be an arbitrary political subdivision of the larger Brunswick aquifer system. The commenter questioned whether sufficient consideration had been given to the physical limits of the hydrologic system. The EPA recognizes that the aquifer does indeed cover a large area. However, a significant portion of the population in these other areas utilize other sources of water supply or have alternative sources available.

Concern was also raised that the Ridgewood Area may have alternative water supply available through adjacent water purveyors; specifically, the Passaic Valley Water Commission or the Hackensack Water Company. EPA has reviewed this matter and determined that either insufficient supply is currently available (in one case) or interconnections between the Ridgewood Area and the purveyor are currently not adequate to handle the Area's demand. Furthermore, the Brunswick Shale and Sandstone Aquifer in the Ridgewood Area is a source of water for export to adjacent purveyors during drought conditions.

The area considered for designation was determined to meet the criteria of an area which depends upon an aquifer for its sole or principal drinking water source and which, if contaminated, would pose a serious threat to the health of the Ridgewood Area residents.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification the "small entity" shall have the same meaning as given in Section 601 of the RFA. This action is only applicable to the Ridgewood Area.

The only affected entities will be those Area-based businesses, organizations or governmental jurisdictions that request Federal financial assistance for projects which have the potential for contaminating the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact to today's action will not be significant. Most projects subject to this review will be proceded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmantal Policy Act, as amended (NEPA), 42 U.S.C. 4321, et seq. Integration of those related review procedures with sole source aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, this minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Brunswick Shale and Sandstone Aquifer of the Ridgewood Area. It provides an additional review of ground-water protection measures, incorporating State and local measures whenever possible, for only those projects which request Federal financial assistance.

Dated: January 12,1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-1887 Filed 1-23-84; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2459-7]

Denial of Petition To Designate the Niagara/Glacial Aquifer in Southeastern Wisconsin as a Sole or Principal Source of Drinking Water

AGENCY: Environmental Protection Agency.

ACTION: Determination notice.

SUMMARY: Notice is hereby given that pursuant to Section 1424(e) of the Safe Drinking Water Act (Pub. L. 93-523, as amended) the Administrator of the Environmental Protection Agency (EPA) has determined that the area of the Niagara-glacial aquifer system in southeastern Wisconsin petitioned for designation is not a sole or principal source of drinking water and the petition is denied.

EFFECTIVE DATE: Immediately.

ADDRESSES: The data on which this finding is based are available to the public and may be reviewed during normal business hours at the U.S. Environmental Protection Agency, Region V, Drinking Water Branch, Room 2674, 230 South Dearborn Street, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Valdas V. Adamkus, Regional Administrator, U.S., Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: The Safe Drinking Water Act was enacted on December 16, 1974. Section 1424(e) of the Act states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to the public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Background Information

On March 25, 1980, EPA received a petition from Dr. James R. Tanker, Jr., at the University of Wisconsin Center-Fond du Lac, requesting EPA to designate the Niagara and the overlying glacial aquifers as a sole source aquifer. On January 9, 1981, Dr. Tinker

resubmitted his petition which included the necessary data to consider the package up-to-date and complete. EPA published a notice in the **Federal Register**. On November 13, 1981, which served to publish the highlights of the petition, to announce a public comment period, and to determine if there was sufficient public interest to hold a public hearing. Based on comments from concerned parties, the public comment period was extended to January 15, 1982. A total of 14 written comments were received. It was determined, that a public hearing was not necessary because public interest was not sufficient. No commenters requested a public hearing. Seven of the written responses were against designation. Most of the commenters were of the opinion that Federal projects were already subject to sufficient environmental impact studies which delineated appropriate actions to protect ground water. It was generally concluded that designation would only result in duplicate project review resulting in additional delays to Federal projects. Other comments addressed opposition to the arbitarary exclusion of the cities of Milwaukee, Racine, and Kenosha, since their absence from the calculations could be misleading by implying a higher percentge of total ground water usage versus the total water usage for the petitioned area.

Six responses indicated support for the designation of the described area. This group of responders consisted of local environmental organizations and State representatives. These commenters were concerned about the aquifers' susceptibility to contamination as well as the great cost that would be incurred to replace the water supplies. In addition to the comments, a local planning commission submitted technical data without making any recommendations about designation of the aquifer.

Analysis of Action

The original area proposed by the petitioner included "east of the western most boundary of the Niagara aquifer; west and south of the Wisconsin shoreline of Lake Michigan but excluding the cities of Milwaukee, Racine, and Kenosha; north of the Wisconsin-Illinois border."

In a similar case, Maryland Piedmont at 45 FR 57165 August 27, 1980, EPA enlarged the area designated by the petitioner because the area was not hydrologically defined. This determination to use hydrologic boundaries was uphelp by the United States Court of Appeals for the Fourth Circuit. (Montgomery County, Maryland *vs* US Environmental Protection Agency 662 F.2d 1040 (1981)).

The EPA has concluded that the reasons for excluding the cities of Milwaukee, Racine, and Kenosha as well as the use of the Wisconsin-Illinois State line as the southern boundary were arbitrary. Based on an extensive literature search and technical consultation with State agencies, the modified petition boundaries include the cities of Milwaukee and Racine since they are not hydrogeologically isolated from the rest of the Niagara aquifer system. The southern boundary is a ground water divide interpreted to be located north of the city of Kenosha.

Basis for Denial

EPA published proposed procedural regulations to implement Section 1424(e) September 29, 1977 at 42 FR 51620. Although the proposed regulations have not been promulgated in final form, the Agency uses the proposed regulations as guiidance in processing petitions and making sole or principal source aquifer determinations. A sole or principal source acquifer is defined therein as an acquifer which supplies 50 percent or more of the drinking water for an area. The proposed regulations also require the Administrator to consider the availability of alternative sources of drinking water in making the determination .

The U.S. Geological Survey published a report on the *Water Use in Wisconsin*, 1979 (Open-File Report 82–444). Analysis of report data shows only 17 percent of the residential water usage within the proposed area is supplied by ground water. If the total water usage (residential, industrial, commerical, irrigation, livestock watering, ect) is considered for the proposed area, the total ground-water usage would be 26 percent. Finally, all of the above ratios for ground-water usage in the proposed area includes usage from the deeper Cambrian-Ordocvician acquifer which is geologically separated from the petitioned shallower acquifers by the confining Maquoketa shale. Therefore, the percentage of ground-water usage for the petitioned acquifer fails to meet the 50 percent water usage criteria required for an acquifer to be designated as a sole source.

Dated: January 12, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84–1889 Filed 1–23–; 8:45 am]

BILLING CODE 6560–50–M

[OW–FRL–2460–4]

Unconsolidated Quaternary Aquifer, in the Rockaway River Area, New Jersey; Final Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to Section 1424(e) of the Safe Drinking Water Act, the Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Unconsolidated Quaternary Aquifer in the Rockaway River Basin is the sole or principal source of drinking water for the Rockaway River Basin Area, and that the Unconsolidated Quaternary Aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially assisted projects constructed in the Rockaway River Basin Area will be subject to EPA review to insure that these projects are designed and constructed without a significant hazard to public health.

ADDRESSES: The data on which these findings are based is available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region II, Water Supply Branch, Room 824, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Damian J. Duda, Water Supply Branch, Environmental Protection Agency, Region II at 212–264–1800.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300f, 300h–3(e), Pub. L. 93–523), the Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Unconsolidated Quaternary Aquifer of the Rockaway River Basin Area is the sole or principal source of drinking water for the Town of Boonton, Boonton Township, Denville, Dover, Jefferson Township, Mine Hill, Mountin Lakes, Randolph Township, Rockaway Borough, Rockaway Township, Roxbury, Victory Gardens and Wharton. Pursuant to Section 1424(e), Federal financially assisted projects constructed in the Rockaway River Basin Area, which is delineated by the watershed boundaries of the Rockaway River, the Black (Upper Lamington) River Basin in Roxbury Township and Lake Arrowhead in Denville and Mountain Lakes, will be subject to review.

I. Background

Section 1424(e) of the Safe Drinking Water Act states:

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On November 30, 1979, EPA received a petition from the Upper Rockaway River Watershed Association requesting that EPA designate the Quaternary Wisconsin stratified drift deposits as a sole source aquifer. In response to this petition, EPA published a notice in the Federal Register on September 11, 1980 (45 FR 60010) announcing a public comment period and setting a public hearing date. A public hearing was conducted on October 15, 1980, and the public was requested to submit comments on the petition until November 14, 1980.

II. Basis for Determination

Among the factors to be considered by the Administrator in connection with the designation of an area under Section 1424(e) are: (1) whether the Unconsolidated Quaternary Aquifer is the Area's sole or principal source of drinking water, and (2) whether contamination of the aquifer would create a significant hazard to public health.

On the basis of information available to this Agency, the Administrator has made the following findings, which are the basis for the determination noted above:

1. The Quaternary deposits represent an aquifer which currently serves as the "sole source" of drinking water for approximately 90,000 residents.

2. There are no existing alternative drinking water sources or combination of sources, which would provide fifty percent or more of the drinking water to the designated area, nor is there any reasonably available alternative future source capable of supplying the drinking water demands of the Rockaway River Basin Area.

3. The Unconsolidated Quaternary Aquifer is glacial in origin and is composed of unconsolidated sand and gravel deposits.

As a result of its highly permeable soil characteristics, the Unconsolidated Quaternary Aquifer is susceptible to contamination through its recharge zone from a number of sources, including, but not limited to, chemical spills, highway runoff, septic tanks, leaking storage tanks, and leaching from open dumps. There is current evidence of localized contamination of the aquifer from gasoline spills, individual disposal systems, leaking fuel tanks, and wastewater treatment systems. Since ground water contamination can be difficult or impossible to reverse, and since this aquifer is relied on for drinking water purposes by the general population, contamination of the aquifer would pose a significant hazard to public health.

III. Description of the Unconsolidated Quaternary Aquifer and its Recharge Zone

The Unconsolidated Quaternary Aquifer underlies thirteen municipalities in Morris County, in the Rockaway River Basin Area. The municipalities are the Town of Boonton, Boonton Township, Denville, Dover, Jefferson Township, Mine Hill, Mountain Lakes, Randolph Township, Rockaway Borough, Rockaway Township, Roxbury, Victory Gardens and Wharton. The area in which Federal financially assisted projects will be subject to review is the area which includes the unconsolidated Quaternary Aquifer's (1) recharge zone—delineated by the floodplain areas of the Rockaway River Basin and a portion of the Black (Upper Lamington) River Basin and (2) streamflow source zone—the watershed boundaries of the Rockaway River Basin, a portion of the Black (Upper Lamington) River Basin and Lake Arrowhead.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public and the New Jersey Department of Environmental Protection and a study on the available water supply in the Rockaway Area (Tetra-Tech, 1979).

The above data is available to the public and may be inspected during normal business hours at the Environmental Protection Agency Region II, Water Supply Branch, Room 824, 26 Federal Plaza, New York, New York.

V. Project Review

EPA Region II is working with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures have been developed in which EPA will be notified of proposed commitments by Federal agencies for projects which could contaminate the Unconsolidated Quaternary Aquifer. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comment where appropriate. Should the Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be entered into. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible on any existing or future State and local control mechanisms in protecting the ground water quality of the Unconsolidated Quaternary Aquifer.

Included in the review of any Federal financially assisted project will be coordination with the State and local agencies. Their comments will be given full consideration and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VI. Summary and Discussion of Public Comments

Most of the comments received from Federal, State and local government agencies and from the public were strongly in favor of designation. Only two commenters expressed any reservations regarding the designation.

Two commenters felt that EPA currently has sufficient ground water protection mechanisms, which, together with State and local mechanisms, render a sole source designation unnecessary. Each felt that a municipality should have the responsibility of protecting its own water resource. Although a number of ground water protection measures are available at the Federal, State and local level, none of these , either individually or collectively, permit EPA to act as directly and comprehensively as would a sole source designation in the review and approval of Federal financially assisted projects. In addition, EPA feels

that the sole source project review process will foster integration rather than duplication of environmental review efforts.

One other commenter, although generally in favor of the designation had some recommendations to the existing petition. Specifically the two recommendations are (1) to extend the recharge area and (2) to expand any project review to include both federally assisted and non-federally assisted projects mainly public and semi-public. EPA has evaluated the recharge suggestion and determined the extent of the recharge area for project review. At present, only Federal financially assisted projects can come under sole source review. EPA does not have the legal means to review any non-federally funded project without amendment to the Safe Drinking Water Act. Federal financial assistance will only be withheld in those instances where it is determined that a proposed project may contaminate the aquifer so as to create a significant hazard to public health and no acceptable remedial measures are available to prevent the potential hazard.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification the "small entity" shall have the same meaning as given in Section 601 of the RFA. This action is only applicable to the Rockaway Rover Basin Area. The only affected entities will be those Area-based businesses, organizations or governmental jurisdictions that request Federal financial assistance for projects which have the potential for contaminating the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act, as amended (NEPA), 42 U.S.C. 4321, et seq. Integration of those related review procedures with sole source aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, this minimizing any adverse effect on those small entities which are affected. Finally today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Rockaway River Basin Area. It provides an additional review of ground water protection measures, incorporating State and local measures wherever possible, for only those projects which request Federal financial assistance. This regulation was submitted to office of Management and Budget for review under EP 12291.

Dated: January 12, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-1888 Filed 1-23-84; 8:45 am]

BILLING CODE 6560-50-M

[SA-FRC 2511-6]

Science Advisory Board; Environmental Engineering Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Engineering Committee (EEC) of the Science Advisory Board will be held in Conference Room 3906-3908M, U.S. Environmental Protection Agency, 401 "M" Street, SW., Washington, D.C., on February 8-9, 1984. The meeting will begin at 9:00 a.m., and last until approximately 5:00 p.m. each day.

The agenda for the meeting will include a continuation of the Committee's review of data supporting proposed effluent guidelines for the organic chemical and plastics/synthetic fibers industry. Other agenda items are not yet firm, but will probably include discussions on RCRA-related issues, control technology research, and sludge management.

The meetings is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382-2552, or Terry F. Yosie, Staff Director, Science Advisory Board, at (202) 382-4126. Public comment will be accepted at the meeting. Written comment will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make such comment must contact Mr. Torno prior to February 3, 1984, in order to be placed on the agenda.

EPA has recently instituted new visitor control procedures. In order to minimize any inconvenience, persons wishing to attend are requested to call Ms. Cheryl Fauntleroy at (202) 382-2552, so that they may be included on a roster that will be prepared for the building security guards. Attendees are also requested to enter the building at the West Tower entrance.

Dated: January 16, 1984.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 84-1884 Filed 1-23-84; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2511-3]

Final Determination; Groundwater System of the Upper Santa Cruz Basin and the Avra-Altar Basin of Pimá, Pinal, and Santa Cruz Counties, Arizona: Aquifer Determination

AGENCY: Environmental Protection Agency.

ACTION: Final Determination.

SUMMARY: Pursuant to Section 1424(e) of the Safe Drinking Water Act, the Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Upper Santa Cruz and Avra-Altar Aquifers are the sole or principal source of drinking water for the Tucson Active Management Area, as established by the 1980 Arizona Groundwater Management Act, and that these aquifers, if contaminated, would create a significant hazard to public health. As a result of this action, Federal financially assisted projects constructed anywhere in the Tucson Active Management Area will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region 9, Water Management Division,

Fifth Floor, 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: George Wilson, Arizona, Hawaii, Nevada Branch (W–4), Water Management Division, Environmental Protection Agency, Region 9, at (415) 974–8345.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h–3(e), Pub. L. 93–523) the Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Upper Santa Cruz and Avra-Altar Aquifers are the sole or principal source of drinking water for the Tucson Active Management Area, Arizona. Pursuant to Section 1424(e), Federal financially assisted projects constructed anywhere in the Tucson Active Management Area will be subject to EPA review.

I. Background

Section 1424(e) of the Safe Drinking Water Act states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a signficant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determined may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On June 29, 1981, EPA received a petition from Southwest Environmental Service of Tucson, AZ, to designate the Upper Santa Cruz and Avra-Altar Aquifers as sole source aquifers. In response to this petition, EPA published a notice in the Federal Register on November 18, 1981, announcing receipt of the petition and requesting public comment. EPA prepared a support document summarizing available information regarding the aquifers. On September 24, 1982, EPA published a notice in the Federal Register announcing availability of the Support Document, requesting public comment, and setting a public hearing date. A public hearing was conducted on December 9, 1982, and the public was allowed to submit comments until December 18, 1982.

II. Basis for Determination

Among the factors to be considered by the Administrator in connection with the designation of an area under Section 1424(e) are: (1) whether the aquifer is the area's sole or principal source of drinking water, and (2) whether contamination of the aquifer would create significant hazard to public health.

On the basis of information available to this Agency, the Administrator has made the following findings, which are the bases for the determination noted above:

1. The Upper Santa Cruz and Avra-Altar Aquifers currently serve as the "sole source" of drinking water for the approximately 518,000 permanent residents within the Tucson Active Management Area.

2. There is no existing alternative drinking water source, or combination of sources, which provides fifty percent or more of the drinking water to the designated area, nor is there any reasonably available alternative future source capable of supplying the area's drinking water needs.

3. The aquifers are composed of loosely consolidated to moderately cemented silty sand to silty gravel and interfingering lenses of silt, sand, and gravel which are coarse, and highly permeable. As a result of their highly permeable characteristics, the aquifers are susceptible to contamination through their recharge zones from a number of sources including, but not limited to, chemical spills, waste disposal ponds, leaking storage tanks, leachate from landfills, agricultural chemicals, and wastewater treatment facilities. There is an existing trichlorethylene and chromium contamination problem from leaking waste disposal ponds. Since groundwater contamination can be difficult or impossible to reverse, and since these aquifers constitute the sole water supply for the general population, contamination would pose a significant hazard to public health.

III. Description of the Upper Santa Cruz and Avra-Altar Aquifers and Recharge Zones

The Upper Santa Cruz and Avra-Altar Aquifers are located within Pima, Pinal and Santa Cruz Counties in southern Arizona. The Avra-Altar groundwater basins are hydrologically connected, and consequently no clear-cut dividing line exists between them. The Avra-Altar Basin and Upper Santa Cruz Basin, while hydrologically separated in the greater Tucson area, join and become a single aquifer north of Tucson.

For the purposes of this designation, the Upper Santa Cruz and Avra-Altar basins are considered a single continuous aquifer. The aquifer and its recharge zones will be regarded as coterminous with the boundaries of the Tucson Active management Area as established by the 1980 Arizona Groundwater Management Act.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition from Southwest Environmental Service, research of available literature on the groundwater basins, and written and verbal comments submitted by the public. This data is available to the public, and may be inspected during normal business hours at the Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

V. Project Review

EPA Region 9 will work with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures will be developed in which EPA will be notified of proposed commitments by Federal agencies for projects which could contaminate the aquifers. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should the Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible on any existing or future State and local control mechanisms in protecting the groundwater quality of the aquifers. Included in the review of any Federal financially assisted project will be coordination with the State and local agencies. Their comments will be given full consideration and the Federal review process will attempt to complement and support State and local groundwater protection mechanisms.

VI. Summary and Discussion of Public Comments

Most of the comments received from the public were in favor of the designation. However, four commenters expressed some opposition.

One commenter flelt that EPA should delay designation until the Safe Drinking Water Act is amended to include specific provisions related to sole source designation. In response to this comment the Agency believes that the existing statutes and regulations provide sufficient basis from which a sole source designation can be made. In fact, ten such designations already have been successfully concluded. Furthermore, it is believed that to delay the designation process would not be prudent since there is no indication that the law will be amended as suggested by the commenter.

Another commenter felt that not enough information is known about the complexities of the aquifer system to call it a "sole source aquifer". The Agency's response to this comment is that the term "sole source aquifer" refers to the fact that fifty percent or more of the area's drinking water comes from the aquifer. While the aquifer is not composed of a single homogeneous material, the available information indicates that the basin is basically one single interconnected aquifer which provides over 50 percent of the area's drinking water.

Another comment was that the boundaries used for the designated area include areas that are not aquifers and areas that are regulated by other agencies. The Agency's response to this comment is that the mountain ranges were included to ensure that the recharge areas to the aquifer system were incorporated as required by Section 1424(e) of the Safe Drinking Water Act, and to match the boundaries of the Tucson Active Management Areas for future regulatory expendiency. The fact that an area is managed by another agency is not relevant to the designation process.

Another commenter stated that because the suface area of the Tucson Active Management Area is so large, any potential contaminants could not reach significant levels. The Agency cannot agree with this comment since it is a matter of public record that point sources within the area have reached levels considered by State and Federal health agencies to be a significant health hazard. Five Tucson municipal water supply wells have been closed due to trichloroethylene contamination.

Onc commenter, although generally in favor of the designation, expressed concern that the sole source designation might preclude the use of land application as a wastewater treatment technique. The Agency shares this concern. However, the Agency also believes that if properly sited, designed, operated, and maintained, land application treatment can be an environmentally sound and cost-effective waste management alternative. Sole source designation will not interfere with the development of any such environmentally sound waste management solution in the area. Federal financial assistance will be withheld only in those instances where it is determined that a proposed project may contaminate the aquifer so as to create a significant hazard to public health and no acceptable remedial measures are available to prevent the potential hazard.

VII. Economic and Regulatory Impact

Pursuant to provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b). I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the term "small entity" shall have the same meaning as given in Section 601 of the RFA. This action is only applicable to the Tucson Active Management Area. The only affected entities will be those businesses, organizations, or governmental jurisdictions that request Federal financial assistance for projects which have the potential for contaminating the aquifer so as to create a significnat hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Most projects subject to this review will be preceded by a groundwater impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act, as amended (NEPA), 42 U.S.C. 4321, et seq. Integration of those related review procedures with sole source aquifer review will allow EPA and other Federl agencies to avoid delay or dupliction of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Tucson Active Management Area. It provides an additional reviews of groundwater protection measures, whenever possible, for only those projects which request Federal financial assistance. This regulation was submitted to OMB for review under EEO 12291.

Dated, January 12, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-1897 Filed 1-23-84; 8:45 am]

BILLING CODE 6560-50-M

[WH FRL 2511-2]

Aquifers Underlying Kings and Queens Counties, New York Determination

AGENCY: Environmental Protection Agency, Region II.

ACTION: Notice of determination; aquifers underlying Kings and Queens Counties, New York.

SUMMARY: Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act (Pub. L. 93-523) the Administrator of the Environmental Protection Agency has determined that the aquifer underlying Kings and Queens Counties, New York, is the sole or principal source of drinking water for the southeastern portion of Queens County, New York, and which, if contaminated, would create a significant hazard to public health.

ADDRESS: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Water Supply Branch, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Damian J. Duda, U.S. Environmental Protection Agency, Water Supply Branch, 26 Federal Plaza, New York, New York 10278—Tel. (212) 264-1800.

SUPPLEMENTARY INFORMATION: The Safe Drinking Water Act was enacted on

December 16, 1974. Section 1424(e) of the Act states:

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of the determination in the Federal Register. After the publication of any notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Background

On June 18, 1979, the Jamaica Water Supply Company, Lake Success, New York, petitioned the Administrator to amend the Long Island (Nassua/Suffolk) designation of June 21, 1978, 43 FR 26611 to include the aquifers underlying Kings and Queens Counties, New York, as a sole source aquifer under the provisions of section 1424(e) of the Safe Drinking Water Act.

Public Participation

A notice of receipt of this petition, together with a request for comments was published in the Federal Register August 29, 1979, 44 FR 50649. In response to the Notice and request for comments, written comments were received from a State, and a local governmental agency. Both commenters claimed that the designation would be premature since there is an absence of final rules and regulations on the sole or principle source aquifer program under Section 1424(e). The letters further stated that New York State will be developing a ground-water management program and that the EPA should await the outcome of these studies before considering designation of the aquifer. The agency does not agree with the letters requesting further delay since the ground water management studies referred to are not directly related to the sole source designation request. In addition, EPA had sufficient information to write a background document which serves as the basis for designation.

On October 4, 1979, the Environmental Protection Agency (EPA) held a public hearing in Queens County, New York City, New York to hear the views of persons interested in the Kings and Queens Aquifer issue. Two groups presented testimony at the public hearing. The first group represented the petitioner, Jamaica Water Supply Company and the second represented the New York State Department of Health, Bureau of Public Water Supply. There were no representatives of the public present at the public hearing.

Basis for the determination

On the basis of the information which is available to this Agency the Administrator has made the following findings, which are the basis for the determination noted above:

(1) The Kings and Queens aquifers which underly the southeastern portion of Queens County are the sole or principal source of drinking water for approximately 650,000 people in such area, which is the service area of the Jamaica Water Supply Company. In 1979, the aquifers supplied approximately 60 million gallons per day (mgd) of water from 65 wells located in or near the water supply franchise area of the Jamaica Water Supply Company. Current water supply treatment practice for public supplies is generally limited to disinfection for drinking purposes. There is no alternative source of drinking water supply which could replace these aquifers if they were contaminated.

While the Kings and Queens aquifers are not utilized as the sole or principal source of drinking water for the Borough of Kings or for any other portion of Queens County, the geographic boundaries of Kings and Queens Counties are the recharge zone for the aquifers underlying the southeastern portion of Queens County. The recharge zone also encompasses parts of Nassau County, New York. Aquifers underlying Nassau and Suffolk Counties, New York have already been designated as a sole or principal source aquifer under Section 1424(e) of the Safe Drinking Water Act.

(2) The aquifers underlying Kings and Queens Counties are vulnerable to contamination through their recharge zone, particularly from leaking sewer pipes. Other sources such as past farming practices and present fertilization of lawns and gardens may also be significant. The area contains leaking fuel tanks and leachate from open dumps and improperly operated landfill sites all of which add to the contamination of the ground water. In addition, EPA analysis shows that further and continued withdrawal of water over and above the aquifers sustained yield would cause the salt-fresh water interface to move into the aquifers recharge zone thereby threatening the ground water quality by increasing the chloride content in the water. Since ground water contamination can be difficult or impossible to reverse, and because this aquifer is relied upon for drinking purposes by many people, contamination of the aquifer would pose a significant hazard to public health.

(3) When an aquifer has been designated as the sole or principal source of drinking water, the area in which projects may be reviewed is the area encompassed by: (1) the boundary of the designated aquifer's recharge zone, and (2) its stream-flow source zone.

The Administrator has determined that the recharge zone and stream-flow source zone for the aquifers underlying southeastern Queens County are defined by the outside boundary of Kings County (Borough of Brooklyn) and Queens County (Borough of Queens) in the city of New York and parts of Nassau County. Since the parts of Nassau County within the recharge and streamflow source zones of the aquifers underlying southeastern Queens County are already under sole or principal source protection as the result of the Agency's prior designation of the aquifers underlying Nassau/Suffolk Counties, today's designation will extend the area for project review to encompass projects undertaken in the Boroughs of Brooklyn and Queens in the city of New York.

Information Utilized in This Determination

The petition, written and verbal comments submitted by the public, a detailed map of the area and independent analysis by EPA are available to the public and may be inspected during normal business hours at the office of the Environmental Protection Agency, Region II, Water Supply Branch, 26 Federal Plaza, Room 24–130, New York, New York 10278.

A copy of the above documentation is also available at the U.S. Environmental Protection Agency, Waterside Mall, Public Information and Reference Unit, Room 2922, 401 M. Street SW., Washington, DC 20460.

Project Review

EPA proposed national regulations for implementing Section 1424(e) of the Safe Drinking Water Act on September 29, 1977, at 42 FR 51620. The proposed regulations contain procedures for review of Federal financially assisted projects which could contaminate "sole or principal source" aquifers through the recharge zone so as to create a significant hazard to public health. They are being used as interim guidance until promulgation of final regulations. Questions and comments concerning the possible effect of the regulations on

Federally assisted projects in the designated Kings/Queens Aquifer should be directed to the Water Supply Branch, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278.

EPA Region II is working with the Federal agencies, which may sponsor projects in the area of concern, to develop interagency procedures whereby EPA will be notified of proposed commitments for projects which could contaminate the designated aquifer. EPA will evaluate such projects and, where necessary, conduct an in-depth review, includng soliciting public comments where appropriate.

Although the project review process cannot be delegated, the Regional Administrator in Region II will rely, to the maximum extent possible, upon close coordination with State and local agencies to ensure consistency with their program objectives. Their in-put will be given full consideration and the Federal review process will function so as to complement and support State and local protection programs.

Federal funding may be withheld from any project which, upon review, may contaminate the aquifer through a recharge zone so as to create a significant hazard to public health.

Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification the "small entity" shall have the same meaning as given in Section 601 of the RFA. This action is only applicable to the Kings-Queens Area.

The only affected entitites will be those area-based business, organizations or governmental jurisdictions that request Federal financial assistance for projects which have the potential for contaminating the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act, as amended (NEPA), 42 U.S.C. 4321, et seq. Integration of those related review procedures with sole source aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not "major" because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the designated area. It provides an additional review of ground water protection measures, incorporating State and local measures whenever possible, for only those projects which request Federal financial assistance. Accordingly, a Regulatory Impact Analysis will not be required.

Dated: January 12, 1983

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-1695 Filed 1-23-83; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2508-6]

Final Determination; Sole Source Aquifer Determinations: Nantucket Island Aquifer, Block Island Aquifer

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Pursuant to Section 1424(e) of the Safe Drinking Water Act, the Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Nantucket Island aquifer and the Block Island aquifer, respectively, are the sole or principal sources of drinking water for Nantucket, Massachusetts, and New Shoreham, Rhode Island, and that the aquifers, if contaminated, would create a significant hazard to public health. As a result of this action, Federal financially assisted projects proposed to be constructed on Nantucket Island or Block Island will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

EFFECTIVE DATE: February 23, 1984.

ADDRESSES: The data on which these findings are based is available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region 1, Water Supply Branch, J. F. Kennedy Federal Building, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Steven J. Koorse, Water Supply Branch, U.S. Environmental Protection Agency, Region 1, at (617) 223-6688.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300f, 300h-3(e), Pub. L. 93-523) the Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Nantucket Island aquifer and the Block Island aquifer, respectively, are the sole or principal sources of drinking water for Nantucket, Massachusetts, and New Shoreham, Rhode Island. Pursuant to Section 1424(e), Federal financially assisted projects proposed to be constructed anywhere on Nantucket or Block Island will be subject to EPA review.

Section 1424(e) of the Safe Drinking Water Act states:

> (e) If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On December 2, 1982, EPA received a petition submitted jointly by the Nantucket Planning and Economic Development Commission and the Wannacomet Water Company requesting EPA to designate the Nantucket Island aquifer as a sole source aquifer.

On February 18, 1983, EPA received a petition from the New Shoreham, Rhode Island, Town Clerk requesting EPA to designate the Block Island aquifer as a sole source aquifer.

In response to these two petitions, EPA published a combined notice in the Federal Register on June 13, 1983 (48 FR 27146). The notice served to publish the petitions and to request public comments on each petition.

Basis for Determination

Among the factors to be considered by the Administrator in connection with the designation of an area under Section 1424(e) are: (1) whether the aquifer is the area's sole or principal source of drinking water and (2) whether contamination of the aquifer would create a significant hazard to public health.

On the basis of information available to EPA, the Administrator has made the following findings, which are the bases for the determinations noted above.

1. The Nantucket Island aquifer is a single continuous aquifer which currently serves as a source of drinking water for approximately 7,000 permanent residents and 27,000 peak seasonal residents of Nantucket.

2. The Block Island aquifer is a single continuous aquifer which currently serves as a source of drinking water for approximately 550 permanent residents and 12,000 peak seasonal residents of New Shoreham.

3. There is no existing alternative drinking water source or combination of sources which provide fifty percent or more of the drinking water to either of the designated areas, nor are there any reasonably available alternative future sources capable of meeting the drinking water demands of the two areas.

4. The Nantucket and Block Island aquifers are glacial in origin and are composed of unconsolidated sand, gravel, silt and clay deposits. As a result of their highly permeable soil characteristics, the aquifers are susceptible to contamination from a number of sources, including but not limited to, chemical spills, highway runoff, septic tanks, leaking storage tanks and leachate from open dumps. Since ground-water contamination can be difficult or impossible to reverse and since the Nantucket Island aquifer and the Block Island aquifer are relied on for drinking water purposes by the general population, contamination of either aquifer could pose a significant hazard to public health.

Description of the Aquifers and Their Recharge Zones

Nantucket Island: The Island of Nantucket is the largest of the group of islands that form the Town of Nantucket, Massachusetts. Nantucket is located about 25 miles south of Cap Cod and 15 miles east of Martha's Vineyard. The area in which Federal financially assisted projects will be subject to review is the area that includes the Nantucket Island aquifer, its stream flow source zone and its recharge area, which are one and the same.

Block Island: Block Island is the popular name for the Town of New Shoreham, Rhode Island. The Island is located about 10 miles south of Rhode Island and 14 miles east of Long Island, New York. The area in which Federal financially assisted projects will be subject to review includes the Block Island aquifer, its stream flow source zone and its recharge area, which are one and the same.

For purposes of these designations the Nantucket Island aquifer and the Block Island aquifer are considered single continuous aquifers, with the Atlantic Ocean forming the lateral boundaries of each aquifer. Similarly, the recharge zone boundaries of each aquifer will be regarded as coextensive with the lateral boundaries of the aquifers.

Information Utilized in the Determinations

The information utilized in this determination includes the petitions, a ground-water resources study conducted by the U.S. Geological Survey (Water Resources of Nantucket Island, Massachusetts, Atlas HA–615), a ground-water resources study conducted by the U.S. Geological Survey in cooperation with the Rhode Island Water Resources Coordinating Board (Ground-Water Resources of Block Island, Rhode Island, Rhode Island Geological Bulletin No. 14) and U.S. Environmental Protection Agency technical publications. The above data are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region 1, Water Supply Branch, J. F. Kennedy Federal Building, Boston, Massachusetts 02203.

Project Review

EPA Region I is working with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures are being developed in which EPA will be notified of proposed commitments by Federal agencies for projects which could contaminate the Nantucket or Block Island aquifiers. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should the Administrator determine that a project may contaminate either aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be entered into. However, a commitment for Federal financial may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Although the project review process cannot be delegated, the EPA will rely to the maximum extent possible on any existing or future State and local control mechanisms in protecting the ground-water quality of the designated aquifers. EPA Region I will coordinate the review of any Federal financially assisted project with State and local agencies. Their comments will be given full consideration and the Federal review process will attempt to complement and support State and local groundwater protection mechanisms.

Summary of Public Comments

No written comments, pro or con, were received during the public comment period. In view of the apparent lack of controversy over the proposed designations, EPA did not schedule public hearings.

Regulatory Flexibility Act and Executive Order 12291 Requirements

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. Section 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the term "small entity" shall have the same meaning as given in Section 601 of the RFA. This action is only applicable to Nantucket Island and Block Island, as formerly delineated in this notice. The only affected entities will be those Nantucket or Block Island businesses, organizations or governmental jurisdictions that request Federal financial assistance for projects which have the potential for contaminating the aquifer so as to create a significant hazard to public health.

For those small entities which are subject to review, the impact of today's action will not be significant. Most projects subject to this review will be preceded by a ground-water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act, as amended (NEPA), 42 U.S.C. 4321 *et seq.* Integration of those related review procedures with sole source aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected.

Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects Nantucket Island and Block Island. It provides an additional review of ground-water protection measures, incorporating State and local measures whenever possible, for only those projects which request Federal financial assistance.

Dated: January 12, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-1896 Filed 1-23-84; 8:45 am]

BILLING CODE 6560-50-M

[(OPTS-00045) BH-FRL 2510-5]

Interagency Toxic Substances Data Committee, Special Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Special Meeting Open to the Public.

SUMMARY: This notice announces a special meeting of the Interagency Toxic Substances Data Committee for the purpose of a briefing on activities of the International Register of Potentially Toxic Chemicals (IRPTC) of the United Nations Environment Program and the International Program on Chemical Safety (IPCS) of the World Health Organization. Speakers will include Dr. Jan Huisman of IRPTC and Dr. Michel Mercier of IPCS. The meeting is open to the public.

DATE: The meeting will take place from 9:30 a.m. to 12:00 noon on Friday, February 3, 1984.

ADDRESS: The meeting will be held in: Rms. 6332, 6334, and 6336, Department of Transportation, 400 Seventh St., SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Sandra Lee, Executive Secretary, Interagency Toxic Substances Data Committee, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-611G, 401 M St., SW., Washington, D.C. 20460 (202-382-2249).

SUPPLEMENTARY INFORMATION: The regular meetings of the Interagency Toxic Substances Data Committee usually are held on the first Tuesday of alternate months. The next meeting has been scheduled for March 6, 1984.

Dated: January 13, 1984.

Sandra Lee,

Executive Secretary, Interagency Toxic Substances Data Committee.

[FR Doc. 84-1900 Filed 1-23-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

I.T.O. Corporation of Ameriport, Inc./ Sea-Land Service, Inc.; Termination

Agreement No.: T-1887-A.

Title: I.T.O. Corporation of Ameriport, Inc. and Sea-Land Service, Inc.

Parties:

I.T.O. Corporation of Ameriport
Sea-Land Service, Inc.

Synopsis: The parties to the above referenced agreement have advised that the agreement has been terminated by the parties effective October 31, 1983.

Filing Party: J. L. Sutherland, Vice President, Sea-Land Service, Inc., 10 Parsonage Road, P.O. Box 800, Iselin, New Jersey 08830.

Dated: January 18, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-1840 Filed 1-23-84; 8:45 am]

BILLING CODE 6730-01-M

New York Freight Conference; Termination of Contract Rate System

Filing Party: David N. Dunn, Esquire, Warren & Associates, P.C., 1100 Connecticut Avenue, NW., Washington, D.C. 20036.

Agreement No.: 5700.

Sumary: By tariff supplement dated November 21, 1983, the Commission received notice that the above-captioned conference is terminating its Contract Rate System effective February 18, 1984.

Dated: January 18, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-1843 Filed 1-23-84; 8:45 am]

BILLING CODE 6730-01-M

Pacific/Indonesian Conference; Termination of Contract Rate System

Filing Party: Scott L. Smith, Chairman, P.O. Box 7411, San Francisco, California 94120.

Agreement No.: 6060.

Summary: By letter dated October 31, 1983, the Commission received notice that the above-captioned conference is terminating its Contract Rate System effective January 1, 1984.

Dated: January 18, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-1842 Filed 1-23-84; 8:45 am]

BILLING CODE 6730-01-M

Pacific/Australia-New Zealand Conference; Termination of Contract Rate System

Filing Party: F. H. Foster, Secretary, P.O. Box 7411, San Francisco, California 94120.

Agreement No.: 50.

Summary: By letter dated October 31, 1983, the Commission received notice that the above-captioned conference is terminating its Contract Rate System effective February 1, 1984.

Dated: January 18, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-1844 Filed 1-23-84; 8:45 am]

BILLING CODE 6730-01-M

Pacific/Straits Conference; Termination of Contract Rate System

Filing Party: Scott L. Smith, Chairman, P.O. Box 7411, San Francisco, California 94120.

Agreement No.: 5680.

Summary: By letter dated October 31, 1983, the Commission received notice that the above-captioned conference is terminating its Contract Rate System effective February 1, 1984.

Dated: January 18, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-1845 Filed 1-23-84; 8:45 am]

BILLING CODE 6730-01-M

Philadelphia Port Corporation/Sea-Land Service, Inc.; Termination

Agreement No.: T-1887.

Title: Philadelphia Port Corporation and Sea-Land Service, Inc.

Parties:

Philadelphia Port Corporation
Sea-Land Service, Inc.

Synopsis: The parties to the above referenced agreement have advised that the agreement has been terminated by the parties effective October 31, 1983.

Filing Party: John J. Malone, President, Philadelphia Port Corporation, 1020 Public Ledger Building, Philadelphia, Pa 19106.

Dated: January 18, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-1841 Filed 1-23-84; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 52.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: T-3071-3.

Title: City of Los Angeles and Japan Line, Ltd., Mitsui OSK, Ltd., and Yamashita Shinnihon Steamship Company, Ltd., Terminal Lease Agreement.

Parties: The City of Los Angeles (City) and Japan Line, Ltd., Mitsui OSK, Ltd., and Yamashita Shinnihon Steamship Company, Ltd. (The Lines).

Synopsis: Agreement No. T-3071-3, between the City and The Lines modifies the parties' basic agreement which provides for the non-exclusive preferential use by The Line: of certain premises in the Port of Los Angeles. The modification provides (1) that the premises be extended to include Berth No. 131; (2) that the berth shall be used for the docking and mooring of vessels during that time required for cargo handling and for no other purpose; (3) The Lines must receive permission from the Port to work vessels, and they must cooperate with other users of the berth; (4) The Lines may not solicit customers which are tenants of the Port; (5) The Lines will remit 25% of wharfage and dockage collected; (6) The Lines will not receive any credit toward annual compensation; and (7) all other rexisting terms of the basic agreement and previous amendments thereto will remain in effect.

Filing Party: Frank Wagner, Deputy City Attorney, Office of the City Attorney, Harbor Division, P.O. Box 151, San Pedro, California 90733.

Agreement No.: T-3450-2.

Title: The City of Los Angeles and Overseas Terminal., Co., Inc., Amended Assignment Agreement.

Parties: The City of Los Angeles (City) and Overseas Terminal Co., Inc. (Overseas).

Synopsis: Agreement No. T-3450-2 modifies the basic agreement between the parties which provides for the non-exclusive preferential assignment to Overseas of Berths 228-230 at Los Angeles Harbor. The modification provides for the purchase by the City from Overseas of certain equipment installed by Overseas at Berths 228-230, and it sets forth the terms and conditions of the purchase.

Filing Party: Raymond P. Bender, Assistant City Attorney, City of Los Angeles, Harbor Division, P.O. Box 151, San Pedro, California 90731-0151.

Agreement No.: T-4157.

Title: Jacksonville Port Authority and Eller & Company, Inc. Terminal Lease Agreement.

Parties: Jacksonville Port Authority (Port) and Eller & Company, Inc., (Eller).

Synopsis: Agreement No. T-4157 provides that the Port will lease 11,000 sq. ft. at Talleyrand Dock, Jacksonville, Fla., to Eller for use in the receiving and delivery of cargo in the foreign commerce of the United States. The lease will run from the first day of the month following approval by the Commission, to September 30, 1984.

Filing Party: C. Prosuch, Director of Finance, Jacksonville Port Authority, P.O. Box 3005, 2831 Talleyrand Avenue, Jacksonville, Florida 32206.

By Order of the Federal Maritime Commission.

Dated: January 18, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-1837 Filed 1-23-84; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed

Erratum

Agreement No.: T-4151.

Filing Party: William C. Smith, Ballard, Sphar, Andrews & Ingersoll, Suite 1100, 1850 K Street, NW., Washington, D.C. 20006.

Synopsis: Agreement No. T-4151 appeared in the **Federal Register** on December 20, 1983, page 56273, indicating incorrectly the leased premises covered by the agreement. It should have been shown as Tioga Marine Terminal No. 2, Berth No. 1, instead of Piers 96-98-100.

By Order of the Federal Maritime Commission.

Dated: January 18, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-1838 Filed 1-23-84; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2477]

MDR Enterprises, Inc.; Reissuance of License

By Notice served and published in the **Federal Register**, Independent Ocean Freight Forwarder License No. 2477 was revoked, effective November 19, 1983 for failure to maintain a valid surety bond on file with the Commission. The Notice of Revocation was served on November 29, 1983.

An appropriate surety bond has been received in favor of MDR Enterprises, Inc. and compliance pursuant to section 44, Shipping Act, 1916, and § 510.15 of the Commission's General Order 4 has been achieved.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in § 9.09(a) of Commission Order No. 1 (Revised), dated September 27, 1983, Independent Ocean Freight Forwarder License No. 2477 shall be reissued to MDR Enterprises, Inc. effective January 11, 1984. A copy of this notice shall be published in the **Federal Register** and served upon MDR Enterprises, Inc.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-1836 Filed 1-23-84; 8:45 am]

BILLING CODE 6730-01-M

Section 15 Agreement; Cancellation

Agreement No.: 10219.

Title: Lykes Bros. Steamship Co., Inc./ Compagnie Malagache de Navigation.

Parties: Lykes Bros. Steamship Co., Inc., Compagnie Malagache de Navigation.

Synopsis: By letter dated January 6, 1984, the Commission received notice to cancel the above agreement as it no longer reflects their current understanding.

Filing Party: R. J. Finnan, Pricing Analyst, Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, Louisiana 70130.

By Order of the Federal Maritime Commission.

Dated: Janyary 18, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-1839 Filed 1-23-84; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Record of Decision; Union Station, Nashville,TN

AGENCY: Public Buildings Service, General Services Administration, Region 4.

ACTION: Notice.

SUMMARY: This notice announces the Record of Decision for the proposed Reporting of Union Station, Nashville, Tennessee, as excess to the needs of GSA.

ADDRESS: General Services Administration; Region 4; 75 Spring Street; Atlanta, Georgia 30303.

The United States General Services Administration (GSA) has made the decision below according to the regulations of the Council on Environmental Quality (40 CFR 1505.2) and the GSA Handbook, *Preparation of Environmental Assessments and Environmental Impact Statements* (PBS P 1095.4A).

Decision

GSA declares Union Station, Nashville, Davidson County, Tennessee, a National Register Landmark structure, excess to its needs. GSA will transfer the property to the GSA Disposal Division, Region IV, Office of Public Buildings and Real Property, for disposition in accordance with Executive Order 12348.

Project Description

The original project provided for the renovation and adaptive reuse of Union Station to house eight Federal agencies and to provide commercial, cultural, recreational, or educational outlease activities in approximately 72,700 occupiable square feet of space.

Under a prospectus approved by the Public Works Committees of Congress on May 15 and June 22, 1978, the estimated cost to renovate the facility was $7,152,000. The renovation cost figure was determined assuming a construction start in 1979.

Several unforeseen events have adversely affected the project, resulting in delays. One major reason for the project delay was the presence of the pathogenic fungus *Cryptococcus Neoformans*. Another hazard was the fungus *Histoplasma Capsulatum*.

The United States Centers for Disease Control (CDC) has warned GSA of the health hazards incident to the presence of these fungi. *Cryptococcus Heoformans* causes the disease in humans called meningitis, and the CDC has advised that this desease is fatal in 50 percent of those who contract the disease. The railroad station, when donated to the Government by the L&N Railroad, was heavily coated with the waste of thousands of pigeons that had accumulated over a period of years. The pigeons waste served as a ready environment for the life cycle and propagation of the hazard fungi. At substantial expense the GSA has applied decontamination procedures on three occasions in an effort to eliminate the hazard. Decontamination could be undertaken effectively only when daily temperatures were between a high of 90 degress and low of 60 degrees. These temperature requirements caused significant delays. On August 5, 1983, Vanderbilt University indicated that samples taken from Union Station on June 27, 1983, were free of pathogenic fungi.

Another factor which adversely affected the project is inflation. Inflation has increased the cost of renovation. Remaining funds once available for the project would allow the renovation of only about 32,000 occupiable square feet of space as opposed to the original plan to renovate 72,700 occupiable square feet. The 25,000 square feet of space proposed for non-federal activities of commercial, cultural, educational, or recreational nature would be reduced to only 5,000 square feet of unfinished space. The cost to renovate the 32,000 square feet of space would exceed $150 per square foot.

Planned renovation which could not be accomplished includes work on the ground floor, mezzanine, and attic. These areas would have to be sealed off and could not be renovated within the funds previously available. Most of the lobby ceiling, walls, and woodwork could not be restored.

Alternatives Considered

GSA considered the following alternatives in reaching its decision:

1. No Action

For an extended period of time this alternative would permit Union Station to deteriorate beyond a point of reasonable restoration for all practicable purposes.

2. Continued Federal Renovation of Union Station

Several unforseen events will not permit the continued renovation of Union Station. Available funds will not permit the renovation of 72,700 occupiable square feet.

3. Declaration of Union Station as Excess to the Needs of GSA

This alternative will make Union available for renovation by other Federal, state, local or private entities for adaptive reuse.

Basis for Decision

GSA based its decision to declare Union Station excess to its needs on a combination of environmental, economic, efficiency, fiscal responsibility, and national policy factors. Declaring Union Station excess to GSA's needs will make the building available to other interested Federal, state, or local governmental agencies and private groups or individuals for acquisition and adaptive use.

After extensive consideration and study, it appears that removal of Union Station from GSA's building inventory and its subsequent disposal as surplus to GSA's needs would be in the best interest of the Government, as well as the general public. There has been considerable media publicity over the problems that have arisen since GSA's ownership including health hazards and weatherization. There has also been substantial correspondence with local interest groups and litigation against GSA's deferment of action on Union Station; however, despite past controversy, the present expressed sentiment of local officials and interest groups is favorable and is in support of the proposed excessing and disposition—especially if conveyance is made to the Metropolitan Government of Nashville and Davidson County.

Indications are that there would be substantial public interest in renovating Union Station if the building were made available to the commercial sector. GSA

has been contacted by at least six (6) private firms or individuals who are interested in commercially developing Union Station. The Metropolitan Government of Nashville and Davidson County has selected a potential private developer of the property contingent upon GSA's decision to declare the property surplus and to donate it to the Metropolitan Government of Nashville and Davidson County for lease to a private developer. The uses proposed by potential developers are compatible with local land use and development plans. Commercial development of Union Station would have a positive environmental impact on the community as GSA would ensure that proposed users are compatible with local plans.

This alternative is expected to have no adverse affect on the architectural qualities of this National Register Landmark depending on the proposed preservation covenants or conditions on the transfer of ownership. Transfer would be accomplished in accordance with the National Historic Preservation Act of 1966, 36 CFR Part 800, and Executive Order 11593, "Protection and Enhancement of the Cultural Environment".

The alternative of reporting Union Station as excess property to the needs of GSA is the environmentally preferred alternative. In arriving at this decision, GSA fully utilized National Environmental Policy Act procedures to involve the interested public. GSA has prepared and circulated a draft Environmental Impact Statement (EIS), circulated a final EIS, and, more recently, circulated a supplement to the final EIS.

Mitigation and Monitoring

Since Union Station is a National Register Landmark property, every effort will be made to preserve the historical, architectural, and cultural features of this property.

Adverse impacts on the architectural, cultural, or historical qualities of Union Station are possible depending on the ultimate development plans for Union Station; however, GSA will require that any purchaser or grantee of Union Station shall comply with the National Historic Preservation Act of 1966, Executive Order 11593, and with covenants and conditions designed to protect the building set forth at the time of transfer of ownership.

Conclusion

GSA has explored alternatives that would have both negative and positive affects on Union Station. Preservation and adaptive reuse of Union Station will result in positive impacts that far outweigh the negative aspects. Reuse of the building will revitalize the area surrounding the station and will serve as a catalyst for further development. Reuse of Union Station will be compatible with local land-use plans to provide a link between "music row" and a proposed convention center.

Declaring Union Station as excess to the needs of GSA and conveying the property to the Metropolitan Government of Nashville and Davidson County will provide the most assurance possible that this National Register Landmark structure will not further deteriorate and will permit its continued use for many years to come.

Dated: January 13, 1984.

Donald F. Layfield,

Regional Administrator of General Services.

[FR Doc. 84-1894 Filed 1-23-84; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committees; Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of February 1984.

National Advisory Council on Alcohol Abuse and Alcoholism

February 2–3; 9:00 a.m.
Wilson Hall, Building 1
National Institutes of Health
9000 Rockville Pike, Bethesda, Maryland 20205

Open—February 2; 9:00 a.m.–4:00 p.m.
Closed—Otherwise
Contact: Mr. James Vaughan, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375

Purpose: The Council advises the Secretary, Department of Health and Human Services, regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Agenda: From 9:00 a.m.–4:00 p.m., February 2, the meeting will be open to the public. This session will be devoted to general business of the Council and a discussion of current budget, legislative and program activities. Otherwise, the Council will conduct a final review of grant applications for Federal Assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Psychopathology and Clinical Biology Research Review Committee

February 13–15; 9:00 a.m.
Holiday Inn Hotel
5520 Wisconsin Avenue, Bethesda, Maryland 20814

Open—February 13; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Irma Fisher, Room 9C–24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1340

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., February 13, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Alcohol Biomedical Research Review Committee

February 15–17; 9:00 a.m.
Quality Inn/Embassy Suites
2000 N street, NW.
Washington, D.C. 20036

Open—February 15; 9:00–11:00 a.m.
Closed—Otherwise
Contact: Harvey P. Stein, Ph.D., Executive Secretary, Alcohol Biomedical Research Review Committee, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106

Purpose: The Committee is charged with the initial review of applications for assistance from the National

Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00–11:00 a.m., February 15, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552 (c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Basic Psychopharmacology Research Review Subcommittee of the Basic Psychopharmacology and Neuropsychology Research Review Committee

February 16–17; 9:00 a.m.
Holiday Inn, 8777 Georgia Avenue
Silver Spring, Maryland 20910

Open—February 16; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Mrs. Shirley Maltz, Room 9C–26,
Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3944

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., February 16, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C., 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee

February 21–23; 9:00 a.m.
Parklawn Conference Room
Holiday Inn—Crowne Plaza
1750 Rockville Pike
Rockville, Maryland 20852

Open—February 21: 9:00–9:30 a.m.
Closed—Otherwise
Contact: Alan Schreier, Ph.D., Extramural Policy and Project Review Branch, NIDA, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., February 21, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Drug Abuse Clinical and Behavioral Research Review Committee

February 21–23; 9:00 a.m.
Holiday Inn–Crowne Plaza
1750 Rockville Pike
Rockville, Maryland 20852

Open—February 21; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Mr. Daniel L. Mintz, Executive Secretary, DACB, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., February 21, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Epidemiology and Prevention Subcommittee of the Drug Abuse Epidemiology, Prevention, and Services Research Review Committee

February 21–23; 8:30 a.m.
State Room, Ramada Inn
8400 Wisconsin Avenue
Bethesda, Maryland 20814

Open—February 21; 8:30–9:30 a.m.
Closed—Otherwise
Contact: Mr. Ron Gold, Executive Secretary, DAPA, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 8:30–9:30 a.m., February 21, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Pharmacology Research Subcommittee of the Drug Abuse Biomedical Research Review Committee

February 21–13; 9:00 a.m.
Twinbrook Conference Room
Holiday Inn–Crowne Plaza
1750 Rockville Pike
Rockville, Maryland 20852

Open—February 21; 9:00–9:30 a.m.
Closed–Otherwise
Contact: Khursheed Asghar, Ph.D., Extramural Policy and Project Review Branch, NIDA, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., February 21, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the

Committee will be performing initial review of applications for assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Services Research Subcommittee of the Drug Abuse Epidemiology, Prevention, and Services Research Review Committee

February 21-23; 8:30 a.m.
Caucus Room, Ramada Inn
8400 Wisconsin Avenue, Rockville, Maryland 20814

Open—February 21; 8:30-9:30 a.m.
Closed-Otherwise
Contact: Mr. H. Noble Jones, Executive Secretary, DAPB, Room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 8:30-9:30 a.m., February 21, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Alcohol Psychosocial Research Review Committee

February 22-24; 9:00 a.m.
Quality Inn/Embassy Suites, Room 106, 2000 N Street NW., Washington, D.C. 20036

Open—February 22; 9:00-9:30 a.m.
Closed-Otherwise
Contact: Laura Weinstein, Ph.D., Executive Secretary, Alcohol Psychosocial Research Review Committee, Room 16C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443-6160

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00-9:30 a.m., February 22, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Criminal and Violent Behavior Research Review Committee

February 22-24; 9:00 a.m.
Gramercy Inn
1616 Rhode Island Avenue NW.
Washington, D.C. 20036

Open—February 22; 9:00-10:30 a.m.
Closed—Otherwise
Contact: Jean Byrne, Room 9C-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4868

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to the mental health aspects of criminal and antisocial behavior, individual violent behavior, sexual assault, and law and mental health interactions, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:30 a.m., February 22, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Aging Subcommittee of the Life Course and Prevention Research Review Committee

February 23-24; 9:00 a.m.
Lanai 144, Sheraton Washington Hotel
2660 Woodley Road at Connecticut Avenue NW.
Washington, D.C. 20008

Open—February 23; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Mrs. Victoria Souder, Room 9C-02, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1220

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of child, family, and aging, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., February 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee

February 23-24; 9:00 a.m.
Sheraton Washington Hotel
2660 Woodley Road NW.
Washington, D.C. 20008

Open—February 23; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Pamela J. Mitchell, Room 9C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1367

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., February 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health

Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee

February 23–24; 9:00 a.m.
The Capitol Hill Hotel
200 C Street SE.
Washington, D.C. 20003

Open—February 23; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Maureen Eister, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4868

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., February 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee

February 23–25; 9:00 a.m.
The River Inn
924–25th Street NW.
Washington, D.C. 20037

Open—February 23; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Mrs. Christine Peers, Room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1177

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to the mental health of the child and family and prevention, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., February 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applicants for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Mental Health Behavioral Sciences Research Review Committee

February 23–25; 9:00 a.m.
The Capitol Hill Hotel
200 C Street, S.E.
Washington, D.C. 20003

Open—February 23; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Naomi Lichtenberg, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., February 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applicants for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

National Advisory Mental Health Council

February 27–28; 9:00 a.m.
National Institutes of Health
Building 31C, Conference Room 6
9000 Rockville Pike
Bethesda, Maryland 20205

Open—February 27; 9:00 a.m.–5:00 p.m.
Closed—Otherwise
Contact: Ms. Helen W. Garrett, Committee Management Officer, Room 17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333

Purpose: The National Advisory Mental Health Council advises the Secretary of Health and Human Services, and the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Agenda: On February 27, the meeting will be open for discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public for the open session will be limited to space available. Otherwise, the Council will conduct a final review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Basic Behavioral Processes Research Review Committee

February 29–March 2; 9:00 a.m.
The Lombardy Hotel
2019 Eye Street N.W.
Washington, D.C. 20006

Open—February 29; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Doris East, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to experimental and physiological psychology and comparative behavior, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., February 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applicants for Federal assistance and will not be open to the public in accordance with the

determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained as follows: NIAAA: Mrs. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375. NIDA: Ms. Claudette Wright, Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1644. NIMH: Ms. Helen W. Garrett, Committee Management Officer, Room 17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: January 16, 1984.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 84–1833 Filed 1–23–84; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Vaccines and Related Biological Products Advisory Committee by the Secretary, Department of Health and Human Services.

DATE: Authority for this committee will expire on December 31, 1985, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: January 17, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–1831 Filed 1–23–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 81N–0396; DESI 6514]

Drugs for Human Use; Drug Efficacy Study Implementation; Prescription Drugs Offered for Relief of Symptoms of Cough, Cold, or Allergy; Amendment

Correction

In FR Doc. 83–34781 beginning on page 153 in the issue of Tuesday, January 3, 1984, make the following corrections:

1. On page 154, first column under **ADDRESSES,** third paragraph, fourth line, "(HFN–520)" should have read "(HFN–530)".

2. Same paragraph, last line, the zip code should have read "20857."

3. Same page, second column, first complete paragraph, last line, "destromethorphan" should have read "dextromethorphan."

4. Same column, third complete paragraph, third line, "triprolodine" should have read "triprolidine."

BILLING CODE1505–01–M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

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

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 we are proposing to establish a new system of records, National Long-term Care Survey Follow-up, HHS/HCFA/ORD, No. 09–70–0030. This system will provide a nationally valid data base on dependency among elderly persons, the services they use, and their resources for providing for their long-term care in their communities and in institutions. The data will be used for developing long-term care policies for those who will require such care.

We have provided background information about the proposed system in the **"SUPPLEMENTARY INFORMATION"** section below. HCFA invites public comments by February 23, 1984, with respect to routine uses of the system.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Director, Office of Management and Budget (OMB) on January 16, 1984. The new system of records, including routine uses, will be effective March 16, 1984, unless HCFA receives comments which would convince us to make a contrary determination.

ADDRESS: Address comments to Shirley Mulhall, HCFA Privacy Officer, Office of Management and Budget, Health Care Financing Administration, Room G–C–3, East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for public inspection at this location.

FOR FURTHER INFORMATION CONTACT: Jack Scharff, Project Officer, Division of Program Studies, Office of Research and Demonstration, Room 2–C–15, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone number (301) 597–2412.

SUPPLEMENTARY INFORMATION: The Long-Term Care Survey was first conducted in 1982 to establish a national data base on the prevalence of dependency among elderly persons, the kinds and intensity of formal and informal services used by such persons, and the resources available to the elderly with which to pay for their long-term care. The purpose of the survey was to establish a data base with which to estimate the potential demand for cost of alternative types of long-term care services for elderly dependent persons in the community (i.e., those not in nursing homes or other institutions) and to estimate the target populations of a program modeled on the National Channeling Demonstration (an experiment designed to ensure that services are targeted effectively and delivered efficiently through case management and cost sharing).

This previous survey provided a wealth of data that are now being analyzed. However, the data are limited in that there is only a cross-section or "snapshot" of the noninstitutionalized elderly population at one point-in-time. In estimating the potential demand for services, the cost of services, and the ability of elderly persons to finance long-term care services, it is important to have a longer view—to know how long their dependencies last, to determine the total amount of services that will be used, the ability of the informal system to provide services over an extended period of time, and how long personal income and assets can pay for services. We propose to reinterview the persons in the previous survey to determine changes in their health conditions, income, services, utilization patterns, and informal supports. All persons who were dependent in the previous survey (i.e., they needed help in personal care or in instrumental activities such as shopping and cooking) will be interviewed as well as a subsample of those persons who were not dependent. Persons who enter

institutions will be interviewed (or, where that is not possible, an interview will be obtained with a knowledgeable proxy) and information will be obtained about deceased sample members through a brief interview with their next-of-kin or another knowledgeable person. The resulting data base will permit us to estimate probability of institutionalization or death within a two-year period for persons with a variety of health conditions and functional limitation. Equally important, it will permit estimates of the service requirements over an extended period of the home-based, dependent elderly population.

In addition to these longitudinal interviews, the initial Long-Term Care Survey Follow-up will have two other components which will provide a complete cross-section of the elderly population: (1) Persons who have become 65 years old between April 1, 1982, (the date of the original sample selection) and March 31 of the survey year (the terminal date of the follow-up survey); and (2) persons who are in institutions. By adding these interviews we will obtain a data base of the total long-term care population, regardless of its place of residence—nursing homes or the community—permitting rigorous comparisons between various subgroups of the institutionalized and noninstitutionalized.

The Privacy Act of 1974 allows us to disclose information without the consent of the individual for "routine uses", that is, disclosure for purposes which are compatible with the purpose for which we collected the data. Accordingly, we are proposing a routine use which provides for disclosure of an individual's record in response to Congressional inquiries made at the request of that individual. Other routine uses provide for disclosure to (1) a contractor involved in the Long-Term Care Initiative (this includes the Channeling Demonstration and the analyses of existing data sets) and to (2) the Department of Justice in the event of litigation.

Individually identifiable data will be maintained only at the Bureau of the Census. The system of records will contain manual and automated records. The manual records will be kept in locked file cabinets or areas of restricted access. All individuals having access to the system of records will sign a pledge of confidentiality or will be sworn Census employees.

Automated records will be maintained in accordance with the National Bureau of Standards Federal Information Processing Standards, the DHHS ADP Systems Security Manual (Part 6, ADP Systems Security), and the Census Administrative Manual, Chapter C–2, "Confidential Data, Sensitive Information, and Requests under the Freedom of Information and Privacy Acts."

Since we propose to establish this system in accordance with the requirements of the Privacy Act, we anticipate no untoward effect on the privacy or personal rights of individuals.

Dated: January 16, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

09–70–0030

SYSTEM NAME:

National Long-Term Care Survey Follow-up, DHHS/HCFA/ORD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Department of Commerce, Bureau of the Census, Washington, D.C. 20233.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will include records of elderly Medicare beneficiaries who have been identified in the National Long-Term Care Survey as having a functional limitation. This information pertains to Medicare beneficiaries living in institutions, in their communities, and deceased beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data records will include information on personal care; mobility; physical, mental, and social functioning; formal and informal services and supports; income and assets; and instrumental activities such as managing money and taking medicine plus basic information on nursing home stays, living arrangements, and demographics from persons who have no limitations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1875(a) of the Social Security Act (42 U.S.C. 139511).

PURPOSE OF THE SYSTEM OF RECORDS:

To provide a national data base on the incidence and prevalance of dependency among the functionally limited elderly person; the services they use, and their resources for providing long-term care in their communities and in institutions. The data will be used for developing long-term care policies for those who will require such care.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

Disclosure may be made:

1. To a congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

2. To contractors under contract with the Health Care Financing Administration (HCFA) or the National Center for Health Services Research (NCHSR) of the Department of Health and Human Services (DHSS) for projects involved in the Long Term Care Initiative. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and disc, paper and card records.

RETRIEVABILITY:

Records are retrieved by a unique identifying number which is linked to names, addresses, and Medicare numbers at the Census Bureau.

SAFEGUARDS:

All individuals having access to the system of records will sign a pledge of confidentiality or will be sworn Census employees. Automated records will be maintained in accordance with the National Bureau of Standards Federal Information Processing Standards, the DHHS ADP System Manual, Part 6, ADP System Security, and the Census Administrative Manual, Chapter C–2 "Confidential Data, Sensitive Information and Requests Under the Freedom of Information and Privacy Act."

RETENTION AND DISPOSAL:

On the possibility that a further follow-up may be undertaken, tape and hard copy of all interviews will be retained for a period not to exceed five years, after which they will be destroyed. Data disposal will consist of burning or shredding the hard copy (and so certifying) and degaussing computer records. There are no plans to dispose of non-identifiable individual data.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, 6325 Security Boulevard, Room 2230, Oak Meadows Building, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

An individual requesting notice as to whether the system of records contains information pertaining to him/her, should write to the Systems Manager, at the above address, indicating his/her full name, current address, including ZIP Code at the time she/he was first interviewed for the survey, and the date of birth. The individual may simultaneously request records access as described below.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address given above, reasonably identify the record as described above, specify the information being contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete or not current).

RECORD SOURCE CATEGORIES:

Individual-specific information will be gathered through interviews with beneficiaries, their proxies, or their survivors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84-1851 Filed 1-23-84; 8:45 am]
BILLING CODE 4120-03-M

Public Health Service

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants; Meeting

Pursuant to Pub. L. 92-463 of the Federal Advisory Committee Act, notice is hereby given of the meeting of the Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects on Phenoxy Herbicides and Contaminants to be held at the National Instituties of Health, February 6, 1984, Building 31, Conference Room 3, Bethesda, Maryland 20205.

In accordance with provisions set forth in Section 552b(c)(9)(B), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 6, from approximately 9:30 a.m. to adjournment, to review a draft report concerning the morbidity among Ranch Hand pilots heavily exposed to Agent Orange in Vietnam, as compared with unexposed men with similar service records, for clarity and scientific accuracy before it is released by the Air Force within a week or two. The Secretary has determined that the meeting will not be open to public observation because the proposed agency actions of the scheduled public release of the comprehensive study being reviewed by the committee will be frustrated by the premature disclosure of portions or fragmented elements of the study.

The Acting Executive Secretary, Patricia Madigan, National Cancer Institute, Landow Building, Room 5A-18, National Institutes of Health, Bethesda, Maryland 20205 (301/496-4947) may be contacted for general information.

Dated: January 16, 1984.

Robert W. Miller,

Acting Chairman.

[FR Doc. 84-1835 Filed 1-20-84; 9:02 am]
BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Intent To Hold Public Scoping Meetings and To Prepare an Environmental Impact Statement (EIS) for Coal Preference Right Lease Applications (PRLAs), Located in Kane and Garfield Counties, Utah

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent to Prepare an EIS and Conduct Scoping.

SUMMARY: Notice is hereby given that in accordance with the National Environmental Policy Act of 1969, the BLM will prepare an EIS covering the proposed conversion of twelve (12) PRLAs to coal leases in Kane and Garfield counties, Utah.

Public comments concerning issues and alternatives that should be addressed in the EIS are invited. Comments should be received no later than March 30, 1984 at the address listed below. As part of the scoping process, public open houses are scheduled for February 28 and 29, and a public meeting is scheduled for March 1, 1984. The scoping open houses will be February 28, in Kanab, Utah, in the BLM Kanab Resource Area Office, and February 29, in Escalante, Utah, in the Escalante Resource Area Office, from 4 to 7 p.m. each evening. On March 1, the public scoping meeting will be held in Salt Lake City, Utah beginning at 7 p.m. in the BLM Utah Office, University Club Building, 13th Floor Conference Room. The University Club Building is located at 136 East South Temple, Salt Lake City, Utah. The public is encouraged to attend any of these meetings.

SUPPLEMENTARY INFORMATION: The PRLAs to be addressed in the EIS cover approximately 40,000 acres. They are located on BLM administered public lands in Kane County east of Alton, Utah, on the Kaiparowits Plateau in Kane and Garfield counties, and on the Dixie National Forest in Garfield County west of Escalante, Utah. Five separate companies or individuals are involved in the applications. They are Hiko Bell Mining and Oil Company, Utah International, Inc., Sun Oil Company, Woods Petroleum Corporation, and Jesse H. Knight.

Preliminary concerns identified to date include: mineral development within Wilderness Study Areas, mineral development within an area determined by the Secretary of the Interior to be unsuitable for surface mining, establishment of a coal transportation system through Glen Canyon National Recreation Area, and the U.S. Forest Service's determination that the majority of their PRLA acreage is unsuitable for further consideration for coal leasing.

FOR FURTHER INFORMATION AND SUBMISSION OF COMMENTS: To receive further information contact Mr. Dave Everett, phone (801) 586-2401, address—Cedar City District BLM, P.O. Box 724, Cedar City, Utah 84720. Comments should be addressed to the District Manager, at the same address.

Dated: January 18, 1984.

Roland G. Robinson,

State Director.

[FR Doc. 84-1866 Filed 1-23-84; 8:45 am]
BILLING CODE 4310-DQ-M

South Dakota; Issuance of Disclaimers

[M 45059-C, M 45059-D, M 45059-E]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: This document corrects the legal description and the effective date for the notice that appeared at page 51711 in the Federal Register of Thursday, November 10, 1983, as FR Doc. 83-30430.

FOR FURTHER INFORMATION CONTACT: James Binando (406) 657-6090.

DETAILS: The land is located in R. 49 W., rather than R. 45 W., and the disclaimers will not be issued before April 24, 1984, instead of before February 8, 1984.

Edward H. Croteau,

Chief, Branch of Land Resources.

January 16, 1984.

[FR Doc. 84-1891 Filed 1-23-84; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Emigrant Lake, Rogue River Basin Project, Oregon; Public Notice of Partial Closure of Off Road Vehicle Use Area

Part 420 of Title 43, Code of Federal Regulations, developed in compliance with Executive Orders 11644 and 11989, provides for reviews of areas open to off road vehicle use to assure that such use remains compatible with environmental concerns, as well as the Bureau of Reclamation's needs for the land. When the use of off road vehicles conflicts with environmental management or Reclamation's use of the land, the vehicle use is to be terminated.

A recent review of the permitted off road vehicle use at Emigrant Lake has uncovered such a conflict on the East Bank of the Hill Creek Arm. This area is hereby closed to further use by off road vehicles. Off road vehicle use will continue to be permitted on the West Bank of the Hill Creek Arm and the North Bank of the Upper Emigrant Creek Arm.

Copies of the evaluation leading to the original opening of the Emigrant Lake off road vehicle areas and the review report leading to the closure of the East Bank of the Hill Creek Arm may be examined at the following addresses:

Bureau of Reclamation, Pacific Northwest Regional Office, Federal Building and U.S. Courthouse, 550 West Fort Street, Boise, Idaho 83724

Jackson County, Parks and Recreation Department, County Courthouse, Medford, Oregon 97501

Effective Date: February 23, 1984.

For further information contact: Mr. Mike Misner, Chief, Recreation Branch, Division of Water, Power and Lands, Pacific Northwest Region, Boise, Idaho 83724; telephone 208-334-1177.

Dated: January 19, 1984.

B. H. Spillers,

Acting Commissioner.

[FR Doc. 84-1828 Filed 1-23-84; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 13, 1984. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the interior, Washington, DC 20243. Written comments should be submitted by February 8, 1984.

Carol D. Shull,

Chief of Registration, National Register.

ALASKA

Anchorage Division

Anchorage, *Lathrop Building*, 801 W. 4th Ave.

ARIZONA

Pinal County

Oracle, *Acadia Ranch*, AZ 77

CALIFORNIA

Los Angeles County

Lloyd, Harold, Estate (Greenacres),

CONNECTICUT

Hartford County

Hartford, *Clay Hill Historic District (Boundary Increase)*, 8 Florence St.

Litchfield County

Milton, *Welch, David, House*, Potash and Milton Rds.

GEORGIA

Camden County

St. Marys vicinity, *Duck House (Cumberland Island National Seashore MRA)*, Cumberland Island

St. Marys vicinity, *Dungeness Historic District (Cumberland Island National Seashore MRA)*, Cumberland Island

St. Marys vicinity, *Main Road (Cumberland Island National Seashore MRA)*, Cumberland Island

St. Marys vicinity, *Plum Orchard Historic District (Cumberland Island National Seashore MRA)*, Cumberland Island

St. Marys vicinity, *Rayfield Archeological District (Cumberland Island National Seashore MRA)*, Cumberland Island

St. Marys vicinity, *Stafford Plantation Historic District (Cumberland Island National Seashore MRA)*, Cumberland Island

St. Marys vicinity, *Table Point Archeological District (Cumberland Island National Seashore MRA)*, Cumberland Island

ILLINOIS

Adams County

Quincy, *One Thirty North Eighth Building*, 130 N. 8th St.

Cook County

Chicago, *Belmont-Sheffield Trust and Savings Bank Building*, 1001 W. Belmont Ave.; 3146 N. Sheffield Ave.

Chicago, *Conway Building*, 111 W. Washington St.

Chicago, *Loucks, Charles N., House*, 3926 N. Keeler Ave.

Chicago, *Midwest Athletic Club*, 6 N. Hamlin Ave.

Kane County

Geneva, *Fabyan Villa*, 1511 S. Batavia Ave.

Sangamon County

Springfield, *Yates, Gov. Richard, House*, 1190 Williams Blvd.

Stephenson County

Dakota, *Leek, Clyde, Round Barn (Round Barns in Illinois TR)*, Off N. Dakota Rd.

Eleroy vicinity, *Harbach, Gerald, Round Barn (Round Barns in Illinois TR)*, US 20

Eleroy Vicinity, *Otte, Dennis, Round Barn (Round Barns in Illinois TR)*, E of Eleroy

Freeport vicinity, *Bruce, James, Round Barn (Round Barns in Illinois TR)*, S of Freeport

Lena vicinity, *Jensen, Chris, Round barn (Round Barns in Illinois TR)*, *11723 W. Galena Rd.*

Orangeville vicinity, *Fehr, Charles, Round Barn (Round Barns in Illinois TR)*, NE of Orangeville

Will County

Lockport vicinity, *Fitzpatrick House*, IL 53

Winnebago County

Durand Vicinity, *Weber, Robert, Round Barn (Round Barns in Illinois TR)*, *E of Durand*

INDIANA

Hendricks County

Danville, *Wilson-Courtney House*, 10 Cartersburg Rd.

Huntington County

Huntington, *Hotel LaFontaine*, 200 W. State St.

Noble County

Rome City, *Sylvan Lake Hotel*, 101 Front St.

Teppecanoe County

Lafayette, *Purdue, John, Block*, 6—12 N. 2nd St.

Lafayette, *Waldron-Beck House and Carriage House*, 829 N. 21st St.

MINNESOTA

Hennepin County

Minneapolis, *Chadwick, L.L., Cottages*, 2617 W. 40th St.

Minneapolis, *Wesley United Methodist Church*, 101 E. Grant St.

St. Louis County

Duluth, *Fitger Brewing Company*, 600 E. Superior St.

MISSOURI

Adair County

Kirksville vicinity, *Bear Creek Baptist Church*, N of Kirksville off US 63

MONTANA

Lake County

Linderman, Frank Bird, House

NEW JERSEY

Atlantic County

Atlantic City, *Segal Building*, 1200 Atlantic Ave.

Mercer County

Ewing, *Trenton Jewish Community Center Bath House and Day Camp*, 999 Lower Ferry Rd.

Middlesex County

Raritan Landing Archeological District (Boundary Increase)

NEW MEXICO

Bernalillo County

Albuquerque, *Nob Hill Business Center*, 3500 Central Ave. SE

San Miguel County

Pecos, *Valencia Ranch Historic Archaeological District*, Off NM 63

Taos County

Red River vicinity, *Mallette, Orin, Cabin (Red River MRA)*, W of Red River
Red River vicinity, *Mallette, Sylvester M., Cabin (Red River MRA)*, River St. and Copper King
Red River vicinity, *Melson-Oldham Cabin (Red River MRA)*, SE of Red River
Red River vicinity, *Pierce-Fuller House (Red River MRA)*, High St.
Red River vicinity, *Red River Miners' Hospital-Westoby House (Red River MRA)*, Ray Hawk Trail and High St.
Red River vicinity, *Red River Schoolhouse (Red River MRA), High St.*
Red River vicinity, *Westoby, Edward P., Cabin (Red River MRA)*, Jay Hawk and High St.
Red River vicinity, *Young, Brigham J., House (Red River MRA)*, Main St.

NEW YORK

Ulster County

Napanoch, *Hoornbeek Store Complex*, Main St. between Clinton & Church Sts.

OHIO

Butler County

Trenton vicinity, Deuscher, Henry P., House, 2385 Woodsdale Rd.

Champaign County

Urbana, *Scioto Street Historic District*, scioto St. from Locust to E. Lawn Ave.

Greene County

Cedarville, *Cedarville Opera House*, 78 N. Main St.

Hamilton County

Cincinnati, *Goodall Building*, 324 W. 9th St.

Huron County

New London, *Gregory House*, 1 E. Main St.

Lucas County

Toledo, *Old West End Historic District (Boundary Increase)*, Roughly bounded by Glenwood, Glover, Ashland, Collingwood, and Central Sts.

Mahoning County

Struthers vicinity, *Lake Hamilton Dam*, Off OH 616
Youngstown, *Liberty Theatre*, 142 Federal Plaza W.
Youngstown, *Stambaugh, Henry H., Memorial Auditorium*, 1000 5th Ave.

Pickaway County

Circleville vicinity, *Peters, Stevenson, House*, OH 188

Trumbell County

Niles, *Ward-Thomas House*, 503 Brown St.

Tuscarawas County

Johnson Site II

WISCONSIN

Waupaca County

Fremont vicinity, *Sanders Site (47–Wp–26 and 47–Wp–70)*, Off WI 110

WYOMING

Carbon County

Baggs vicinity, *Divide Sheep Camp*, NE of Baggs

[FR Doc. 84–1908 Filed 1–23–84; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6; Sub–193X]

Burlington Northern Railroad Co.; Abandonment; in Mercer County, ND; Exemption

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*. The line to be abandoned is between M.P. 0.00 near Truax and M.P. 6.37 near Truax Jct., a distance of 6.66 miles, in Mercer County, ND.

BN has certified (1) that no local or overhead traffic has moved over the line for at least 2 years and (2) that no formal complaint filed by a user of rail service (or a state or local governmental entity acting on behalf of such user) on the line regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complianant within the 2-year period. The Public Service Commission (or equivalent agency) in North Dakota has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on February 23, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by February 3, 1984, and petitions for reconsideration, including environmental, energy and public use concerns, must be filed by February 13, 1984 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to BN's representative: Thomas A. Ehlinger, 176 East Fifth Street, St. Paul, MN 55101.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: Janaury 16, 1984.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–1942 Filed 1–23–84; 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 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, N.W., 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.

Extension

Employment Standards Administration
Accident Data on Public School Bus Drivers Annual Report
1215-0045, WH-374
Annually
State or Local Governments
12 responses; 24 hours

Upon petition of several states an exemption was provided from Title 29 CFR 570.52, occupation of Motor Vehicle driver, for 16 and 17 year old school-bus drivers. School bus accident data are needed and used to evaluate whether an exemption is warranted.

Reinstatement

Employment and Training Administration
Benefits Appeals
1205-0172; MA 5-130
Monthly
State or local governments
636 responses; 2,544 hours; 1 form

This report is used to monitor the benefit appeals process to evaluate compliance with appeals promptness standards and to develop plans for remedial action. The report is also needed for budgeting and for workload figures.

Signed at Washington, D.C. this 19th day of January, 1984.

Richard Glesener,

Acting Departmental Clearance Officer.

[FR Doc. 84-1948 Filed 1-23-84; 8:45 am]
BILLING CODE 4510-27-M; 4510-30-M

Employment and Training Administration

Job Training Partnership Act (Pub. L. 97-300) and Wagner-Peyser Act, as Amended by Pub. L. 97-300; 1984 Allotments for Title II, Part B; Summer Youth Employment and Training Programs; and Program Year (PY) 1984 Allotments for Programs Under Title II, Part A; Training Services for the Disadvantaged; Adult and Youth Programs; Title III; Dislocated Worker Program; and Interim Allotments for the State Employment Services Under the Wagner-Peyser Act, as Amended

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the final allotments for the 1984 Summer Program under Title II-B of the Job Training Partnership Act (JTPA) and Final allotments for PY 1984 (July 1, 1984 through June 30, 1985) for programs under Titles II-A and III of the JTPA and iterim allotments for the State Employment Service under the Wagner-Peyser Act, as amended.

FOR FURTHER INFORMATION CONTACT: For JTPA inquires, contact Robert N. Colombo, Acting Director, Office of Employment and Training Programs, 601 D Street, NW., Washington, D.C. 20213, telephone number (202) 376-6093.

For State Employment Service inquiries, contract Robert J. Litman, Acting Director, Office of Planning and Review, 601 D Street, NW., Washington, D.C. 20213, telephone number (202) 376-6660.

SUPPLEMENTARY INFORMATION: Attached are the final allotments for the 1984 Summer Program under Title II-B of the JTPA, final allotments for PY 1984 (July 1, 1984 through June 30, 1985) for programs under Titles II-A and III of the JTPA and interim allotments for the State Employment Services under the Wagner-Peyser Act, as amended by JTPA. The allotments are based on the funds appropriated by Pub. L. 98-139, the statutory formulas contained in the Acts and the latest data available to the Secretary. These allotments, except for the State Employment Services, will not be updated for subsequent unemployment data.

1984 JTPA Title II-B

Final allotments for the 1984 JTPA Title II-B Summer Program total $724,549,000 as shown on Attachment I. This amount is composed entirely of fiscal year 1984 formula new obligational authority (NOA) funds. No matching is required for these funds. These funds support summer youth activities. Except for Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands the Commonwealth of the Northern Marianas, and Native Americans, the data used in developing these allotments were as follows. Data for both areas of substantial unemployment and the number of excess unemployed individuals are averages for the 12-month period, May 1982 through April 1983. The economically disadvantaged data are from the 1980 Census.

The allotments for the specifically listed areas above are based on the relative share of funds those areas received for the 1983 Summer Program excluding discretionary funds.

The 1985 Title II-B allotments will be announced by December 31, 1984, using the latest unemployment data available at the time of allotment.

PY 1984 JTPA Title II-A

Attachment II shows the PY 1984 JTPA Title II-A final allotments by State based on a total figure of $1,886,151,000. This amount is composed entirely of PY 1984 formula NOA funds. These funds support the basic job training program. Except for Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas, the following data were used in developing these allotments.

Data for both areas of substantial unemployment and the number of excess unemployed individuals are averages for the 12-month period May 1982 through April 1983. The economically disadvantaged data are from the 1980 Census.

The allotments for the specifically listed areas above are based on estimated 1982 unemployment, using a 90 percent relative share hold-harmless of the Title II-A transition period

allotments for these areas (published in the **Federal Register** November 25, 1983) and a minimum allotment amount of $125,000.

PY 1984 JTPA Title III

The PY 1984 JTPA Title III Dislocated Worker Program final allotments are reflected in Columns 3–5 of Attachment III. Column 2 shows the total appropriation of $223,000,000, which includes the base allotment of Federal funds totaling $167,250,000 and discretionary funds of $55,750,000 to be distributed at a later date. The base funds are subject to the matching requirements contained in Section 304 of JTPA.

Allotments for Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Marianas are based on the proportion these jurisdictions received of the Title II–A funds.

Except for the areas specifically listed above, the data used for determining these allotments, relative numbers of unemployed and relative numbers of excess unemployed, are annual averages for the period October 1982 through September 1983. The long-term unemployed data are averages for calendar year 1982.

Column 4 shows a total amount of $111,164,598. This represents the total amount States must provide in matching in accordance with section 304 of the Act to be eligible for the Federal allotment listed in Column 3.

Column 5 shows a total amount of $334,164,598, the sum of Columns 3 and 4. This represents the total resources available for the Title III Dislocated Worker Program.

PY 1984 Wagner-Peyser Allotments to States

The PY 1984 State public employment system appropriation totals $740,398,000. In accordance with the formula criteria in Section 6 of the Wagner-Peyser Act, as amended, interim allotments of $727,698,000 are being allotted to the States as displayed in Attachment IV, Column 5. FY 1983 unemployment and civilian labor force data were used to determine the interim allotments. Final allotments using calendar year unemployment and civilian labor force data will be announced at a later date. Nationally, $12,700,000 is being held back to finance the postage costs associated with conducting public employment service business.

The interim allotments to the States are based on a 12-month average civilian labor force and unemployment data for the period of October 1982—September 1983. The relative share hold-harmless as provided for under section 6(b)(2) of the Act was from the transition period allotments published in the **Federal Register** on November 25, 1983. The Secretary is authorized under section 6(b)(4) of the Act to reserve 3 percent of the total availability. The 3 percent set-aside is distributed using the same methodology that was used for the transition period allotments. Ten percent of each State's total allotment (Column 5, Attachment IV) is to be reserved for use according to the activities described under Section 7(b) of the Act.

Signed this 11th day of January 1984.

Roberts T. Jones,

Administrator, Office of Comprehensive Employment and Training.

ATTACHMENT I.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, FY 1984, JTPA TITLE II–B ALLOTMENTS TO STATES

	Allotment
Alabama	16,599,358
Alaska	1,775,415
Arizona	8,776,397
Arkansas	7,189,673
California	75,371,390
Colorado	7,285,204
Connecticut	8,311,427
Delaware	1,775,415
District of Columbia	6,746,288
Florida	24,927,300
Georgia	13,843,092
Hawaii	2,279,027
Idaho	2,885,806
Illinois	37,980,866
Indiana	17,450,907
Iowa	6,893,857
Kansas	4,465,938
Kentucky	11,933,738
Louisiana	13,877,463
Maine	3,282,930
Maryland	10,515,210
Massachusetts	16,839,184
Michigan	37,478,242
Minnesota	9,913,311
Mississippi	8,916,856
Missouri	13,959,367
Montana	2,207,122
Nebraska	3,147,874
Nevada	2,703,689
New Hampshire	1,898,617
New Jersey	21,762,233
New Mexico	4,193,889
New York	50,848,855
North Carolina	16,366,076
North Dakota	1,775,415
Ohio	37,111,204
Oklahoma	6,266,877
Oregon	8,713,064
Pennsylvania	37,306,913
Puerto Rico	22,269,883
Rhode Island	3,140,596
South Carolina	10,222,019
South Dakota	1,775,415
Tennessee	15,992,744
Texas	34,374,879
Utah	3,389,474
Vermont	1,775,415
Virginia	12,625,007
Washington	13,883,123
West Virginia	7,765,585
Wisconsin	15,599,138
Wyoming	1,775,415
American Samoa	55,003
Guam	670,830
Northern Marianas	25,730
Trust Territories	74,374
Virgin Islands	380,370
Native Americans	13,176,511
National total	724,549,000

ATTACHMENT II.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, PY 1984, JTPA TITLE II–A ALLOTMENTS TO STATES

	Allotment
Alabama	45,718,867
Alaska	4,702,878
Arizona	24,071,745
Arkansas	18,543,748
California	206,967,087
Colorado	19,964,704
Connecticut	16,990,435
Delaware	4,702,878
District of Columbia	8,164,813
Florida	68,059,421
Georgia	36,691,694
Hawaii	5,475,161
Idaho	7,899,117
Illinois	104,953,189
Indiana	46,838,441
Iowa	18,910,217
Kansas	11,914,392
Kentucky	32,658,550
Louisiana	37,972,870
Maine	8,039,947
Maryland	27,289,918
Massachusetts	36,182,469
Michigan	103,925,839
Minnesota	27,178,542
Mississippi	24,295,227
Missouri	36,008,001
Montana	6,016,550
Nebraska	7,707,682
Nevada	7,475,521
New Hampshire	5,194,295
New Jersey	49,504,570
New Mexico	11,408,864
New York	123,452,151
North Carolina	44,786,303
North Dakota	4,702,878
Ohio	102,687,464
Oklahoma	16,879,681
Oregon	24,002,603
Pennsylvania	102,848,422
Puerto Rico	60,360,805
Rhode Island	7,804,484
South Carolina	28,042,343
South Dakota	4,702,878
Tennessee	43,949,827
Texas	93,620,142
Utah	9,249,966
Vermont	4,702,878
Virginia	32,317,888
Washington	38,329,076
West Virginia	21,433,067
Wisconsin	43,147,634
Wyoming	4,702,878
American Samoa	350,026
Guam	1,457,238
Northern Marianas	125,000
Trust Territories	1,285,908
Virgin Islands	1,781,828
National total	1,886,151,000

ATTACHMENT III.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, PY 1984 JTPA TITLE III DISLOCATED WORKERS PROGRAM ALLOTMENTS AND MATCHING REQUIREMENTS

	Unemployment rate	Reduction units	Allotment	Required match	Total program
Alabama	14.3	5	4,079,060	0	4,079,060
Alaska	10.2	1	296,493	237,194	533,687
Arizona	10.3	1	1,900800	1,520,640	3,421,440
Arkansas	9.7	0	1,340,825	1,340,825	2,681,650
California	10.3	1	18,211,123	14,568,898	32,780,021
Colorado	8.0	0	1,603,294	1,603,294	3,206,588
Connecticut	6.8	0	1,383,095	1,383,095	2,766,190
Delaware	7.6	0	303,277	303,277	606,554
District of Columbia	10.8	1	541,283	433,026	974,309
Florida	8.9	0	5,521,134	5,521,134	11,042,268
Georgia	7.6	0	2,601,742	2,601,742	5,203,484
Hawaii	6.4	0	342,631	342,631	685,262
Idaho	10.3	1	635,620	508,496	1,144,116
Illinois	12.2	3	10,866,051	4,346,420	15,212,471
Indiana	11.3	2	4,810,706	2,886,424	7,697,130
Iowa	8.6	0	1,853,741	1,853,741	3,707,482
Kansas	6.4	0	924,805	924,805	1,849,610
Kentucky	11.2	2	2,680,337	1,608,202	4,288,539
Louisiana	12.1	2	3,088,379	1,853,027	4,941,406
Maine	8.9	0	637,866	637,866	1,275,732
Maryland	7.5	0	2,310,360	2,310,360	4,620,720
Massachusetts	7.1	0	2,902,123	2,902,123	5,804,246
Michigan	15.2	6	11,578,385	0	11,578,385
Minnesota	8.4	0	2,465,109	2,465,109	4,930,218
Mississippi	12.1	2	1,932,727	1,159,636	3,092,363
Missouri	9.7	0	3,242,489	3,242,489	6,484,978
Montana	8.7	0	457,198	457,198	914,396
Nebraska	6.2	0	574,908	574,908	1,149,816
Nevada	10.2	1	753,523	602,818	1,356,341
New Hampshire	6.4	0	374,280	374,280	748,560
New Jersey	8.5	0	4,503,918	4,503,918	9,007,836
New Mexico	10.2	1	818,114	654,491	1,472,605
New York	9.0	0	10,422,943	10,422,943	20,845,886
North Carolina	8.9	0	3,650,676	3,650,676	7,301,352
North Dakota	6.0	0	185,629	185,629	371,258
Ohio	12.9	3	11,438,077	4,575,231	16,013,308
Oklahoma	8.1	0	1,317,932	1,317,932	2,635,864
Oregon	10.8	1	2,350,768	1,880,614	4,231,382
Pennsylvania	12.3	3	10,823,137	4,329,255	15,152,392
Puerto Rico	23.6	14	3,391,510	0	3,391,510
Rhode Island	9.5	0	669,235	669,235	1,338,470
South Carolina	10.4	1	2,315,906	1,852,725	4,168,631
South Dakota	5.7	0	206,188	206,188	412,376
Tennessee	11.7	2	3,805,859	2,283,515	6,089,374
Texas	8.1	0	6,719,377	6,719,377	,13,438,754
Utah	8.9	0	758,998	758,998	1,517,996
Vermont	7.0	0	225,398	225,398	450,796
Virginia	6.9	0	2,395,540	2,395,540	4,791,080
Washington	11.5	2	3,828,532	2,297,119	6,125,651
West Virginia	17.8	8	2,241,181	0	2,241,181
Wisconsin	10.9	1	4,260,996	3,408,797	7,669,793
Wyoming	8.9	0	263,359	263,359	526,718
American Samoa	0.0	0	31,038	0	31,038
Guam	0.0	0	129,217	0	129,217
Northern Marianas	0.0	0	11,084	0	11,084
Trust Territories	0.0	0	114,025	0	114,025
Virgin Islands	0.0	0	157,999	0	157,999
Undistributed	0.0	0	55,750,000	0	55,750,000
National total	10.1	0	223,000,000	111,164,598	334,164,598

ATTACHMENT IV.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, INTERIM PY 1984 WAGNER-PEYSER ALLOTMENTS TO STATES

	Basic formula	3 percent distribution			Total allotment [3]
		Step 1 [1]	Step 2 [2]	Total	
Alabama	11,251,027	0	0	0	11,251,027
Alaska	6,905,280	1,005,146	0	1,005,146	7,910,426
Arizona	7,696,534	0	265,408	265,408	7,961,942
Arkansas	7,618,520	0	512,498	512,498	8,131,018
California	70,808,286	0	0	0	70,808,286
Colorado	8,664,364	0	339,763	339,763	9,004,127
Connecticut	8,431,957	0	567,218	567,218	8,999,175
Delaware	1,971,461	0	61,127	61,127	2,032,588
District of Columbia	5,668,429	0	381,315	381,315	6,049,744
Florida	26,760,862	0	0	0	26,760,862
Georgia	14,121,156	0	0	0	14,121,156
Hawaii	3,033,043	0	204,033	204,033	3,237,076
Idaho	5,753,326	837,465	0	837,465	6,590,791
Illinois	34,013,481	0	0	0	34,013,481
Indiana	15,189,858	0	0	0	15,189,858
Iowa	9,679,392	0	651,133	651,133	10,330,525
Kansas	6,014,700	0	404,609	404,609	6,419,309
Kentucky	9,849,971	0	0	0	9,849,971
Louisiana	11,369,239	0	0	0	11,369,239

ATTACHMENT IV.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, INTERIM PY 1984 WAGNER-PEYSER ALLOTMENTS TO STATES—Continued

	Basic formula	3 percent distribution			Total allotment [3]
		Step 1 [1]	Step 2 [2]	Total	
Maine	3,421,449	498,032	0	498,032	3,919,481
Maryland	11,311,419	0	0	0	11,311,419
Massachusetts	15,503,392	0	0	0	15,503,392
Michigan	28,576,548	0	0	0	28,576,548
Minnesota	11,637,672	0	295,702	295,702	11,933,374
Mississippi	8,402,611	0	565,244	565,244	8,967,855
Missouri	13,052,184	0	0	0	13,052,184
Montana	4,701,648	684,381	0	684,381	5,386,029
Nebraksa	5,650,456	822,491	0	822,491	6,472,947
Nevada	4,570,497	665,290	0	665,290	5,235,787
New Hampshire	2,503,098	0	0	0	2,503,098
New Jersey	19,719,947	0	0	0	19,719,947
New Mexico	5,276,074	767,996	0	767,996	6,044,070
New York	58,407,107	0	3,929,048	3,929,048	62,336,155
North Carolina	16,088,998	0	0	0	16,088,998
North Dakota	4,787,684	696,904	0	696,904	5,484,588
Ohio	31,870,658	0	0	0	31,870,658
Oklahoma	13,354,343	0	898,347	898,347	14,252,690
Oregon	9,347,483	0	628,805	628,805	9,976,288
Pennsylvania	33,550,031	0	0	0	33,550,031
Puerto Rico	7,591,818	0	0	0	7,591,818
Rhode Island	2,811,632	0	189,138	189,138	3,000,770
South Carolina	8,476,180	0	0	0	8,476,180
South Dakota	4,424,921	644,100	0	644,100	5,069,021
Tennessee	12,842,003	0	0	0	12,842,003
Texas	40,531,702	0	2,726,569	2,726,569	43,258,271
Utah	9,677,839	1,408,725	0	1,408,725	11,086,564
Vermont	2,072,887	301,733	0	301,733	2,374,620
Virginia	13,888,387	0	0	0	13,888,387
Washington	12,149,033	0	378,996	378,996	12,528,029
West Virginia	5,405,895	0	0	0	5,405,895
Wisconsin	14,253,635	0	0	0	14,253,635
Wyoming	3,433,068	499,724	0	499,724	3,932,792
Formula total	704,093,185	8,831,987	12,998,953	21,830,940	725,924,125
Guam	340,506	0	0	0	340,506
Virgin Islands	1,433,369	0	0	0	1,433,369
National total	705,867,060	8,831,987	12,998,953	21,830,940	727,698,000

[1] Funds are allocated to the 12 States whose relative share decreased from TP 1984 to the PY 1984 basic formula amount and which have a civilian labor force (CLF) below one million and are below the media CLF density. These States are held harmless at 100 percent of their TP 1984 relative share.
[2] The balance of the 3 percent funds are distributed to the remaining 17 States losing in relative share from TP 1984 to the PY 1984 basic formula amount.
[3] Hold-Harmless provisions required under section 6(b) of the Wagner-Peyser Act, as amended, are maintained at the final allotment level.

[FR Doc. 84-1893 Filed 1-23-84; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Airco Welding Products, Inc., et al.

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are indentified 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 February 3, 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 February 3, 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, NW, Washington, D.C. 20213.

Signed at Washington, D.C. this 16th 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	Articles produced
Airco Welding Products, Inc. (USWA)	Chester, WV	12/27/83	12/20/83	TA-W-15, 166	Welding wire.
Inland Shoe Manufacturing Co., Inc. (ACTWU)	Advance, MO	12/13/83	12/07/83	TA-W-15, 167	Men's women's and children's casual shoes.
Kaiser Steel Corp., Fabricated Products Group, Plate Operation (Boilermakers).	Fontana, CA	1/11/84	1/06/84	TA-W-15, 168	Pressure vessels and off-shore drilling platforms, large diameter pipe.
Lindberg Heat Treating Co. (workers)	Oakland, CA	1/03/84	12/30/83	TA-W-15, 169	Hardening and tempering steel and valves.

APPENDIX—Continued

Petitioner (union/workers or former workers of:)	Location	Date received	Date of petition	Petition	Articles produced
N.J. Ladies' Coats Co., Inc. (ILGWU)	Newark NJ	1/12/84	1/04/84	TA-W-15, 170	Ladies' suits, coats.
Sewpco Tube Corp. (Electrical, radio and Machine Workers Union).	Clifton, NJ	1/09/84	12/22/84	TA-W-15, 171	Welded and large diameter stainless steel pipe, tubing and fittings.
Tiffin Crystal By Towle (workers)	Tiffin, Ohio	1/11/84	1/09/84	TA-W-15, 172	Crystal, casual, stemware.
U.S. Steel Corp., Sales Office (wkrs)	Atlanta, GA	1/11/84	1/03/84	TA-W-15, 173	Sales office.
Union Carbide Corp. (workers)	Dove Creek, Colorado	1/04/84	12/28/83	TA-W-15, 175	Uranium—underground mine.
Vincenti (workers)	St. James, MO	1/09/84	12/29/83	TA-W-15, 175	Ladies' sportswear, jackets, pants, blouse and Skirts and dresses.

[FR Doc. 84-1945 Filed 1-23-84; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Kane Industries et al.

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 9, 1984—January 13, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 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 increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-14,791; Kane Industries, Div. of Chromalloy America Corp., Leitchfield, KY

TA-W-14,384; Kerr Glass Co., Millville, NJ

TA-W-14,548; Kerr Glass Manufacturing Corp., Keyport, NJ

TA-W-14,508; Westinghouse Electric Corp., Power Circuit Breaker Div., Trafford, PA

TA-W-14,509; Westinghouse Electric Corp., Large Rotating Apparatus, Switchgear Div., E. Pittsburgh, PA

TA-W-14,646; Donn Products, Inc., Lackawanna, NY

TA-W-14,788; Houdaille Industries, Strippit Div., Akron, NY

TA-W-14,731; U.S. Steel Corp., Supply Div., Steel Service Centers, Brighton, MA

TA-W-14,732; U.S. Steel Corp., Supply Div., Steel Service Centers, Baltimore, MD

TA-W-14,734; U.S. Steel Corp., Supply Div., Steel Service Centers, Pittsburgh, PA

TA-W-14,735; U.S. Steel Corp., Supply Div., Steel Service Centers, Cleveland, OH

TA-W-14,737; U.S. Steel Corp., Supply Div., Steel Service Centers, Cincinnati, OH

TA-W-14,738; U.S. Steel Corp., Supply Div., Steel Service Centers, Chicago, IL

TA-W-14,739; U.S. Steel Corp., Supply Div., Steel Service Centers, St. Paul, MN

TA-W-14,740; U.S. Steel Corp., Supply Div., Steel Service Centers, Kansas City, MO

TA-W-14,741; U.S. Steel Corp., Supply Div., Steel Service Centers, St. Louis, MO

TA-W-14,743; U.S. Steel Corp., Supply Div., Steel Service Centers, Memphis, TN

TA-W-14,744; U.S. Steel Corp., Supply Div., Steel Service Centers, Birmingham, AL

TA-W-14,745; U.S. Steel Corp., Supply Div., Steel Service Centers, Dallas, TX

TA-W-14,746; U.S. Steel Corp., Supply Div., Steel Service Centers, Houston, TX

TA-W-14,747; U.S. Steel Corp., Supply Div., Steel Service Centers, Los Angeles, CA

Affirmative Determinations

TA-W-14,728; Eagle of Alabama, Thomasville, AL

A certification was issued covering all workers separated on or after May 24, 1982 and before August 1, 1982.

TA-W-14,785; CF Industries, Inc., Nitrogen Complex, Olean, NY

A certification was issued covering all workers separated on or after March 27, 1983.

TA-W-14,552; Atlas Copco Holyoke, Inc., Holyoke, MA

A certification was issued covering all workers engaged in employment related to the production of stationary air compressors separated on or after March 28, 1982.

TA-W-14,930; Oak Communication System, Carlsbad, CA

A certification was issued covering all workers separated on or after July 27, 1982 and before January 31, 1983.

TA-W-14,450; Phil-Maid Manufacturing Corp./Marianna Div., Marianna, AR

A certification was issued covering all workers separated on or after February 10, 1982 and before March 10, 1983.

I hereby certify that the aforementioned determinations were issued during the period January 9, 1984—January 13, 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 17, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-1946 Filed 1-23-84; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-14,823]

Wheeling-Pittsburgh Steel Corporation, St. Louis District Sales Office, St. Louis, Missouri; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 11, 1983 in response to a worker petition received on June 29, 1983 which was filed on behalf of workers at the St. Louis District Sales Office, St. Louis, Missouri, of Wheeling-Pittsburgh Steel Corporation.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed At Washington, D.C., this 17th day of January 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance..

[FR Doc. 84-1947 Filed 1-23-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting Addendum

January 18, 1984.

Changes have been made to the agenda for January 30, 31 and February 1, 1984 that was published January 17, 1984 (49 FR 2033). The changes include: time changes, title changes, change of speakers, and changes in meeting schedules. The revised agenda is as follows:

Monday, January 30, 1984

9:00 a.m.–12:00 noon—Plenary (Room 416)
9:00 a.m.–9:30 a.m.—Announcements
9:30 a.m.–12:00 noon—Topic: Research on Climate and the Effects of "Nuclear Winter"
Speakers:
Alan D. Hetch, Director, National Climate Program Office
Peter Lunn, Program Manager, Defense Nuclear Agency
Cecil E. Leith, Physicist, Lawrence Livermore National Laboratory
12:00 noon–1:00 p.m.—Lunch
1:00 p.m.–5:00 p.m.—Panel Meetings
1:00 p.m.–3:00 p.m.—Weather Services Panel, Chairman: Warren Washington, (Room B–100)
Topic: Panel Work Session
Speakers: None
1:00 p.m.–5:00 p.m.—Shipbuilding Panel, Chairman: Don Walsh (Room 416)
Topic: Panel Work Session
Speakers: None
5:00 p.m.—Recess

Tuesday, January 31, 1984

8:30 a.m.–12:00 noon—Panel Meetings
8:30–12:00 noon—Radioactive Waste Disposal Panel, Chairman: John Knauss (Room 416)
Topic: Panel Work Session
Speakers: None
10:00 a.m.–12:00 noon—Underwater Technology Panel, Chairman: Sylvia Earle (Room B–100)
Topic: Panel Work Session
Speakers: None
12:00 noon–1:00 p.m.—Lunch
1:00 p.m.–3:00 p.m.—Plenary
Panel Reports
Other Business
3:00 p.m.—Adjourn
3:15 p.m.–6:00 p.m.—Panel Meeting
3:15 p.m–6:00 p.m.—Exclusive Economic Zone Panel, Chairman: Don Walsh (Room 416)
Topics:
- Definition of Outer Continental Shelf
- Maritime Scientific Research: Problems and Opportunities

Speaker: David A. Ross, Director, Marine Policy and Ocean Management Center; Woods Hole Oceanographic Institution
Topic: Fisheries
Speakers: Richard Gutting, National Fisheries Institute
James "Bud" Walsh, Counsel for American Tunaboat Association
(TBA) Representative of the Department of State
6:00 p.m.—Recess

Wednesday, February 1, 1984

9:00 a.m.–11:30 a.m.—Panel Meeting
- Exclusive Economic Zone Panel Chairman: Don Walsh (Room 416)

Topic: Environmental Issues
Speakers: (TBA)
Representative of public environmental group
Michael Danaher, Office of Legal Advisor Oceans, International Environmental and Scientific Affairs, Department of State
Topic: International Dispute Settlement
Speaker: Bernard Oxman, University of Miami School of Law.
11:30 a.m.–12:30 p.m.—Lunch
12:30 p.m.–3:00 p.m.—Panel Meeting
- Exclusive Economic Zone Panel, Chairman: Don Walsh (Room 416)

Topic: Panel Work Session
3:00 p.m.—Adjourn.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, DC 20235.

Dated: January 18, 1984.

Steven N. Anastasion,

Executive Director.

Dated: January 18, 1984.

James A. Almazan,

Physical Scientist.

[FR Doc. 84-1868 Filed 1-23-84; 8:45 am]

BILLING CODE 3510-42-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on February 7, 1984, Room 1046, 1717 H Street, NW, Washington, DC.

In accordance with the procedures outlined in the **Federal Register** on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows: Tuesday, February 7, 1984—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss with the NRC Staff the status of implementing requirements for emergency response capability (NUREG-0737 supplement 1 issues). As part of this discussion the Staff will discuss: plant specific schedules for complying with these requirements, how the staff has conducted its related safety analysis report reviews, and exemptions that have been requested by utilities.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information about topics to be discussed, whether the meeting has

been cancelled or rescheduled, the chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, David Fisher (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m. est.

Dated: January 17, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–1939 Filed 1–23–84; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published December 27, 1983 (48 FR 57037). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. Those Subcommittee meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the February 1984 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634–3267, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

**Advanced Reactors*, January 25 and 26, 1984, Argonne, IL. The Subcommittee will continue the development of the report, "LMFBR Safety Philosophy and Issues."

**Class 9 Accidents*, January 27, 1984, Washington, DC. The Subcommittee will discuss the draft final Severe Accident Policy Statement.

**Human Factors*, February 7, 1984, Washington, DC. The Subcommittee will discuss with the NRC Staff the status of implementing requirements for emergency response capability (NUREG–0737 Supplement 1 requirements). As part of this discussion, the Staff will discuss: plant specific schedules for complying with these requirements, how the Staff has conducted its related safety analysis report reviews, and exemptions that have been requested by utilities.

**Regulatory Policies and Practices*, February 8, 1984, Washington, DC. The Subcommittee will discuss the Proposed General Statement of Policy and Procedures for Enforcement Actions (SECY–83–487) and other matters related to enforcement activities.

**Qualification Program for Safety-Related Equipment*, February 22, 1984, Washington, DC. The Subcommittee will review the status of Generic Issue A–46, "Seismic Qualification of Equipment for Operating Reactors" and proposed revisions to the NRC Equipment Qualification Research Plan.

**Class 9 Accidents*, February 23, 1984, Washington, DC. The Subcommittee will discuss the final Severe Accident Policy Statement.

**Emergency Core Cooling Systems (ECCS)*, February 29, 1984, Washington, DC. The Subcommittee will continue the review of the General Electric SAFER Emergency Core Cooling Systems Evaluation Model Code.

**Braidwood Nuclear Power Plant*, March 8 and 9, 1984, Joliet, IL (tentative). The Subcommittee will review the application of the Commonwealth Edison Company for an operating license.

**Maintenance Practices and Procedures*, March 14, 1984, Washington, DC. The Subcommittee will review the current status of maintenance practices and procedures for nuclear power reactors.

**Safety Philosophy, Technology, and Criteria*, March 14, 1984, Washington, DC. The Subcommittee will meet with NRC Management and discuss with them their perception of the risk which they associate with a selected collection of recent NRC decisions and the basis on which this level of risk is considered to be acceptable.

**Extreme External Phenomena*, March 14, 1984, Washington, DC. The Subcommittee will review the generic methodology for developing design basis severe winds for SEP plants and to review the specific application to Ginna.

**Combined Emergency Core Cooling Systems (ECCS) and Decay Heat Removal*, March 20 and 21, 1984, Washington, DC. The Subcommittee will discuss the status of feed-and-bleed capability in PWRs.

**ACRS Seminar on Probabilistic Risk Assessment*, March 22 and 23, 1984, Washington, DC. A seminar will be held on the state-of-the-art of probabilistic risk assessment.

**AC/DC Power Systems Reliability*, Date to be determined, Washington, DC. The Subcommittee will discuss the status of the NRC Staff actions on Generic Issue B–56, "Diesel Reliability," and Generic Issue A–30, "Adequacy of Safety-Related DC Power Supplies" and Task Action A–44, "Station Blackout."

**Emergency Core Cooling Systems (ECCS)*, Date to be determined, Washington, DC. The Subcommittee will continue the review of the joint NRC/B&W/EPRI integral test program.

**Reactor Operations*, Date to be determined, Washington, DC. The Subcommittee will review a differing professional opinion (DPO) related to the Westinghouse Safety Parameter Display Systems (SPDS).

Westinghouse Water Reactors, Date to be determined, Washington, DC. The Subcommittee will continue pre-Preliminary Design Approval review of Westinghouse Advanced Pressurized Water Reactor. This meeting will be closed.

**Regulatory Activities*, Date to be determined, Washington, DC. The Subcommittee will review Regulatory Guide 1.35, Rev. 3, "Inservice Inspection of Ungrouted Tendons in Prestressed Concrete Containment Structures;" Regulatory Guide 1.35.1, "Determining Prestressing Forces for Inspection of Prestressed Concrete Containments;" Regulatory Guide 1.12, Rev. 2, "Seismic Instrumentation;" and proposed general revisions to Appendix J to 10 CFR 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

**River Bend Nuclear Power Plant*, Date to be determined, Washington, DC. The Subcommittee will review the application of the Gulf States Utilities for an operating license for the River Bend Nuclear Power Plant.

**Combined Structural Engineering and Combination of Dynamic Loads*, Date to be determined, Sandia and Livermore Labs. The Subcommittee will visit and review containment integrity and other matters.

ACRS Full Committee Meeting

February 9–11, 1984: Items are *tentatively* scheduled.

*A. *NRC Safety Research Program*—ACRS report to the U.S. Congress.

*B. *Diablo Canyon Nuclear Power Station*—Discuss plant changes resulting from quality assurance deficiences in the design/construction of this station.

*C. *Backfitting of Nuclear Plants*—Briefing regarding proposed changes in NARC backfitting policy.

*D. *Passive Containment System*—ARCS comments regarding preapplication review of the Passive Containment System.

*E. *Boiling Water Reactor Primary System Integrity*—Briefing regarding status of action to correct primary pipe cracking in boiling water reactors.

*F. *Consideration of Severe Accidents*—Discussion of proposed decisionmaking process and policy statement regarding consideration of severe accidents in the regulation of nuclear power plants.

*G. *Future ACRS Activities*—Discuss proposed subcommittee and full committee activities.

*H. *ACRS Subcommittee Activity*—Hear and discuss designated subcommittee activity in safety-related areas.

*I. *Meeting with NRC Commissioners (tentative)*—Discuss items related to safety/regulation of nuclear facilities.

*J. *Probabilistic Risk Assessment*—Discuss application of PRA methodology to nuclear power plants.

March 15–17, 1984—Agenda to be announced.

April 5–7, 1984—Agenda to be announced.

Dated: January 19, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–1938 Filed 1–23–84; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Combined Subcommittee on Emergency Core Cooling Systems (ECCS) and Decay Heat Removal; Meeting Postponed

The Combined ACRS Subcommittee on Emergency Core Cooling Systems and Decay Heat Removal scheduled for February 1 and 2, 1984 has been *postponed to March 20 and 21, 1984,* Room 1046, 1717 H Street, NW, Washington, DC.

All other items regarding this meeting remain the same as announced in the **Federal Register** published Monday, January 16, 1984 (49 FR 1950).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employees, Mr. Paul Boehnert or Mr. Anthony Cappucci (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., est.

Dated: January 19, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–1940 Filed 1–23–84; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Policies and Practices; Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on February 8, 1984, Room 1046, 1717 H Street, NW, Washington, DC. The Subcommittee will discuss the Proposed General Statement of Policy and Procedures for Enforcement Actions (SECY–83–487) and other matters related to enforcement activities.

In accordance with the procedures outlined in the **Federal Register** on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee and its Staff. Persons desiring to make oral statements should notify the cognizant Designated Federal Employee as far in advance as practicable so that appropriate arrangments can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting will be as follows: Wednesday, February 8, 1984—9:00 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee members may exhange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear a presentation by and hold discussions with representatives of the NRC Staff.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. M. C. Gaske (telephone 202/634–3265) between 8:15 a.m. and 5:00 p.m., est.

Dated: January 19, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–1941 Filed 1–23–84; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension
2. The title of the information collection: NRC Form 483 Registration Certificate—In Vitro Testing With Byproduct Material Under General License
3. The form number if applicable: NRC Form 483
4. How often the collection is required: Once, when registering as a general licensee pursuant to 10 CFR 31.11.
5. Who will be required or asked to report: Physicians, clinical laboratories, hospitals, and veterinarians in the practice of veterinary medicine wishing to use byproduct material for *in vitro* clinical or laboratory testing under the general license in 10 CFR 31.11.
6. An estimate of the number of responses: 250
7. An estimate of the total number of hours needed to complete the requirement or request: 30
8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not Applicable
9. Abstract: Persons wishing to use byproduct material for *in vitro* clinical or laboratory testing under general license must register with NRC by submitting NRC Form 483. The certificate, when validated and returned by NRC, serves as evidence to suppliers of byproduct material that the registrant is entitled to receive the material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 16th day of January 1984.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 84–1952 Filed 1–23–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–522 and STN 50–523]

Puget Sound Power and Light Co., et al;. Withdrawal of Application for Construction Permits

The Puget Sound Power and Light Company, Puget Power Building, Bellevue, Washington 98009, acting for itself and Pacific Power and Light Company, Portland General Electric Company, and Washington Water Power Company, by Motion for Order Approving Withdrawal of Application and Terminating Proceeding dated November 23, 1983, has requested withdrawal of their application for licenses to construct and operate the Skagit/Hanford Nuclear Project, Units 1 and 2, boiling water reactors at their site located in Benton County, Washington, on the U.S. Department of Energy's Hanford reservation. A copy of the Motion is available for inspection in the NRC's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555. By Memorandum and Order dated December 13, 1983, the Atomic Safety and Licensing Board granted the applicants' request to withdraw their application and terminate the proceedings before it. Accordingly, the Nuclear Regulatory Commission grants the applicants' request for withdrawal of their application to construct and operate the Skagit/Hanford Nuclear Project, Units 1 and 2.

Notice of receipt of the application was published in the **Federal Register** on December 20, 1974 (39 FR 44065). Amended notices were published on March 1, 1977 (41 FR 8835) and February 5, 1982 (47 FR 5554).

Dated at Bethesda, Maryland, this 18th day of January 1984.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4 Division of Licensing.

[FR Doc. 84–1949 Filed 1–23–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–259, 50–260, 50–296]

Tennessee Valley Authority; Consideration of Issuance of Amendments to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. DPR–33, DPR–52 and DPR–68, issued to Tennessee Valley Authority (the licensee), for operation of the Browns Ferry Nuclear Power Plant, Units 1, 2 and 3 located in Limestone County, Alabama.

The amendments would revise the Technical Specifications of the operating licenses to permit reactor operation at power levels of 50% of rated power with one recirculation loop out of service. Presently, the Browns Ferry Nuclear Power Plant, Units 1, 2 and 3 Technical Specifications (TSs) require plant shutdown if an idle recirculation loop cannot be returned to service within 24 hours. The change proposed by the licensee would delete this TS requirement and modify the TSs to provide for: appropriate Average Power Range Monitor (APRM) flux scram trip and rod block settings; an increase in the safety limit Minimum Critical Power Ratio (MCPR) value; revisions to the allowable Average Planar Linear Heat Generation Rate (APLHGR) values suitable for use with an idle recirculation loop; and the inclusion of APRM flux and core plate pressure drop limits during single loop operation; in accordance with the licensee's application for amendments dated March 4, 1982 as modified by September 3, 1983 and January 6, 1983 submittals.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 23, 1984, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the preceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fail to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those petitioned to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportuntiy to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Domenic B. Vassallo: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. H. S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated March 4, 1982 as modified by September 3, 1982 and January 6, 1983 submittals, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Athens Public Library, South and Forrest, Athens, Alabama 35611.

Dated at Bethesda, Maryland, this 16th day of January, 1984.

FOR THE NUCLEAR REGULATORY COMMISSION.

Domenic B. Vassallo,

Chief, Operating Reactors Branch #2 Division of Licensing.

[FR Doc. 84–1950 Filed 1–23–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445, 50–446]

Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2); Application for Operating License; Evidentiary Hearing

January 18, 1984.

On February 20–24, March 12–16, April 23–27, May 1–3, and at later dates to be announced the Atomic Safety and Licensing Board (Board) will hold public evidentiary hearings concerning unresolved quality assurance issues, including questions about welding techniques and protective coatings and about the significance of the Cygna Energy Services' review of design quality. The first two sessions will be held at the Metro Center Hotel, Fort Worth, Texas and the last two sessions at the Fritz Lantham Building, Room 5B14, 819 Taylor Street, Fort Worth, Texas.

Hearing hours are from 8:30 am to 6 pm, Monday to Thursday and 8:30 am to 3 pm Friday, subject to recesses and to extensions permitting the completion of scheduled matters. Because of the heavy hearing schedule, oral limited appearance statements are not scheduled; however, people may submit statements to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention, Chief, Docketing and Service Section if they have specific knowledge of quality assurance conditions at Comanche Peak and may include an address or telephone number that we may use to arrange an oral presentation.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chairman, Administrative Judge.

Bethesda, Maryland

[FR Doc. 84–1951 Filed 1–23–84; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) Collection title: Protected Employee Election
(2) Form(s) submitted: UI–130
(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(4) Frequency of use: On occasion
(5) Respondents: Individuals or households
(6) Annual responses: 3,000
(7) Annual reporting hours: 750

(8) Collection description: Title VII of the Regional Rail Reorganization Act provides protection for ConRail employees deprived of employment. The application obtains information needed to determine if the applicant qualifies for Title VII benefits and which benefits the applicant elects to receive.

(1) Collection title: Protected Employee Benefits
(2) Form(s) submitted: UI–131, UI–132, UI–133
(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(4) Frequency of use: On occasion
(5) Respondents: Individuals or households
(6) Annual responses: 30,800
(7) Annual reporting hours: 7,800

(8) Collection description: Title VII, Article 4 of the Regional Rail Reorganization Act provides subsistence allowance, new career training assistance and reimbursement for moving expenses for ConRail employees deprived of employment. The applications obtain the information needed to pay these benefits.

(1) Collection title: Application/Claim for /Supplementary Unemployment Insurance
(2) Form(s) submitted: UI–110, UI–111
(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(4) Frequency of use: On occasion, monthly
(5) Respondents: Individuals or households
(6) Annual responses: 2,000
(7) Annual reporting hours: 300

(8) Collection description: Section 10 of the Milwaukee Railroad Restructuring Act provides supplementary unemployment benefits for separated and furloughed Milwaukee Road employees. The application and claim obtain the information needed to determine whether the benefits are payable and, if so, the amount of benefits.

(1) Collection title: Application for Reimbursement/Verification of Enrollment and Notice of Change in Educational Program for New Career Training Assistance
(2) Form(s) submitted: UI–112, UI–113, UI–114
(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(4) Frequency of use: On occasion
(5) Respondents: Individuals or households, non-profit institutions, small business or organizations
(6) Annual responses: 1,025
(7) Annual reporting hours: 405

(8) Collection description: Section 12 of the Milwaukee Railroad Restructuring Act provides new career training assistance for separated Milwaukee Road employees. The collection obtains the information needed to determine whether the applicant qualifies for career training assistance and, if so, the amount of reimbursement.

(1) Collection title: Railroad Job Vacancies
(2) Form(s) submitted: N.A.
(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(4) Frequency of use: On occasion
(5) Respondents: Businesses or other for profit, small business or organizations
(6) Annual responses: 750
(7) Annual reporting hours: 125

(8) Collection description: Section 704(d) of the Regional Rail Reorganization Act of 1973 requires that the Board maintain a list of employment available with rail carriers. The collection obtains notice of the job vacancies. The information is used to find jobs for individuals separated from railroad employment.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Milo Sunderhauf (202–395–6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

William A. Oczkowski,
Director of Planning and Information Management.

[FR Doc. 84–1890 Filed 1–23–84; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Information Collection Activities Under OMB Review

Agency Clearance officer—Kenneth Fogash (202) 272–2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Extension

Rule 7d–1(b)(8)(i), (iii) and (viii) [17 CFR 270.7d–1(b)(8)(i), (iii) and (viii)].

SEC File No. 270–176.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of approval rule 7d–1(b)(8)(i), (iii) and (viii) under the Investment Company Act of 1940 which concerns the condition and arrangements pursuant to which Canadian management investment companies may register under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

The potential respondents are all investment companies registered under the Investment Company Act of 1940 and investment advisers of such companies.

Submit comments to OMB Desk Officer: Katie Lewin 202–395–7231.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84–1861 Filed 1–23–84; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 23202; 70–6940]

Arkansas Power & Light Company and System Fuels Inc.; Proposed Intrasystem Agreements Relating to Coal Supply Arrangements

In the Matter of Arkansas Power & Light Company and First National Building, Little Rock, Arkansas, 72203; System Fuels, Inc., Noro Plaza, 666 Poydras, New Orleans, Louisiana, 70130.

January 18, 1984.

Arkansas Power & Light Company ("AP&L"), an electric utility subsidiary of Middle South Utilities, a registered holding company, and System Fuels, Inc. ("SFI"), a fuel supply subsidiary of AP&L and its affiliate operating companies, have filed a declaration with this Commission pursuant to sections 12 and 13(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 90 thereunder.

SFI, pursuant to its repsonsibilities as the fuel supply subsidiary for the Middle South Utilities System, and Arkansas Electric Cooperative Corporation ("AECC") have entered into an Amended Contract for Sale and Purchase of Lignite ("Lignite Contract") with The G–S Lignite Partnerhsip, a partnerhsip composed of Shell Oil Company and GCO Minerals Company. The lignite to be supplied under the Lignite Contract is intended for use in a lignite-fired electric generating plant ("Plant") to be constructed in Arkansas and owned by AP&L and AECC. The obligaitons of SFI and AECC under the Lignite Contract are several, and, subject to adjustment for successors in interest, the liability of each is limited to one-half of claims arising under the Lignite Contract. AP&L proposes to guarantee SFI's obligations under the Lignite Contract. The Lignite Contract will be in effect through the period ending thirty years from the first to occur of (a) the scheduled commercial operation date for the Plant (or the last unit of the Plant if the Plant shall have more than one unit) or (b) the time when 66.33 million tons of lignite to be purchased pursuant to the Lignite Contract have been delivered. The amount of lignite to be delivered is 2.2 million tons per year with certain possible variations.

SFI and AP&L have also entered into a Lignite Sale Purchase Contract to be effective for the duration of the Lignite Contract, under which SFI has agreed to sell to AP&L, and AP&L has agreed to buy from SFI, the lignite acquired by SFI under the Lignite Contract. The lignite to be acquired by SFI under the Lignite Contract will equal AP&L's requirements and will be sold to AP&L at SFI's cost.

The declaration and any amendments thereto are available for public inspection through the Commmission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 15, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A

person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegate authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1857 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13731; 812-5707]

Capital T Money Fund, The Travelers Indemnity Company; Application

January 18, 1984.

Notice is hereby given that Capital T Money Fund (the "Fund"), 99 High Street, Boston, Massachusetts, 02110, an open-end, diversified management investment company registered under the Investment Company Act of 1940 (the "Act"), and The Travelers Indemnity Company ("Travelers") (together, "Applicants") filed an application on November 23, 1983, and an amendemnts thereto on January 6, 1984, for an order of the Commission (1) pursuant to section 17(d) of the Act and Rule 17d-1 thereunder permitting the Fund's Insured Money Market Portfolio (the "Insured Portfolio") to enter into an insurance contract (the "Insurance Contract") with Travelers under which Travelers will guarantee the price at which shares of the Insured Portfolio will be redeemed by the Fund, and (2) pursuant to section 17(b) of the Act permitting the Fund to purchase such insurance coverage from Travelers and to accept any settlement which might arise from a claim made under the Insurance Contract. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the provisions cited in the application.

Applicants state that the Fund is a "stock series investment company" authorized to issue multiple series of shares of beneficial interest. The Fund intends to issue shares representing beneficial interests of the Insured Portfolio if it receives the requested order. It is stated that the Insured Portfolio will be run as a so-called "money market fund" whose investment objective is to obtain the maximum current income from short-term securities consistent with preservation of capital and liquidity. Applicants state that the investment adviser for each portfolio of the Fund will be Keystone Custodian Funds, Inc. (the "Adviser"), a wholly-owned subsidiary of the Travelers Corporation (the "Parent"). The shares of the Insured Portfolio will be sold through the Fund's principal underwriter, Securities Settlement Corporation, a wholly-owned subsidiary of the Parent.

Applicants represent that the Fund will use its best efforts to maintain at $1.00 the net asset value per share of the shares of the Insured Portfolio.

Applicants represent that so long as the Insurance Contract remains in force, all securities held by the Insured Portfolio with remaining maturities in excess of 60 days will be valued at current market value. In addition, the Fund, on behalf of the Insured Portfolio, proposes to enter into the Insurance Contract as a means of guaranteeing, to the extent provided therein, the price at which shareholders of the Insured Portfolio will be able to redeem their shares. Applicants state that the Insurance Contract will insure the Fund against certain decreases in the net asset value of shares of the Insured Portfolio when such shares are redeemed by shareholders to the extent that such decreases result from market or credit losses; it does not insure against any such decreases which might result from embezzlement, improper presentment or other non-market or non-credit factors.

Applicants state that, under the terms of the Insurance Contract, Travelers, a wholly-owned subsidiary of the Parent, would provide coverage to the Fund for the Insured Portfolio in order to permit the Fund through its Insured Portfolio to pay at redemption $1.00 or the shareholder's original purchase price for the shares, whichever is less, for each share of the Insured Portfolio redeemed, provided that the decrease in net asset value is caused by a credit loss or a market loss of securities in the Insured Portfolio.

Applicants state further that, under the Insurance Contract, a credit loss is a failure or inability of an issuer of any security in the Insured Portfolio for lack of credit or funds to honor the security in accordance with its terms on proper presentment and which results in a reduction of the Insured Portfolio's net asset value per share. Under the Insurance Contract, a market loss is a decrease in the value of a security in the Insured Portfolio in response to short-term rate fluctuations due to economic factors, or in response to unfavorable changes in the credit of the issuer resulting in a reduction of the Insured Portfolio's net asset value per share or a reduction of such net asset value caused by the sale of the Insured Portfolio's securities prior to maturity in order to meet redemptions. If such credit or market losses occur, subject to the limits discussed below and in the Insurance Contract, the Insurer will pay to the Fund amounts to enable the Fund to pay redeeming shareholders $1.00 or the purchase price for such shares, whichever is less, within forty-eight hours of Travelers' receipt of notice of any covered loss and proof of loss.

Applicants state that the Insurance Contract presently provides total maximum aggregate liability of Travelers for losses to the Insured Portfolio of up to $300,000,000 over the life of the Insurance Contract. The Insurance Contract has no stated term although it may be cancelled under certain circumstances described below. In addition, unless the coverage provided is increased, the total covered losses payable on account of credit or market losses on securities of a single issuer, other than an issuer of U.S. Government Securities (defined below), may not exceed $15,000,000. Also, unless the coverage provided is increased, the total covered losses payable on account of credit or market losses of a single issuer of U.S. Government Securities may not exceed $125,000,000. Applicants state that it is expected that, if appropriate reinsurance can be obtained by Travelers and if the net assets of the Insured Portfolio increase, the amount of the insurance will also be increased so that Traveler's total maximum aggregate liability equals or exceeds, at all times, the aggregate net asset value of the Insured Portfolio. At present, the Insurance Contract requires that the net assets of the Insured Portfolio not exceed $300,000,000.

Applicants represent that the premium for the Insurance Contract will be based upon the types and amounts of money market instruments held by the Insured Portfolio; premiums will be greater for instruments which are subject to greater credit risks and/or greater market volatility and will be less for instruments subject to lesser credit risks and/or lesser market volatility. It is stated that the premium allocated to obligations issued or guaranteed by the United States or by any agency or instrumentality of the United States Government or by any agency or instrumentality of the United States Government and repurchase agreements relating thereto ("U.S. Government Securities") will be 0.17% per annum of the face value of such assets held by the Insured Portfolio. The premium

allocated to obligations of banks will be 0.375% per annum of the face value of such assets. The premium allocated to commercial paper and corporate obligations will be 0.425% per annum of the face value of such assets. Applicants state that the premium for the Insurance Contract will be calculated weekly and will be payable monthly in arrears and that the premium will be paid solely from the assets of the Insured Portfolio. Applicants represent that no other portfolio of the Fund will be obligated to pay the premium.

Applicants state that the Insurance Contract is conditioned upon compliance by the Insured Portfolio with certain additional conditions including the following:

1. The dollar-weighted average maturity of the securities held by the Insured Portfolio will not be greater than 35 days.

2. At least 5% of the current value of the assets of the Insured Portfolio will be invested daily in securities with remaining maturities of one day.

3. No more than 10% of the current value of the assets of the Insured Portfolio will be invested in securities with remaining maturities in excess of 60 days.

4. No assets of the Insured Portfolio will be invested in securities with remaining maturities greater than 180 days.

5. The Fund will provide Travelers every two weeks with a list of dealers with whom the Fund on behalf of the Insured Portfolio has entered into repurchase agreements showing limits established and amounts outstanding for each such dealer.

6. The Fund will provide the Insurer every two weeks with a list of the Insured Portfolio's securities and the purchase price and maturity of each such security.

Applicants state that to avoid a loss to the Insured Portfolio from the sale of its securities where the loss would result in a reduction in the net asset value per share of the Insured Portfolio below its then current net asset value the Fund will attempt not to sell and will attempt to borrow as permitted by its investment restrictions to pay for shares redeemed and to maintain the net asset value of each share at its then current net asset value, unless in the opinion of the Fund's investment adviser, the sale of such securities is required because of credit concerns. Applicants represent that, in the event of a violation by the Fund of the conditions for coverage of the Insured Portfolio, the Insurance Contract gives the fund five business days to collect such violation. Applicants represent that the Fund's prospectus will adequately disclose the nature and extent of the guaranteed net asset value per share of the Insured Portfolio and the next post-effective amendment to such prospectus will describe such guarantee as a separate security.

Applicants state that Travelers and its subsidiaries had 1982 revenues of approximately $3.8 billion and are one of the largest stock casualty and property insurance groups in the United States. Applicants state further that Travelers writes most types of casualty and property insurance including accident and health insurance.

Applicants state that Best's Insurance Reports (Property-Casualty) 1982 has assigned to Travelers Best's Policyholder's Rating of "A" (excellent) and a Financial Size Category of Class XV (largest). Applicants state further that the rating classification reflects Best's consideration that Travelers is outstanding on a comparative basis with other insurers in the property-casualty industry. Best's Financial Size Category is determined by Traveler's surplus to policyholders plus conditional reserves, equity in unearned premiums and an audit premium equal to one month's workers' compensation writings.

Travelers is an affiliated person of the Adviser by virtue of section 2(a)(3)(C) of the Act and the Adviser is an affiliated person of the Fund by virtue of section 2(a)(3)(E) of the Act. Therefore, the Insurer is an affiliated person of an affiliated person of the Fund within the meaning of sections 17(a), 17(b) and 17(d) of the Act and Rule 17d-1 thereunder. Applicants state that the insurance coverage offered by Travelers to the Insured Portfolio under the Insurance Contract could be deemed "property" within the meaning of section 17(a)(1) of the Act. Also, the possible purchase of securities of the Insured Portfolio by Travelers under the Insurance Contract could be deemed a purchase of securities from a registered investment company by an affiliated person of an affiliated person of such company within the meaning of section 17(a)(2) of the Act. In addition, it is possible that the payment by the Fund of the premium for the insurance coverage for the Insured Portfolio and the rights of the Insured Portfolio to certain payments in the event of a credit or market loss to the Insured Portfolio could constitute participation in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act. Accordingly, Applicants request exemptions from the provisions of section 17(a)(1), 17(a)(2) and 17(d) of the Act, pursuant to section 17(b) of the Act and Rule 17d-1 thereunder, to the extent necessary to permit the Fund, on behalf of the Insured Portfolio, to enter into the Insurance Contract with Travelers.

Applicants state that, in general, money market funds are attractive investments for a wide range of investors because these funds offer relative stability of principal. The Fund believes that the Insurance Contract is in the best interests of potential investors and the shareholders of the Insured Portfolio since it offers them an additional assurance that the principal of their investment may not fall below the purchase price per share of $1.00 per share, whichever is less.

The Fund submits that the terms of the Insurance Contract, including the premiums to be paid thereunder, are reasonable and fair, do not involve any overreaching and that it is necessary for the Fund to enter into the Insurance Contract with Travelers to obtain the desired insurance coverage for the Insured Portfolio. Applicants represent that it is necessary for the Fund to obtain insurance for the Insured Portfolio under the Insurance Contract because no other direct source for such insurance is available. Applicants state that discussions with other insurers of substantially similar financial stability and quality were not fruitful. Applicants state further that such other insurers indicated no willingness to provide similar insurance coverage to the Fund in the future. Applicants state that, if the Commission does not permit the Insured Portfolio to acquire the insurance offered by Travelers, because of its affiliated status, the Fund will not be able to offer to the public a type of investment which is suitable for a wide range of individuals and which is believed by the Fund to be much in demand by investors.

Applicants state that the absence of overreaching in Travelers' provision of insurance to the Insured Portfolio is evidenced by the approval of the Insurance Contract by the disinterested Trustees of the Fund, all of whom (together with the Board of Trustees as a whole) have made the determination that the proposed Insurance Contract is appropriate, and in the best interest of the Fund and its shareholders. Applicants represent that the premium rates are comparable to those charged the one other money market fund currently offering similar insurance coverage.

Applicants state that the Insurance Contract is consistent with the policy of the Insured Portfolio, whose investment objective is to obtain the maximum current income considered consistent with preservation of capital and

liquidity. The Insurance Contract offers the Insured Portfolio's shareholders the assurance that their principal investment will be preserved in the event of a credit or market loss to the Insured Portfolio since in such cases, under the terms of the Insurance Contract, they may always redeem their shares at $1.00 or the purchase price of such shares, whichever is less. Furthemore, Applicants represent that this enhanced safety of principal has been achieved in a manner consistent with maximum current income for the Insurance Portfolio since the Insurance Contract premium, while calculated on a different basis than the premium charged the other fund currently offering similar insurance coverage, will be comparable to that charged for similar insurance coverage and is less than the reduction in yield which would generally occur under normal market conditions if the Insured Portfolio were to seek additional safety by investing solely U.S. Government Securities. The Fund consents to the following conditions to the order granting the exempting from sections 17(a)(1), 17(a)(2) and 17(d):

1. The Insurance Contract will be reviewed and approved on an annual basis by a majority of the Fund's Board of Trustees ("Trustees"), including a majority of the Trustees who are not interested persons of the Fund as defined in section 2(a)(19) of the Act.

2. In the course of the annual review and approval referred to in paragraph 1, the Trustees shall determine that: (a) The Insurance Contract is in the best interests of the shareholders of the Insured Portfolio; and (b) the premiums payable to Travelers under the Insurance Contract are not greater than the premiums that would be charged by another insurer of substantially similar financial stability and quality for similar insurance coverage for the Fund.

3. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which such review and approval occurs, the first 2 years in an easily accessible place, a written record of the deliberations and actions of the Trustees in connection with the annual review and approval referred to in paragraph 1.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 13, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commissin, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1858 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13730; 812-5701]

CoreStates Capital Corp; Application

January 18, 1984.

Notice is hereby given that CoreStates Capital Corp ("Applicant"), Broad and Chestnut Streets, Philadelphia, PA 19101, a Pennsylvania corporation, filed an application on November 18, 1983, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions.

Applicant represents that it is a wholly-owned subsidiary of CoreStates Financial Corp. ("CFC"), a bank holding company incorporated under the laws of Pennsylvania. As of September 30, 1983, CFC had total consolidated assets of approximately $9 billion and shareholders' equity of approximately $567 million and, based on December 31, 1982, rankings of bank holding companies, was believed to be the 30th largest bank holding company in the United States. According to the application, prior to May 2, 1983, CFC's sole banking subsidiary was Hamilton Bank ("Hamilton"), a bank chartered under the laws of Pennsylvania, but, on that date, CFC effected a business combination with Philadelphia National Corporation ("Philadelphia National"), the parent bank holding company of the Philadelphia National Bank ("PNB"), a national banking association. As a result, CFC became the sole shareholder of Philadelphia National and the indirect parent of PNB. The application states that through Hamilton and PNB, CFC and its subsidiary Philadelphia National principally engage in commercial, international and consumer banking and trust services. Through other subsidiaries, CFC is engaged in mortgage banking, consumer financing, factoring and commercial financing and financial advisory services.

The application indicates that CFC has determined to consolidate its short term commercial paper and long term debt financing activities on behalf of CFC under Applicant for ease of administration, accounting, recordkeeping and tax considerations. According to the application, Applicant intends to offer its debt securities (including instruments other than short term paper) for sale to the public from time to time. The offer and sale of debt securities which are not short term and the investment of the proceeds in the obligations of CFC and its subsidiaries may cause Applicant to fall within the definition of investment company under the Act since (1) it would be making a public offering of these securities resulting in beneficial ownership by more than 100 persons and (2) more than 40% of its assets would consist of investment securities. Applicant represents that in the event that its proposed registration statement becomes effective and a public offering of debt securities is made thereunder prior to the grant of its requested section 6(c) exemption, Applicant and CFC would cause the proceeds of the offering to be held in bank deposit accounts or invested in government securities and would, if necessary, take further action to assure that less than 40% of the assets of Applicant were invested in investment securities as defined in the Act.

The application indicates that in addition to the proposed public offering of debt securities, it is anticipated that Applicant will make other public offerings and private placements of long term and short term debt instruments (including commercial paper) from time to time and may assume certain outstanding debt instruments heretofore issued by CFC or its subsidiaries. Applicant states that all the debt securities will be unconditionally guaranteed by CFC as to principal, interest and premium, if any. The application further states that CFC's guarantee will provide that in the event of a default with respect to a security issued by Applicant, legal proceedings may be instituted directly against CFC to enforce the guarantee of that security without first proceeding against Applicant. Applicant will not issue equity securities, except to CFC, and no entity other than CFC will hold any capital stock or other equity securities of

Applicant. Applicant represents that the proceeds of all debt offerings will be lent to CFC and its subsidiaries to finance the business operations of CFC and its subsidiaries to finance the business operations of CFC and its subsidiaries and that, other than holding securities resulting from its primary purpose, Applicant will not hold securities or deal or trade in securities nor will Applicant engage in any other business.

Applicant states that CFC and Philadelphia National are primarily engaged through Hamilton and PNB in the business of banking and therefore are expressly excluded from investment company status, pursuant to section 3(c)(6) of the Act. PNB and Hamilton are banking institutions excluded from investment company status pursuant to section 3(c)(3) of the Act, and, apart from Applicant, the other subsidiaries of CFC are primarily engaged in businesses other than that of investing, reinvesting, owning, holding or trading in securities. The application further states that, since Applicant's incorporation in 1974, it has served as a financing subsidiary for CFC in providing funds for CFC and CFC's subsidiaries through the issuance of commercial paper. Applicant avers that purchasing Applicant's debt securities will be the practical equivalent of purchasing debt obligations of CFC, which could issue debt securities directly without raising questions under the Act.

Applicant also represents that no investor will invest in applicant in the expectation that Applicant's activity will produce a profit on income; no person will be relying on the investment skills of Applicant's employees; and Applicant's investments and objectives are totally different from those of investment companies for which the Act was intended. The application states that Applicant and its related companies are, and will be, strictly supervised by various banking authorities, as well as by the Commission. All equity securities of Applicant will be held by CFC, a bank holding company, registered under the Bank Holding Company Act of 1956. CFC and its subsidiaries are subject to regulation by the Board of Governors of the Federal Reserve System, and CFC is required to file with the Federal Reserve Board an annual report and additional information which the Federal Reserve Board may require. Applicant states that CFC is also registered under the Securities Exchange Act of 1934 and is subject to the reporting requirements and other provisions of that Act. PNB is a member of the Federal Reserve System and the Federal Deposit Insurance Corporation ("FDIC"), and its business and that of its affiliates is subject to regulation by various Federal and State banking authorities and examination by the Comptroller of the Currency. Hamilton is subject to examination by the FDIC and the Pennsylvania banking authorities. Applicant further states that the debt securities to be issued by Applicant will be registered under the provisions of the 1933 Act unless thay are issued in a private offering or are otherwise exempt from registration under that Act. Any debt securities to be registered under the provisions of the 1933 Act will be issued pursuant to a trust indenture subject to, and qualified under, the Trust Indenture Act of 1939.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 13, 1984, at 5:30 p.m., do so by submitting a written request setting forth in nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, and order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1856 filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13729; 812-5669]

Dean Witter/Sears Liquid Asset Fund Inc., et al.; Application

January 18, 1984.

Notice is hereby given that the Dean Witter/Sears Tax-Free Daily Income Fund Inc. ("Daily Income"), Dean Witter/Sears Liquid Asset Fund Inc. ("Liquid Asset"), Dean Witter/Sears U.S. Government Money Market Trust ("Sears Trust"), (collectively referred to as the "money market funds"), Dean Witter Developing Growth Securities Trust ("Developing Growth"), and Dean Witter World Wide Investment Trust ("World Wide") One World Trade Center, New York, NY 10048, (collectively with the Money Market Funds, "Fund Applicants"), and Dean Witter Reynolds Inc. ("DWR") 130 Liberty Street, New York, NY 10048, (collectively with the Fund Applicants, "Applicants") filed an application on October 6, 1983, for an order of the Commission: (1) Pursuant to section 11(a) of the Investment Company Act of 1940 ("Act") to allow Developing Growth, World Wide, and any other fund assessing a contingent deferred sales charge for which DWR may in the future serve as investment adviser or principal underwriter (collectively with Developing Growth and World Wide, the "deferred sales charge funds") and the other Applicants (i) to offer shares of the money market funds in exchange for shares of the deferred sales charge funds, and (ii) to offer shares of the deferred sales charge funds in exchange for shares of the money market funds that were acquired through one or more exchanges of shares of contingent deferred sales charge funds and (2) pursuant to section 6(c) of the Act exempting DWR and the deferred sales charge funds from the provisions of section 22(d) of the Act to the extent necessary (i) to permit the exchanges described above, and (ii) to permit DWR and the deferred sales charge funds to defer the imposition of the contingent deferred sales charge when the shares of a deferred sales charge fund are exchanged for shares of a money market fund. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of its relevant provisions.

Applicants state that DWR if the principal underwriter for shares of Developing Growth and together with Daiwa Securities America Inc. is the principal underwriter for shares of World Wide. Shares of Developing Growth and World Wide redeemed within six years of purchase are subject to a contingent deferred sales charge under most circumstances. Sears Trust, Liquid Asset and Daily Income continuously offer their shares directly to the public at net asset value. Each Fund permits reinvestment of dividends and distributions without a sales load. DWR and Daiwa Securities America Inc. serve as underwriters and distributors of World Wide, and receive the proceeds of the contingent deferred sales charges. Where a contingent deferred sales charge is imposed, the amount of the charge will depend on the number of years since the investor made the purchase payment from which an amount is being redeemed.

On March 30, 1983, the Commission issued an order (Investment Company Act Release No. 13126, the "Previous Order") pursuant to section 6(c) of the Act granting Developing Growth an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit it to assess a contingent deferred sales charge on redemption of its initial and any future series of shares and to permit it to waive the contingent deferred sales charge under certain circumstances. On August 8, 1983, World Wide filed an application, which was still pending at the time the present application was filed, requesting a similar order which would grant an exemption identical to that granted to Developing Growth. In addition, that application seeks an order to permit exchanges of shares between Developing Growth and World Wide and any other management investment companies for which DWR may now or in the future serve as investment adviser or principal underwriter and which companies would propose to assess a contingent deferred sales charge, under the circumstances described therein, to be made without imposition of a contingent deferred sales charge. Applicants request an amendment to the Previous Order and the order that is anticipated to be issued under the Pending Application which would allow the deferred sales charge funds to defer the imposition of the contingent deferred sales charge when shares of a deferred sales charge fund are exchanged into a money market fund.

Applicants' proposal would allow a shareholder of a deferred sales charge fund to exchange into a money market fund, at no charge, without the imposition of the contingent deferred sales charge at the time of the exchange. During the period of time the shareholder remains in the money market fund, the investment period or "year since purchase payment made" is frozen. When the shareholder redeems out of the money market fund he would then be subject to a contingent deferred sales charge which would be computed based upon the period of time the shareholder actually held shares in a deferred sales charge fund. Applicants also propose that shareholders acquiring shares of a money market fund pursuant to the above-described exchange privilege be able to exchange those shares back into a deferred sales charge fund from the money market fund, with no charge being imposed on such exchange, and the investment period previously frozen when shares were first exchanged for shares of a money market fund resuming on the date shares of a contingent deferred sales load fund were reacquired. Thus, the contingent deferred sales charge would be imposed only upon an ultimate redemption based upon the time the shareholder was invested in a deferred sales charge fund. There would be no limit as to the number of exchanges that would be permitted or the money market funds or deferred continent sales charge funds into which exchanges could be made.

Applicants represent that, for purposes of calculating the contingent deferred sales charge, the date of purchase will be assumed to be the last day of the month in which the shares being exchanged were purchased (or deemed to have been purchased as a result of prior exchanges). In allocating the investor's purchase payments between funds for purposes of the contingent deferred sales charge, the amount which represents the current net asset value of the investor's shares which were (i) purchased (or deemed to have been purchased) more than six years prior to the exchange and (ii) originally acquired, despite intervening exchanges, through reinvestment of dividends or distributions (all such shares being hereinafter referred to as "Free Shares"), will be exchanged first. After an exchange all dividends earned on shares in the money market funds will be treated as Free Shares. If the exchanged amount exceeds the value of the investor's Free Shares, it will be assumed that an exchange is made of shares held (or deemed to be held as a result of prior exchanges) by the investor for the longest period of time within the applicable six-year period. Utilizing this assumption, any appreciation in the value of these non-Free Shares will thereafter be treated as Free Shares, and the amount of the investor's purchase payments for the non-Free Shares of the fund exchanged into will thereafter be deemed to be equal to the lesser of (a) the actual or, if there have been prior exchanges, the deemed purchase payments for, or (b) the current net asset value of, the exchanged non-Free Shares. If the exchange between Funds would result in the exchange of only part of a particular block of shares, then the purchase payment (actual or deemed, as above) for that block of shares will first be allocated on a pro-rata basis between the shares of that block to be retained and those to be exchanged. The pro-rated amount of such purchase payment attributable to the retained shares of that block will remain as the purchase payment for the retained shares, and the amount of the investor's purchase payment for the exchanged shares of that block will thereafter be deemed to be equal to the lesser of (a) the pro-rated amount of the purchase payment for, or (b) the current net asset value of, the exchanged shares.

Applicants state that Developing Growth and World Wide finance their own distribution expenses pursuant to plans adopted under Rule 12b–1 under the Act (the "Plans"). Under the Plans, the funds pay an annual fee to the Distributor, as reimbursement for expenses incurred by the Distributors in connection with the offering of the respective fund shares. Applicants state that upon any exchange, any necessary reduction of the base of aggregate purchase payments to the Fund exchanged from (for purposes of calculating the annual distribution fee under its Plan) will similarly be made on the basis that the investor's Free Shares are exchanged first and, if the exchanged amount exceeds their value, with the assumption, that an exchange is made of shares held (or deemed to be held, as a result of prior exchanges) by the investor for the longest period of time within the applicable six-year period. Utilizing this assumption, the base of aggregate purchase payments of the fund exchanged from will be reduced by the lesser of (a) the actual or, if there have been prior exchanges, the deemed purchase payments for, or (b) the current net asset value of, the exchanged non-Free Shares. However, if an exchange would result in the exchange of only part of a particular block of shares, the base of aggregate purchase payments will be reduced only by a pro-rated amount of the lesser of (a) the actual or, if there have been prior exchanges, the deemed purchase payment for, or (b) the current net asset value of, the entire particular block of shares. The amount of the reduction will then be added to the base of aggregate purchase payments of the fund exchanged into.

Applicants seek an order pursuant to section 11(a) of the Act approving the terms of the proposed offers of exchange and exempting such exchange transactions from the provisions of section 22(d) of the Act. Applicants submit that it is consistent with the purposes of Developing Growth and World Wide, and with the purposes of funds to be offered in the future with a contingent deferred sales charge, to defer imposition of the contingent deferred sales charges in the case of exchanges as described herein. As stated in their prospectuses, Developing Growth and World Wide are not designed for investors who intend to

liquidate their investments after a short period. It is expected that the funds to be offered in the future with a contingent deferred sales charge would be similarly designed. In situations in which the contingent deferred sales charge will not be imposed until final redemption, the exchange into a money market fund usually is made due to a temporary change in the investor's investment strategy and would not be inconsistent with the purposes of the funds or the investor's initial intention of making a long-term investment in a fund.

Applicants submit that the requested relief is fair to shareholders of Developing Growth, World Wide and other contingent deferred sales charge funds because DWR and not those funds will bear the cost (in the form of revenue lost) as a result of the delays in imposition of the contingent deferred sales charge resulting from exchanges. Applicants state that since their proposal would allow shares of the deferred sales charge funds to be exchanged for shares of the money market funds without immediate imposition of the contingent deferred sales charge, it could be argued that an exemption from the provisions of section 22(d) is required to the extent that the contingent deferred sales charge is not applied in the same manner to shareholders who exchange their shares of the deferred sales charge funds as to shareholders who simply redeem their shares. Accordingly, Applicants request an order of the Commission exempting them from the provision of section 22(d) of the Act to the extent necessary to permit the deferred sales charge funds to defer the imposition of the sales charge upon exchanges into the money market funds in the manner described in the application.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 13, 1984, a 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1855 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01

[Release No. 13732; 811-2984]

Fort Holdings, Inc.; Application

January 18, 1984.

Notice is hereby given that Fort Holdings, Inc. ("Applicant"), c/o Chicago Title and Trust Company, 111 West Washington Street, Mail Location 0624, Chicago, Illinois 60602, registered under the Investment Company Act of 1940 ("Act") as a closed-end, diversified management investment company, filed an application on October 19, 1983, for an order of the Commission pursuant to section 8(f) of the Act, and Rule 8f-1 thereunder, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for a statement of the relevant statutory provisions.

Applicant, an Indiana corporation, states that it has not registered any of its shares under the Securities Act of 1933. At the time of the filing of the application, it is stated, Applicant had 63 shareholders. As of September 30, 1983, there were 184,768 shares of Applicant's common stock outstanding, having an aggregate net asset value of $5,139,190 (approximately $27.81 per share), it is stated, and Applicant's assets included portfolio securities maturing on October 1, 1983, or October 4, 1983, of an aggregate value of $5,050,000, cash of $26,211 and accrued interest of $107,802. It is further stated that pursuant to a plan approved in accordance with the Indiana General Corporation Act by its shareholders at a special meeting on August 25, 1983, all of Applicant's assets (other than $158,817 being on behalf of shareholders whose whereabouts are unknown, or who had not yet properly tendered certificates for their shares, and $20,000 being held to meet expenses of Applicant's deregistration, liquidation and dissolution) were distributed pro rata to its shareholders in cash. The total amount of such distributions—effectuated between October 6, 1983 and October 13, 1983—was $4,982,088, or approximately $27.82 per share, it is stated. Applicant also states that none of the funds being held for it are or will be invested in any securities, that all of the expenses incurred or to be incurred in connection with its liquidation have been or will be paid by it, and that any portion of the $20,000 reserved for liquidation expenses will ultimately be distributed pro rata to Applicant's shareholders in a final liquidating distribution.

It is further stated that the distributive shares of those of its shareholders who cannot be located in the course of Applicant's dissolution will be deposited with the Clerk of the Circuit Court of Allen County, Indiana, as prescribed by the Indiana General Corporation Act, and, if still unclaimed after two years following the date for the final distribution by Applicant, are required by statute to be paid by the holder thereof to the Attorney General of the State of Indiana in accordance with the Indiana Disposition of Unclaimed Property Act.

Applicant further states that as of October 13, 1983, it had no outstanding debts or liabilities, other than $265,025 in principal amount of 9¼% installment debentures due 1987 issued by applicant during 1972 under an indenture dated as of December 29, 1972 between Applicant and Indiana Bank and Trust Company of Fort Wayne, as trustee. Applicant further states that on January 3, 1980, all of its obligations under such debentures and indenture were assumed by OFI, Inc. (a company which subsequently changed its name to "Hyponex Corporation") in the purchase by OFI, Inc. of substantially all of Applicant's assets, but that Applicant continues to be liable to the debentureholders for the payment of principal of (and premium, if any) and interest on the debentures in the event of a default in such payment by Hyponex Corporation. To the best of Applicant's knowledge, it is stated, there has been no such default. It is represented, in addition, that the Estate of F. E. Schouweiler, which owned approximately 78.7% of Applicant's outstanding shares prior to the liquidating distributions described herein, has agreed to indemnify Applicant's directors, and its shareholders who are not beneficiaries of such Estate, against any and all claims, debts, liabilities, judgments, costs and expenses arising out of the assertion against them of any claim based upon any debt of Applicant (which includes the debentures).

On the basis of the foregoing, Applicant submits that it has ceased to be an investment company as defined in the Act, since it has distributed substantially all of its assets and is

engaged solely in the process of winding-up of its affairs. Accordingly, Applicant requests that the Commission issue an order pursuant to Section 8(f) of the Act declaring that it has ceased to be an investment company.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 13, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1859 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13726; 811-1011]

Transwestern Mutual Fund; Application

Notice is hereby given that Transwestern Mutual Fund ("Applicant") 10201 Parish Place, Cupertino, California, 95014, registered under the Investment Company Act of 1940 ("Act"), as an open-end, diversified management investment company, filed an application on November 3, 1983, for an order of the Commission pursuant to section 8(f) of the Act, and Rule 8f-1 thereunder, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the relevant provisions thereof.

Applicant states that it registered under the Act on December 22, 1960, and on that same date filed a registration statement under the Securities Act of 1933, with respect to 200,000 shares of common stock. According to the application, on August 31, 1983, Applicant had issued and outstanding 6,700,703 shares of common stock. The net asset value as of August 31, 1983 was $1.75 per share or $11,726.33 in the aggregate.

Applicant represents that on June 22, 1978, Applicant's Board of Directors approved of the entry into an agreement with Industry Fund of America, Inc. ("IFA") whereby Applicant transferred its assets, subject to its liabilities to IFA in exchange for shares of IFA at equivalent net asset values. On June 20, 1983 Applicant's shareholders unanimously approved entry into the above agreement.

Applicant states that in connection with the reorganization, in those states where securities of IFA are permitted to be distributed, securityholders of Applicant received shares of IFA based upon the relative net asset values of the shares of such companies as determined on August 31, 1983; those shareholders of Applicant residing in states where IFA shares cannot be distributed received cash equivalent to the net asset value of Applicant's shares as of the above date. Applicant states that the reorganization was effectuated on August 31, 1983, when all of Applicant's net assets were sold subject to liabilities, to IFA in exchange for shares of IFA.

Applicant represents that it had no securityholders at the time of the filing of the application. Applicant further states that it is not a party to any litigation or administrative proceeding and does not intend to engage in business activities other than those necessary for the winding up of its affairs. Applicant states that it remains in existence as a corporation in the State of California, but intends to file a Certificate of Dissolution with said state.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 13, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon it own motion.

For the commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1854 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13728; 812-5656]

Boettcher Venture Capital Partners, L.P., Boettcher & Co.; Application for Order Pursuant to Section 6(c) of the Act Exempting Applicants From the Provisions of Sections 2(a)(3) and 2(a)(19) of the Act

January 17, 1984.

Notice Is Hereby Given that Boettcher Venture Capital Partners, L.P. (the "Partnership") and Boettcher & Company (the "Managing General Partner") ("Applicants") 828 Seventeenth Street, Denver, Colorado, 80201, filed an application on September 26, 1983, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), declaring (1) that the independent general partners of the Partnership are not "interested persons" of the Partnership or its other partners as defined in Section 2(a)(19) of the Act solely by reason of their status as general partners of the Partnership ("General Partners"), and (2) that the persons who become limited partners of the Partnership (the "Limited Partners") will not be deemed "affiliated persons" of the Partnership or its other partners solely by virtue of their status as Limited Partners. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the relevant provisions thereof.

Applicants state that the Partnership is a newly formed business development company organized as a Delaware limited partnership on September 22, 1983, pursuant to a Certificate and Agreement of Limited Partnership (the "Partnership Agreement"). Applicants state further that the Partnership is subject to Sections 55 through 65 of the Act and to those sections of the Act made applicable to business development companies by Section 59 thereof. Applicants state that the investment objective of the Partnership is to seek capital appreciation by making venture capital investments. The Partnership proposes to make a public offering of up to 20,000 units of limited partnership interests ("Units") at a price of $1,000 per Unit. Applicants state that

the proceeds will be invested in numerous venture capital investments ("Portfolio Securities") over a period of several years. Applicants represent that each of these investments will be liquidated once it reaches a state of maturity when disposition can be considered, which typically will be four to eight years from the date of investment. Applicants state that proceeds from the sale of Portfolio Securities will not generally be reinvested except in limited circumstances but will be distributed to the General and Limited Partners. The Partnership is to terminate in ten years (unless extended for up to four additional one-year terms in order to permit an orderly liquidation) and thus will be an investment vehicle of limited duration.

Applicants state that the Managing General Partner will be responsible for the venture capital investments which are made by the Partnership but its actions will be subject to the supervision of the individual general partners. In addition, the Managing General Partner will perform the management and administrative services necessary for the operation of the Partnership pursuant to the terms of the Partnership Agreement and will be responsible for the admission of additional or substitute Limited Partners. Under the Partnership Agreement, the Managing General Partner may not voluntarily resign or withdraw from the Partnership except upon 60 days notice to all Partners and the substitution of a replacement. The Managing General Partner is registered as an investment adviser under the Advisers Act and is also a registered broker-dealer and will serve as the dealer-manager under a "best efforts" selling agreement.

Applicants represent that the General Partners will consist of individual general partners ("Individual General Partners") all of whom save one will be independent general partners ("Individual General Partners") defined as individuals who are not "interested persons" of the Partnership within the meaning of the Act and one of whom will be an individual who is affiliated with the Managing General Partner, which will also be a General Partner. Applicants state that, prior to the public offering of the Units, four persons will become individual general partners, three of whom will also qualify as Independent General Partners. The Partnership will be managed solely by the Individual General Partners, except that the Managing General Partner, subject to the guidance and supervision of the Individual General Partners, is responsible for the management of the Partnership's venture capital investments, the admission of additional, assignee or substitute Limited Partners to the Partnership, and the management and administrative services necessary for the operation of the Partnership. The General Partners will otherwise act by majority vote of the Individual General Partners. Applicants state that the Individual General Partners will perform the same functions as directors of a corporation and the Independent General Partners will assume the responsibilities and obligations imposed by the Act on the non-interested directors of a business development company.

Applicants state that the Partnership Agreement provides that the Individual General Partners may be removed either (1) for cause by the action of two-thirds of the remaining Individual General Partners or (2) by failure to be re-elected by the Limited Partners. The Managing General Partner may be removed either (1) for cause by a majority of the Independent General Partners or (2) by failure to be re-elected by the Limited Partners. The Limited Partners have no right to control the Partnership's business, but may exercise certain rights and powers of a Limited Partner under the Partnership Agreement, including voting rights, and the giving of consents and approvals provided for in the Partnership Agreement. Applicants state that, if at any time the number of Independent General Partners is reduced to less than three, the remaining General Partners shall, within 60 days, designate one or more successor Independent General Partners so as to restore the number of Independent General Partners to at least three.

Although the Partnership is not obligated to obtain an errors and omissions insurance policy, the Individual General Partners periodically will review the question of the appropriateness of obtaining such insurance coverage for the Partnership.

Applicants state that the Independent General Partners are "interested persons" of the Partnership within the meaning of Section 2(a)(19) of the Act by virtue of being partners of the Partnership, which makes them "affiliated persons" of the Partnership within the meaning of Section 2(a)(3) of the Act. Applicants state further that the Independent General Partners could be construed to be "interested persons" of an investment adviser and principal underwriter to the Partnership because the Independent General Partners are "affiliated persons" of the Managing General Partner by virtue of being "co-partners" in the Partnership with the Managing General Partner. The Managing General Partner could be construed to be an investment adviser of the Partnership and is the principal underwriter with respect to the sale of the Units. Applicants represent further that each person who becomes a Limited Partner will be a partner of the Partnership and a co-partner thereof with each other Limited Partner and with each Individual General Partner as well as the Managing General Partner. Therefore, each Limited Partner could be deemed to be an "affiliated person" of the Partnership as well as of each other Limited and General Partner merely by virtue of having purchased a Unit and becoming a Limited Partner.

Applicants request that the Partnership and its Independent General Partners be exempted from the provisions of Section 2(a)(19) of the Act to the extent the Independent General Partners would otherwise be deemed to be interested persons of the Partnership or the Managing General Partner solely because such Independent General Partners are general partners of the Partnership and co-partners thereof with the Managing General Partner. Applicants further request that any Limited Partner not be deemed an "affiliated person" of the Partnership, any other Limited Partner, any of the Individual General Partners or the Managing General Partner solely because such Limited Partner is a partner of the Partnership or that Limited Partner and any of such other persons are co-partners of the Partnership.

Applicants assert that the Partnership has been structured so that the Independent General Partners are the functional equivalents of the noninterested directors of an incorporated investment company. Applicants state that Section 2(a)(19) of the Act excludes from the definition of interested persons of an investment company those individuals who would be interested persons solely because they are directors of an investment company. Applicants state that there is no equivalent exception for partners or co-partners of an investment company. It is submitted that it is consistent with the purposes fairly intended by the policy and provisions of the Act to grant the requested exemption from the provisions of Section 2(a)(19) of the Act.

Applicants state that persons investing in a corporate entity as mere shareholders would have substantially the same rights which are accorded to Limited Partners, but would not be

"affiliated persons" unless they held five percent or more of the corporation's outstanding voting securities. Applicants assert that the question of affiliation and the accompanying prohibitions should not turn on the mere form of organization of the investment vehicle. It is stated that the requested exemption from the provisions of Section 2(a)(3) of the Act will place investments in the Partnership on a footing more equal with investments in companies organized as corporations and that the requested exemption is consistent with the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the applications may, not later than February 13, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the applications will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1853 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash—(202) 272-2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Revised

Form N-1R
No. 270-283

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for clearance a proposed amendment to form N-1R, the annual report for management investment companies. This action is being taken in connection with proposed amendments to rule 12d-1 under the Investment Company Act of 1940, which would permit registered investment companies to acquire securities of issuers that derive 15% or less of their gross revenues from securities related activities (that is, the business of a broker, dealer, investment adviser or underwriter) without restrictions. The proposed amendments to rule 12d-1 would also permit investment companies, for the first time, to acquire securities of issuers that derive more than 15% of their gross revenues from securities related activities, provided certain conditions are met. The proposed amendment to form N-1R would require identification of any broker, dealer or underwriter whose securities the company has acquired that regularly sells or distributes the company's shares or executes its portfolio transactions.

Submit comments to OMB Desk Officer: Katie Lewin (202) 395-7231, Office of Information and Regulatory Affairs, New Executive Office Building, Room 3235, Washington, D.C. 20503.

Dated: January 17, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1937 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

Agency Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth Fogash (202) 272-2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Extension

Rule 31a-1 [17 CFR 270.31a-1]
SEC File No. 270-173

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of approval rule 31a-1 under the Investment Company Act of 1940 which concerns the records required to be maintained and preserved by registered investment companies.

The potential respondents are all investment companies registered under the Investment Company Act of 1940, certain majority-owned subsidiaries thereof, and banks and transfer agents that maintain and preserve records on behalf of registered investment companies.

Submit comments to OMB Desk Officer: Katie Lewin 202-395-7231.

Dated: January 17, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1928 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-12903]

American Southwest Financial Corp.; Application and Opportunity for Hearing

January 18, 1984.

Notice is hereby given that American Southwest Financial Corporation (the "Applicant") has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended, (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that trusteeship of The Valley National Bank of Arizona ("Valley") under indentures dated as of December 1, 1982, April 1, 1983, July 1, 1983 and October 27, 1983 (the "Qualified Indentures"), between the Applicant and Valley which were heretofore qualified under the Act, and trusteeship by Valley under an indenture tentatively to be dated as of January 1, 1984, and which will be qualified under the Act (the "New Indenture"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Valley from acting as trustee under any of these indentures and the New Indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that the trusteeships under the qualified indentures and such other indentures are not so likely to involve a material conflict of interest to make it necessary

in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any such indentures.

The Applicant alleges that:

(1) Pursuant to the Qualified Indentures, the Applicant has issued $50,475,000 aggregate principal amount of its 12–7/8% GNMA-Collateralized Bonds, Series A (the "Series A Bonds"), $35,280,000 aggregate principal amount of its 12–1/4% GNMA-Collateralized Bonds, Series B (the "Series B bonds"), $35,598,000 aggregate principal amount of its GNMA-Collateralized Bonds, Series 1–10 inclusive (the "Series 1–10 Bonds"), and $143,863,000 in aggregate principal amount of its GNMA-Collateralized Bonds, Series C (the "Series C Bonds"), for which Valley serves as trustee. The Series A Bonds, Series B Bonds, Series 1–10 Bonds and the Series C Bonds were issued pursuant to separate indentures or indenture supplements, were registered under the Securities Act of 1933, and the Qualified Indentures were qualified under the Act.

(2) Pursuant to the New Indenture, the Applicant proposes to issue and sell an as yet undetermined aggregate principal amount of its GNMA-Collateralized Bonds (the "New Bonds") for which it contemplates Valley will serve as trustee. The Applicant contemplates that the New Bonds will be registered under the Securities Act of 1933 and that the New Indenture will be qualified under the Act.

(3) Each series of Bonds is secured by the pledge by the Applicant to Valley of collateral which serves as security only for that series. Each series is payable solely from the collateral pledged to secure the bonds of that series, and the holders of any Bonds issued by the Applicant will not have recourse to the collateral granted to Valley as trustee for any other series of bonds. Any default under an indenture for any series of Bonds will not cause a default under an indenture for any other series of bonds.

(4) The Applicant is not in default under any of the Qualified Indentures.

(5) Such differences as exist between the Qualified Indentures and the New Indenture are not likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Valley from acting as trustee under any of the Indentures.

The Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested persons may, not later than February 13, 1984 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1935 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20572; SR-Amex-83-31]

American Stock Exchange, Inc.; Order Approving Proposed Rule Change

January 17, 1984.

The American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, NY 10006, submitted on November 21, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder concerning its Post Execution Reporting ("PER") system and AUTOPER. In May 1983, The Exchange began the AUTOPER pilot program which enables participating specialists in selected issues to enter execution data into the PER system by using touch-screen terminals. The pilot program, having a total of 12 screens, has to date been limited to 300 share market orders.

Under AUTOPER, eligible orders are automatically routed to the specialist for display on the touch-screen. The specialist has the option of executing the trade as principal or agent using the touch-screen, or removing the order from the terminal and executing via standard card imput. The specialist may also "stop" the order using the touch-screen. When a "stopped" order is executed the report is entered by card. The purpose of the system is to enable equity specialists to execute and report small routine orders by using touch-screen terminals.

The AMEX states that it now proposes to establish the AUTOPER pilot as a permanent floor-wide enhancement of the PER system. Thus AUTOPER would be expanded from its current 12 screens up to approximately 100 screens (one for each equity specialist). The current limitation to 300 share market orders would remain unchanged, but the system would be expanded to include marketable limit orders up to 500 shares (the present PER parameters). A marketable limit order would initially be considered to be one for which the limit price is equal or better than the last sale price.

The Amex states that the use of AUTOPER on a floor-wide basis will provide more efficient and accurate execution and reporting of small routine orders, thereby addressing the need to improve PER processing and turnaround time. According to the Amex, its experience during the pilot program has indicated that AUTOPER has the potential to eliminate nearly all price errors and significantly reduce other errors in the relevant transactions and reports.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20426, November 30, 1983) and by publication in the **Federal Register** (48 FR 55061, December 8, 1983). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1934 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20573; SR-BSE-83-12]

Boston Stock Exchange, Inc., Order Approving Proposed Rule Change

January 17, 1984.

The Boston Stock Exchange, Inc. ("BSE") One Boston Place, Boston, Massachusetts 02108, submitted on October 6, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to amend Chapter II, subsection 15 of its rules relating to the confirmation of good-'til-cancelled ("G.T.C.") orders. The amendment provides that confirmation periods will be determined by the Exchange, in lieu of the current requirement of semi-annual confirmation periods in April and October. Under the rule the specialist has the responsibility of notifying the broker, in writing, of all G.T.C. orders held by him prior to the expiration of the confirmation period. Formerly, the rule stated that G.T.C. orders automatically are cancelled if unconfirmed. The proposed rule will provide that G.T.C. orders which are not confirmed or renewed are retained on the specialist's book, and, if executed according to their terms by the specialist, must be accepted by the entering firm. In addition, the proposed rule will allow any firm, at its discretion, to request and receive confirmation once a month, notwithstanding the confirmation periods prescribed by the Exchange.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20435, December 2, 1983) and by publication in the **Federal Register** (48 FR 55364, December 12, 1983). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–1929 Filed 1–23–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 20571; SR-BSE-83-11]

Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change

January 17, 1984.

The Boston Stock Exchange, Inc. ("BSE") One Boston Place, Boston, MA 02108, submitted on September 1, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder. The proposed rule change would amend Chapter XXII, Sections 2(b) and 2(c) of the BSE rules to do the following: (i) amend minimum net capital requirements for BSE dealer-specialists and provide that, if the dealer-specialist does not meet such requirements for five consecutive business days, such member or member organization shall be restricted from expanding his or its business and shall take such other measures as the Exchange deems necessary; (ii) increase the minimum liquidating equity required by each BSE dealer-specialist from $50,000 to $80,000 effective January 1, 1984; (iii) establish an "Early Warning Alert" notice by the BSE to alert a specialist if its equity drops below $80,000; (iv) require that if a dealer-specialist's equity drops below $70,000, such dealer-specialist must notify the Exchange of steps being taken to supply itself with additional capital, such specialist to be given five business days to increase its equity to the minimum level of $80,000; (v) require that if a dealer-specialist cannot increase its equity to the $80,000 minimum within the five business days allotted or if a specialist's equity drops below $65,000, such specialist's securities shall be assigned to another specialist for not more than 20 days, after which time they will be subject to reallocation to another dealer-specialist; (vi) provide that each "Alternate A specialist" must maintain at all times a liquidating equity of not less than $25,000 in cash or securities, and each "Alternate B specialist" must maintain a liquidating equity of not less than $15,000; and (vii) provide that a dealer-specialist may register as both an Alternate A or Alternate B specialist, in which case the minimum equity requirement shall be $25,000 more than the minimum equity required for its primary account.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20412, November 23, 1983) and by publication in the **Federal Register** (48 FR 55363, December 12, 1983). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–1930 Filed 1–23–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 20546A; SR-CBOE-83-37]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

January 17, 1984.

The Chicago Board Options Exchange, Incorporated ("CBOE") LaSalle at Jackson, Chicago, IL 60604, submitted on November 7, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to permit CBOE to delist particular options series having no open interest while continuing to list other series of the same class that do have open interest.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20436, December 2, 1983) and by publication in the **Federal Register** (48 FR 55366, December 12, 1983). No comment letters were received with respect to the proposed rule filing.

The Commission found in Securities Exchange Act Release No. 20546 (January 10, 1984) that the proposed rule change was 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. Due to an administrative error, however, that release was approved one day prior to the elapse of the 30 day period provided by Section 19(b)(2) of the Act for consideration of rule change proposals such as the present proposal. The Commission is

therefore re-approving CBOE's proposal today, for the same reasons as appeared in Release No. 20546.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1933 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20574; File No. SR-MSTC-83-20]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Co.; Relating to MSTC's Price Revision Schedule

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 December 30, 1983 the Midwest securities Trust Company 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

Attached to the filing as Exhibit A is MSTC's Price Revision Schedule.

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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed price modifications, effective with service beginning January 3, 1984, reflect cost savings realized through increased activity in 1983. This increased activity has enabled MSTC to retain sufficient earnings that permit it to maintain service levels and developmental programs. Excess revenues beyond those needed to meet retained earnings objectives, based on results through December 1983, are projected to be refunded to Participants in 1984.

However, MSTC, consistent with its policy that services' fees fairly cover their associated costs, has increased fees for certain services. These fee changes arise from increased costs for certain monthly fixed services and for several labor intensive functions, and reflect more accurately the expense of providing such services. MSTC's fees also cover expenses associated with new programs implemented to insure enhanced cost-effectiveness for all Participants.

The proposed fee schedule is consistent with Section 17A of the Securities Exchange Act of 1934 in that the fee schedule will help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. In addition, the price changes provide for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed change in fees will have an impact on competition, but such impact will not impose any burdens on competition, but rather, will relieve a burden on or otherwise promote competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have been solicited, but none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 17, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1936 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Applications for Unlisting Trading Privileges and of Opportunity for Hearing

January 17, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Murphy Oil Corporation (Holding Co.)
Common Stock, $1 Par Value (File No. 7-7327)

Diamond Shamrock Corporation (Holding Co.)
Common Stock, $1 Par Value (File No. 7-7328)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 7, 1984 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-1931 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

January 17, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Aegis Corp.
Common Stock, $.01 Par Value (File No. 7-7308)
Amfac, Inc.
Common Stock, No Par Value (File No. 7-7309)
Beefsteak Charlies Inc.
Common Stock, $.10 Par Value (File No. 7-7310)
Big V Supermarkets, Inc.
Common Stock, $.10 Par Value (File No 7-7311)
Core Laboratories, Inc.
Common Stock, $1 Par Value (File No. 7-7312)
Dale Electronics, Inc.
Common Stock, $.10 Par Value (File No. 7-7313)
Gates Learjet Corporation
Common Stock, $1 Par Value (File No. 7-7315)
Knoll International, Inc.
Class A Common Stock, $.10 Par Value (File No. 7-7316)
Petro-Lewis Corporation
Warrants (File No. 7-7317)
Resorts International, Inc.
Warrants (File No. 7-7318)
Rykoff & Co. (S.E.)
Common Stock, $.10 Par Value (File No. 7-7319)
Seiscom Delta Inc.
Common Stock, $.10 Par Value (File No. 7-7320)
Topps Chewing Gum, Incorporated
Common Stock, $.10 Par Value (File No. 7-7321)
AM International, Inc.
Common Stock, $2.50 Par Value (File No. 7-7322)
Canada Southern Petroleum
Capital Stock, $1 Par Value (File No. 7-7323)
Lionel Corp.
Common Stock, $.10 Par Value (File No. 7-7325)
Wickes Companies
Common Stock, $2.50 Par Value (File No. 7-7326)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 7, 1984 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmoms.

Secretary.

[FR Doc. 84-1932 Filed 1-23-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Greater Pittsburgh International Airport—FAA Acceptance of Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review Under 14 CFR Part 150

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its acceptance of noise exposure maps submitted by Greater Pittsburgh International Airport (PIT) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for PIT under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before February 26, 1984.

EFFECTIVE DATE: The effective date of the FAA's acceptance of the PIT noise exposure maps and of the start of its review of the associated noise compatibility program is August 30, 1983.

Comments close: Thirty days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Louis P. DeRose, Airport Planning Officer, AEA-610, Federal Aviation Administration, Eastern Region, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430, (212) 917-1245. Comments on the proposed noise compatibility program should also be submitted to that office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has accepted the noise exposure maps for Greater Pittsburgh International Airport, effective August 30, 1983, and is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before February 26, 1984. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that is accepted by FAA as meeting Federal Aviation Regulation Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken to proposes for the reduction of

existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Greater Pittsburgh International Airport submitted to the FAA on April 22, 1983, noise exposure maps, descriptions and other documentation which were produced during an airport noise control and land use compatibility (ANCLUC) study conducted at PIT from April 1979, to September 1981. It was requested that the FAA accept this material as a noise exposure map as described in Section 103(a) (1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Greater Pittsburgh International Airport. The specific maps under consideration are depicted in Exhibits III–7 and III–8 in the Final Technical Report, the final report of the ANCLUC study. The FAA has accepted these materials as the noise exposure maps for Greater Pittsburgh International Airport, effective on August 30, 1983.

FAA's acceptance of an airport operator's noise exposure map is limited to the determination that the map was develped in accordance with the procedures contained in Appendix A of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

Questions may arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act. It should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's acceptance of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Upon acceptance of the noise exposure maps, the FAA has formally received the noise compatibility program for PIT, also effective on August 30, 1983. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 26, 1984.

The proposed program, however, includes recommended measures relating to flight procedures for noise control purposes, the review of which is not subject to the 180-day review procedures. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the accepted noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, 800 Independence Avenue, SW., Rm. 615, Washington, D.C.

Federal Aviation Administration, Eastern Regional Office, Fitzgerald Federal Building, J. F. Kennedy International Airport, Jamaica, NY 11430

Federal Aviation Administration, Airports District Office, Terminal Building, Capital City Airport, New Cumberland, PA 17070

Greater Pittsburgh International Airport, Allegheny County Department of Aviation, Rm. 134M, Terminal Building, Pittsburgh, PA 15231

Questions may be directed to the individual named above under the heading, "For Further Information Contact."

Issued in Jamaica, New York on November 15, 1983.

Brian J. Vincent,

Manager, Airport Division, Eastern Region.

[FR Doc. 84–1964 Filed 1–23–84; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs; Public Meetings

The National Highway Traffic Safety Administration (NHTSA) will hold a meeting on April 4, 1984, to answer questions from the public and industry regarding the Agency's rulemaking, research and enforcement programs. The meeting will begin at 10:30 a.m., run until 1:00 p.m., and reconvene at 2:00 p.m. if necessary. It will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

At the April meeting, representatives of DOT will answer questions received from the industry and the public relating to NHTSA's rulemaking, research and enforcement programs (including defects). The purpose of this is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. (Questions regarding the Agency's fuel economy program will continue to be addressed at the EPA's meetings on vehicle emissions).

Questions for the April meeting should be submitted in writing by March 9 to Barry Felrice, Acting Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, S.W., Washington, D.C. 20590. If sufficient time is available, questions received after the March 9 date may be answered at the meeting. The individual, group, or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by March 9 and the issues to be discussed will be mailed to interested persons on or before March 30, 1984, and will be available at the meeting. This list will serve as the agenda.

A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, D.C., within four weeks after the meeting. Copies of the

transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA, Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590.

Issued in Washington, D.C. on January 19, 1984.

Barry Felrice,

Acting Associate Administrator for Rulemaking.

[FR Doc. 84-1956 Filed 1-23-84; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OM for Review

Dated: January 17, 1984.

On January 17, 1984, the Department of Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue, N.W., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0043.
Form Number: 972.
Type of Review: Revision.
Title: Consent of Shareholder to Include Specific Amount in Gross Income.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0253.
Form Number: ATF Rec 5110/16.
Type of Review: Reinstatement.
Title: DSP Storage Record—Additions of Oak Chips and Caramel.

OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Office of the Secretary

OMB Number: 1505-.
Form Number: TFR 619.
Type of Review: Existing.
Title: Census of Properties of Persons Served as Defendants in Litigation Brough by Iran Seeking Return of Property Alleged to Belong to Iran.

US Customs Service

OMB Number: 1515-0062.
Form Number: CF 1301.
Type of Review: Extension.
Title: General Declaration

OMB Number: 1515-0020.
Form Number: CF 7539.
Type of Review: Revision.
Title: Drawback Entry Covering Rejected Merchandise and Same Condition Merchandise.

OMB Number: 1515-0001.
Form Number: CF 4609.
Type of Review: Extension.
Title: Air Cargo Manifest.

OMB Number: 1515-0002.
Form Number: CF 7507.
Type of Review: Extension.
Title: General Declaration (Outword/Inward).

OMB Reviewer: Judy McIntosh (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Cathy Thomas,

Departmental Reports Management Office.

[FR Doc. 84-1867 Filed 1-23-84; 8:45 am]

BILLING CODE 4810-25-M

[Dept. Circular, Public Debt Series—No. 1-84]

Treasury Notes of January 31, 1986; Series Q-1986

January 19, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,250,000,000 of United States securities, designated Treasury Notes of January 31, 1986, Series Q-1986 (CUSIP No. 912827 QK 1). The securities will be sold at auction, with bidding on the basis of yield. Payments will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1 The securities will be dated January 31, 1984, and will bear interest from that date, payable on a semiannual basis on July 31, 1984, and each subsequent 6 months on January 31 and July 31 until the principal becomes payable. They will mature January 31, 1986, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2 The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in demoninations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5 The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:30 p.m., Eastern Standard time, Wednesday, January 25, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 24, 1984, and received no later than Tuesday, January 31, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $5,000, and larger bids

must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "competitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. A noncompetitive bidder may not have entered into an agreement, or make an agreement with respect to the purchase or sale or other disposition of any noncompetitive awards of this issue in this auction prior to the designated closing time for receipt of tenders.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4, must be made or competed on or before Tuesday, January 31, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, January 27, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the fact amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-1996 Filed 1-20-84; 2:19 pm]

BILLING CODE 4810-40-M

Comptroller of the Currency

[Docket No. 84-2]

Performance Review Board

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of Change in Membership of a Senior Executive Service Performance Review Board.

SUMMARY: This notice announces the new membership of the OCC Performance Review Board (PRB), pursuant to 5 U.S.C. 4314(c)(4).

DATE: January 24, 1984.

FOR FURTHER INFORMATION CONTACT: Gary W. Norton, Director for Human Resources, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, SW, Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION: The membership of the OCC PRB which appeared in the **Federal Register**, Volume 46, No. 249, page 62994, Tuesday, December 29, 1981, has been changed. The current membership is as follows:

Michael A. Mancusi, Chairperson, Senior Deputy Comptroller for National Operations
H. Joe Selby, Senior Deputy Comptroller for Bank Supervision
Doyle L. Arnold, Senior Deputy Comptroller for Policy and Planning
Brian W. Smith, Chief Counsel
Martha B. Stephens, Executive Secretary, Deputy Comptroller for Management Resources.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 84-1955 Filed 1-23-84; 8:45 am]

BILLING CODE 4810-33-M

Fiscal Service

[Dept. Circ. 570, 1983 Rev., Supp. No. 13]

Surety Companies Application and Renewal Fees; Change in Fees Imposed

The Department of the Treasury will be decreasing the fees imposed and collected as referred to in 31 CFR 223.22, relating to services performed for and special benefits conferred upon surety companies. The new fees are effective December 31, 1983 and are determined in accordance with the Office of Management and Budget Circular A-25, as amended. The new fees are as follows:

(1) Examination of a company's application for a certificate of authority as an acceptable surety on Federal bonds or for a certification of authority as an acceptable reinsuring company on such bonds—$1,000.

(2) Determination of a company's continuing qualifications for annual renewal of its certificate of authority—$650.

The fees relating to recognition as and renewal for admitted reinsurer status will remain unchanged at this time.

Questions concerning this notice should be directed to the Operations Staff, Banking and Cash Management, Department of the Treasury, Washington, D.C. 20226 or by phoning (202) 634-5745.

Dated: January 17, 1984.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 84-1850 Filed 1-23-84; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and the Delegation of Authority from the Director, USIA (47 FR 57600, December 27, 1982), I hereby determine that the objects in the exhibit, "Silk Roads: Chian Ships", (included in the list [1] filed as a part of this determination) imported from abroad for the termporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the American Museum of Natural History and foreign lenders. I also determine that the termporary exhibition or display of the listed exhibits objects at the American Museum of Natural Hisory, beginning on or about January 25, 1984, to on or about May 30 1984, is in the national interest. Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: January 20, 1984.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 84-2063 Filed 1-23-84; 8:45 am]

BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 49, No. 16
Tuesday, January 24, 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).

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	Items
Federal Election Commission	1
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1

FEDERAL ELECTION COMMISSION

FEDERAL REGISTER NO. 84-1674

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, January 26, 1984, 10:00 A.M.

The following items have been carried over from the meeting of January 19: Application of Lyndon H. Larouche, Jr. for commission determination of eligibility to receive Presidential primary matching funds. Draft Advisory Opinion #1983-43, Frank M. Northam on behalf of U.S. Defense Committee & Patrick Reilly.

Request for Reagan for President Committee for stay of Commission's Final Repayment Determination Pending Appeal.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone 202-523-4065

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-1981 Filed 1-20-84; 12:36 pm]

BILLING CODE 6715-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION

January 18, 1984.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIMES AND DATES: January 25, 1984, 10 a.m.

PLACE: 825 North Capitol Street NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission, it does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of public information.

Consent Power Agenda 784th Meeting—January 25, 1984, Regular Meeting (10 a.m.)

CAP-1. Project No. 7684-000, James and Irene Leishman
CAP-2. Project Nos. 7038-001, 6216-999, et al., Great Northern Hydro Company
CAP-3. Project No. 6650-001, Pioneer Hydropower, Inc.
CAP-4. Omitted
CAP-5. Project No. 6954-001, Hydro Power Development, Inc.
CAP-6. Project No. 4839-001, City of Rohnert Park, California
CAP-7. Project No. 7030-001, Dryden Hydro Associates
CAP-8. Project Nos. 6827-003 and 004, Jackson Falls Hydroelectric Power Company
CAP-9. Project Nos. 3417-002 and 004, Southeastern Renewable Resources, Inc. and the Town of Grafton, West Virginia, Project No. 3476-001, Noah Corporation, Project No. 4067-001, City of Bedford, et al., Project No. 4239-001, City of Philippi, West Virginia, Project No. 4255-001, Taylor County Commission and The Town of Flemington, West Virginia
CAP-10. Project No. 7570-003, Calaveras Public Utility District
CAP-11. Project No. 3428-000, Worumbo Hydro Incorporated, Project No. 4784-000, Androscoggin Water Power Company
CAP-12. Project No. 5227-001, Robert Raymond Tift
CAP-13. Project No. P-2750-000, Town of Springfield, Vermont and Vermont Public Power Supply Authority
CAP-14. Project No. 82-002, Alabama Power Company
CAP-15. Docket No. QF83-440-000, Abbott Energy, Inc.
CAP-16. Docket No. ER83-765-001, Carolina Power & Light Company
CAP-17. Docket No. ER79-150-010, Southern California Edison Company
CAP-18. Docket Nos. ER79-182-007 and ER80-109-004, Commonwealth Edison Company
CAP-19. Docket No. ER82-318-003, Philadelphia Electric Power Company, the Susquehanna Electric Company and the Susquehanna Power Company
CAP-20. Docket No. ER79-126-007, Arizona Public Service Company
CAP-21. Docket No. ER83-433-000, Rochester Gas and Electric Corporation
CAP-22. Docket Nos. ER83-622-000, ER83-622-001 and ER83-622-002, Western Massachusetts Electric Company
CAP-23. Docket No. ER83-194-000, Mississippi Power Company
CAP-24. Docket No. EL83-14-000, Northeast Utilities Service Company
CAP-25. Docket No. EL84-4-000, Westchester Resco Company

Consent Miscellaneous Agenda

CAM-1. Docket Nos. RM83-62-001 and 002, Treatment of purchased power in the fuel cost adjustment clause for electric utilities
CAM-2. Docket Nos. RM83-9-000 and 001, Exemption from, and revisions to, procedures governing collection and reporting of information concerning cost of providing retail electric service
CAM-3. Docket No. RM79-76-219, (Colorado—1 Amendment II), High-cost gas produced from tight formations
CAM-4. Docket No. RM79-76-202, (Texas—37), High-cost gas produced from tight formations
CAM-5. Docket No. RM79-76-162, (Texas—31), High-cost gas produced from tight formations
CAM-6. Docket No. GP80-15-002, Michigan Wisconsin Pipe Line Company
CAM-7. Docket No. GP84-3-000, Bureau of Land Management, Section 102 determination, Nortex Gas and Oil Company, Nortex-Hart Federal No. 1-25X well, FERC No. JD83-55445

Consent Gas Agenda

CAG-1. Docket No. TA84-1-14-000 (PGA84-1), Lawrenceburg Gas Transmission Corporation
CAG-2. Docket No. TA84-1-15-000 (PGA84-1), Mid Louisiana Gas Company
CAG-3. Docket No. TA84-1-16-000 (PGA84-1), National Fuel Gas Supply Corporation
CAG-4. Docket No. TA84-1-17-001 (PGA84-1), Texas Eastern Transmission Corporation
CAG-5. Docket No. TA84-1-18-003 (PGA84-1), Texas Gas Transmission Corporation
CAG-6. Docket No. TA84-1-31-003 (PGA84-2), Arkansas Louisiana Gas Company
CAG-7. Docket No. TA84-1-61-001 (PGA84-1), West Lake Arthur Corporation
CAG-8. Docket Nos. RP83-6-000 and RP82-33-000, El Paso Natural Gas Company
CAG-9. Docket Nos. RP83-35-011, (RP81-109, RP82-37, RP78-87 and RP74-41-016), Texas Eastern Transmission Corporation
CAG-10. Docket Nos. TA84-1-37-000 and TA84-1-37-002 (PGA84-1) (IPR4-1), Northwest Pipeline Corporation
CAG-11. Docket No. RP84-39-000, Pacific Gas Transmission Company
CAG-12. Docket No. CP83-416-000, Montana-Dakota Utilities Company

CAG–13. Docket Nos. RP82–57–012 and RP83–52–006, United Gas Pipe Line Company
CAG–14. Docket Nos. RP77–62, RP80–97, RP81–54, RP81–56, RP82–10, RP82–12, RP82–121, RP82–125, RP83–47, RP84–3, TA82–1–9, TA82–2–9, TA83–1–9 and TA83–2–9, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.
CAG–15. Docket No. ST83–659–000, Harry C. Boggs Natural Gas Company
CAG–16. Docket Nos. ST81–289–001, ST81–484–001, ST81–466–001, ST81–290–001, CP83–295–000, ST82–443–000 and ST82–445–000, Seagull Energy Corporation
CAG–17. Docket Nos. RI74–188–020 and RI75–21–015, Independent Oil & Gas Association of West Virginia
CAG–18. Docket No. RI83–8–009, Mobil Oil Corporation and Northern Natural Gas Producing Company
CAG–19. Docket No. G–7004–023, Pennzoil Company
CAG–20. Docket Nos. CI81–178–007 and CI83–350–002, Exxon Corporation
CAG–21. Docket No. CI84–31–001, Samedan Oil Corporation
CAG–22. Docket Nos. CP83–438–001 and CP83–438–002, East Tennessee Natural Gas Company
CAG–23. Docket No. CP66–269–001, et al., Tennessee Gas Pipeline Company, a Division of Tenneco Inc. Docket Nos. CI67–1810–001 and CI77–347–001, the Louisiana Land and Exploration Company
CAG–24. Docket No. CP80–541–001, Texas Gas Transmission Corporation. Docket No. CP81–6–001, Texas Gas Transmission Corporation
CAG–25. Docket Nos. CP84–35–000, CP84–43–000 and CP84–48–000, National Fuel Gas Supply Corporation
CAG–26. Docket No. CP81–107–000, et al., Boundary Gas, Inc. Docket No. CP84–14–000, Couch Gas Storage Company
CAG–27. Docket No. CP83–411–000, Equitable Gas Company
CAG–28. Docket No. CP83–394–000, Montana-Dakota Utilities Company

Power Agenda

I. Licensed Project Matters
P–1. Project Nos. 4024–001, 002, 6439–001 and 002, Gregory Wilcox Project Nos. 6423–001, 002, 6424–001, 002, 6425–001, 002, 6426–001, 002, 6427–001, 002, 6428–001 and 002, Uncompahgre Valley Water Users Association and Montrose Partners
P–2. Project No. 2971–000, Allegheny Electric Cooperative, Inc. Project No. 2988–000, Ohio Edison Company, Project No. 3219–000, Duquesne Light Company, Project No. 3490–002, Potter Township, Pennsylvania
P–3. Project No. 4114–001, Long Lake Energy Corporation, Project No. 5614–000, New York State Electric and Gas Corporation and Georgia-Pacific Corporation
II. Electric Rate Matters
ER–1. Docket No. ER83–736–000, Pennsylvania-New Jersey-Maryland Interconnection and Philadelphia Electric Company
ER–2. Docket Nos. ER84–131–000 and ER83–628–000, Kansas Gas and Electric Company
ER–3. Docket No. ER84–146–000, Union Electric Company
ER–4. Docket No. ER84–117–000, Philadelphia Electric Company
ER–5. Docket No. ER84–74–000, Canal Electric Company
ER–6. Docket No. ER83–726–002, Boston Edison Company
ER–7. Docket Nos. ER81–450–000 and ER81–461–000 (Consolidated), Union Electric Company and Missouri Edison Company
ER–8. Docket No. E–9592–000, Roscoe E. Dean and William D. Lovin V. Georgia Power Company
ER–9. Docket Nos. EF–84–2011–002, EF–2011–003, EF84–2011–004, EF–84–2011–005, EF84–2021–002, EF84–2021–003, EF84–2021–004 and EF84–2021–005, U.S. Department of Energy—Bonneville Power Administration
ER–10. Docket Nos. EL80–7–003 and EL80–7–004, Southeastern Power Administration V. Kentucky Utilities Company
ER–11. Omitted

Miscellaneous Agenda

M–1. Docket No. 83–56–000, application for license, permit and exemption from licensinig for water power projects
M–2. Reserved
M–3. Reserved
M–4. Docket No. RM83–2–000, fees applicable to natural gas pipeline rate matters
M–5. Docket No. RM82–25–000, fees applicable to producer matters under the Natural Gas Act

Gas Agenda

I. Pipeline Rate Matters
RP–1. Docket No. TA84–1–53–003, 004 and 008, K N Energy, Inc.
RP–2. Docket No. RP84–17–001, Tennessee Gas Pipeline Company
RP–3. Docket Nos. RP84–15–003 and 003, MIGC, Inc., Docket Nos. RP84–7–001 and 002, Colorado Interstate Gas Company
RP–4. Docket Nos. RP84–11–001 and 003, Columbia Gas Transmission Corporation
RP–5. Docket Nos. RP83–139–001 and 002, El Paso Natural Gas Company
RP–6. Docket No. RP83–106–001, Transwestern Pipeline Company, Docket No. RP81–130–007, et al., Transwestern Pipeline Company, Docket No. RP83–113–001, Pacific Gas Transmission Company, Docket No. RP83–135–001, Pacific Interstate Transmission Company, Docket No. RP83–136–001, Pacific Offshore Production Company, Docket No. RP84–28–000, Pacific Interstate Offshore Company
RP–7. Docket Nos. RP77–62–023, RP80–97–031, 032, RP81–54–015, 016, 017, RP82–10–003 and RP82–12–004, Tennessee Gas Pipeline Corporation, A Division of Tenneco, Inc.
RP–8. Omitted
RP–9. Docket No. RP80–136–000, Southern Natural Gas Company
RP–10. Docket Nos. RP81–130–004, RP83–25–006, TA82–2–42–010 and TA83–1–42–002, Transwestern Pipeline Company
RP–11. Docket No. OR78–1–013 (Quality Bank), Trans Alaska Pipeline System
II. Producers Matters
CI–1. Docket No. G–3653–005, et al., Sun Exploration and Production Company, et al., Docket No. G–3711–002, et al., Breton Resources Company, et al., Docket Nos. CI83–337–000 and CI83–350–000, Exxon Corporation
III. Pipeline Certificate Matters
CP–1. Docket No. CP80–17–000, 001 and 002 (Phase I), Trans-Anadarko Pipeline System
CP–2. Docket Nos. CP81–107–006, 007, CP81–108–003, 004, CP81–296–004, 005, 006, 007, CP81–298–002, 003, CP82–470–002 and 003 (Phase I), Tennessee Gas Pipeline Company a Division of Tenneco, Inc., Docket No. CP83–403–000, Consolidated Gas Supply Corporation, Docket Nos. CP82–119–004, 005 and 006, Algonquin Gas Transmission Company, Docket Nos. CP82–446–002, 004 and 005, Texas Eastern Transmission Company
CP–3. Docket No. CP83–283–000, Northwest Pipeline Corporation
CP–4. Omitted

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–1924 Filed 1–19–84; 4:16 pm]

BILLING CODE 6717–01–M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, January 27, 1984

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: January 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–1982 Filed 1–20–84; 12:40 pm]

BILLING CODE 6210–01–M

federal register

Tuesday
January 24, 1984

Part II

Department of Transportation

Coast Guard

33 CFR Part 157

Segregated Ballast, Dedicated Clean Ballast and Crude Oil Washing on Tank Vessels of 20,000 DWT or More But Less Than 40,000 DWT Carrying Oil in Bulk; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

[CGD 82-28]

Segregated Ballast, Dedicated Clean Ballast and Crude Oil Washing on Tank Vessels of 20,000 DWT or More but Less Than 40,000 DWT Carrying Oil in Bulk

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend its Rules for the Protection of the Marine Environment Relating to Tank Vessels Carrying Oil in Bulk. This amendment is necessary to implement 46 U.S.C. 3705(c) and 3706(d), formerly Subsections (7) (E), and (H) of Section 5 of the Port and Tanker Safety Act of 1978 (the Act). The proposed rules are applicable to U.S. tankships, and to foreign tankships (other than those on innocent passage) entering the navigable waters of the United States or which call at a port or place subject to the jurisdiction of the United States. The rules are intended to reduce discharges of oil from existing tankships of 20,000 to 40,000 deadweight tons (DWT) by implementing the Act, which requires the installation of segregated ballast tanks, dedicated clean ballast tanks, or crude oil washing systems.

DATE: Comments must be received on or before May 14, 1984.

ADDRESSES: (1) Comments on this proposal or the combined preliminary regulatory evaluation and draft environmental assessment should be mailed to Commandant (G-CMC/44) (CGD 82-28), U.S. Coast Guard, Washington, DC 20593. The comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC/44), Room 4402, Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC, 20593. Normal office hours are between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, except holidays. Copies of the combined draft environmental impact statement and preliminary regulatory evaluation may also be obtained by a written request to the preceding address. To speed processing, the Coast Guard asks that these requests not be included in the comments submitted regarding the proposed rulemaking.

(2) Comments on the information collection requirements contained in this proposal should be submitted to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC, 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: LCDR Alan E. Spackman, Project Officer, at (202) 426-4431.

SUPPLEMENTARY INFORMATION: On March 18, 1982, the Coast Guard published notice in the **Federal Register** (47 FR 11724) of its intent to develop regulations to implement Subsections (7) (E) and (H) of Section 5 of the Port and Tanker Safety Act of 1978 (PTSA) (Pub. L. 95-474, as amended; 46 U.S.C. 391a) and of its intent to develop a draft environment impact statement (EIS) to support the issuance of a notice of proposed rulemaking for those regulations. On August 26, 1983, Pub. L. 98-89 was passed; this statute substantially recodified Title 46b of the U.S. Code, including 46 U.S.C. 391a. The referenced Subsections (7) (E) and (H) now appear at 46 U.S.C. 3705(c) and 3706(d).

To ensure that the full range of issues related to the EIS were addressed, the Coast Guard solicited comments relating to the notice and preparation for the draft EIS. Copies of the notice were mailed to the operators of those vessels which would be affected by the proposed action, to other Federal Agencies, coastal states, environmental groups, and to persons who had previously expressed interest in similar proposals. A total of 30 responses were received. A discussion of the comments received is presented in the following paragraphs.

Interested persons are invited to participate in this proposed rulemaking or in the preparation of the regulatory evaluation and environmental impact statement by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 82-28), the specific section of the proposed regulations or supporting documents to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed envelope or postal card is enclosed. To the extent permitted by law, the proposal may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing by an interested person who can demonstrate that the opportunity to make an oral presentation will aid this rulemaking.

Drafting Information

The principal persons involved in the drafting of this rule are LCDR Alan E. Spackman, Project Manager, Office of Merchant Marine Safety and Mr. Stanley M. Colby, Project Attorney, Office of Chief Counsel.

Discussion of Comments

Because they are germane to the proposal, five documents that were received by the Coast Guard prior to the publication of the notice have been placed in the public comment file. Two of these documents, a statement from the Portuguese Government and a letter from the Embassy of India express concern over the unilateral nature of the requirements of subsections (7) (E) and (H) of Section 5 of the PTSA. Third document is comprised of a series of letters submitted by the Union of Greek Shipowners. This document protests the implementation of unilateral standards in excess of those agreed to by the International Maritime Organization (IMO, formerly IMCO). Further, the submittal by the Union of Greek Shipowners discusses the probable impact of the standards, technical feasibility and costs; the technical information persented does not differ substantially from that already available to the Coast Guard and presented in the preliminary regulatory evaluation and draft environmental impact statement (DEIS/RE). The fourth document presents the joint view of two major U. S. shipbuilding companies and three companies which own or operate U.S. flag tank vessels. The comments presented in this document fully support the legislated standards and urge rapid regulatory implementation. This document notes that the standards are but a part of a larger, more comprehensive action aimed at reducing oil pollution resulting from the marine transportation of oil. It further notes that the industry has had since 1978 to prepare for the implementation of the standards in 1986; a failure to implement the standards would adversely affect those companies that had acted in good faith in planning, contracting, and building new tank vessels in anticipation of the standards. The fifth document, a letter from a U.S. Senator, also urges rapid regulatory implementation.

Two letters, from companies or organizations associated with the towing industry, requested clarification of the proposal with respect to tank barges. The Coast Guard is proposing that the standards only be applicable to self-propelled vessels.

Comments submitted by the Oil Companies International Marine Forum, the International Chamber of Shipping, the Union of Greek Shipowners, the International Association of Independent Tanker Owners and an *Aide Memoire* submitted jointly by the Governments of Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Japan, the Netherlands, Norway, Sweden, and the United Kingdom express strong reservations about the unilateral nature of the standards, citing the considerable actions already undertaken by IMO to control oil pollution. The industry commenters further contend that the environmental impact of the standards would be minimal, the proposed action would not be cost effective, and (by limiting trading flexibility) the standards would impose additional operating and capital costs on tankships trading to U.S. ports.

Adverse comments were received from four (of the approximately thirty) companies which own or operate U.S. flag vessels which would be affected by the proposed rules. These commenters also expressed concern over the unilateral nature of the standards. Further, to support their opposition to the proposal they cite (in general terms) such factors as lost carrying capacity, high capital costs, reduction in serviceable life of existing tankships, expected small environmental benefit and adverse impacts on military transport capacity. One of these commenters, an operator of thirteen vessels, indicated a high probability that implementation of the standards would cause the company to quit the oil transport business. One commenter asked that particular attention be paid to the impact of the standards on U.S. vessels in foreign trade and on the U.S. refining industry. This commenter believes that the increased domestic transportation costs that will result from these standards will cause oil companies to import refined products rather than crude oil. While all of these are valid concerns, and most are addressed in the DEIS/RE, the only means of eliminating these areas of concern would be for the Congress to amend or revoke 46 U.S.C. 3705(c) and 3705(d). Without legislative relief, the Coast Guard must issue regulations implementing the mandated standards.

The Chemical Carriers Association (CCA) requested that special consideration be given to tankships carrying chemicals which would be affected by the proposed rules and referenced technical documents that they had previously submitted to both the Coast Guard and IMO. (Copies of these documents have been placed in the public comment file for inspection.) Essentially, the CCA contends that these vessels rarely operate without sufficient cargo to meet the draft and trim standards for segregated ballast tanks (SBT) and dedicated clean ballast tanks (CBT) and normally carry only incidental cargoes of "product oil". However true this may be, the statute does not provide the Coast Guard with the flexibility to accept the design and operational alternatives they propose. 46 U.S.C. 3706 mandates coverage for any self-propelled vessel which is constructed or adapted to carry, or which carries, oil or any hazardous materials in bulk as cargo or in residue. The Act's standards for SBT or CBT, that this proposal would implement, are applicable to any of these existing vessels of 20,000 to 40,000 DWT that are 15 years old or older that carry products, as mandated by 46 U.S.C. 3706(d). No exception is provided in the statute of a vessel designed to carry hazardous materials which carries only small quantities of products in bulk.

Discussion of the Proposed Regulations

46 U.S.C. 3705(c) and 3706(d) require any self-propelled vessel that is:

(a) An existing crude oil tanker of at least 20,000 DWT but less than 40,000 DWT, and at least 15 years of age, to be equipped with SBT or a crude oil washing system (COW) before January 2, 1986, or the date on which it reaches 15 years of age, whichever is later.

(b) An existing product carrier of at least 20,000 DWT but less than 40,000 DWT, and at least 15 years of age, to be equipped with SBT or may operate with CBT before January 2, 1986, or the date on which it reaches 15 years of age, whichever is later.

46 U.S.C. 3701 (1) and (3), when read together, define "existing vessel" as a vessel other than one—

(a) For which the building contract is placed after June 1, 1979; or

(b) In the absence of a building contract, the keel of which is laid, or which is at a similar stage of construction after January 1, 1980; or

(c) The delivery of which is after June 1, 1982; or

(d) That has undergone a major conversion, under a contract made after June 1, 1979, or construction work that began after January 1, 1980, or was completed after June 1, 1982.

46 U.S.C. 3705(c) and 3706(d) are applicable to all U.S. tankers and to foreign tankers which operate on or enter the navigable waters of the United States (except those in innocent passage) or which transfer oil or hazardous materials in any port or place subject to the jurisdiction of the United States.

In the June 30, 1980 **Federal Register** (45 FR 43705), the Coast Guard issued regulations to implement portions of the PTSA requiring SBT, CBT, and COW on new tank vessels of 20,000 DWT or more and existing tank vessels of 40,000 DWT or more. Vessels subject to these regulations had to comply by June 1, 1981. Procedures for obtaining exemptions from the SBT, CBT, or COW requirements on certain existing vessels were published in the January 15, 1981 **Federal Register** (46 CFR 3510). This proposed rulemaking is composed of a series of amendments to existing regulations that implement the appropriate SBT, CBT, and COW standards, as well as the exemption procedures, applicable to existing tankships of 20,000 to 40,000 DWT on the appropriate compliance date.

The following paragraphs provide a brief discussion of the Coast Guard's intent in this rulemaking proposal:

1. The Coast Guard is proposing to revise the authority citation for all of 33 CFR Part 157 to reflect the recodification of Title 46 of the U.S. Code.

2. Proposed § 157.04 provides for the Coast Guard to authorize classification societies (CS) to conduct certain of the plan reviews, certifications, and inspections required by this proposal. For U.S. vessels, the proposal limits this authorization to plan review, certification, and inspection of COW systems, reflecting the current understanding between the Coast Guard and the American Bureau of Shipping (ABS) for conducting these functions under an agreement signed April 27, 1982 and published by the Coast Guard in Navigation and Vessel Inspection Circular No. 10–82 titled "Acceptance of Plan Review and Inspection Performed by the American Bureau of Shipping for New Construction or Major Modifications to U.S. Flag Vessels." The development of cooperative agreements between the Coast Guard and the ABS is a continuing process. The proposed rule is not intended to foreclose the future expansion of the use of third-party certifications. For foreign vessels, the Coast Guard is proposing to authorize a CS to perform the plan review, inspections, and certifications for SBT, CBT, and COW systems on existing vessels of 20,000 to 40,000 DWT. The Coast Guard's concerns, as reflected in the proposed rules, are that such CS which performs these functions:

(a) Is familiar with the vessel; therefore, the Coast Guard proposes that

the authorization is limited to vessels classed by that CS.

(b) Has available the applicable Coast Guard regulations.

(c) Is knowledgeable of the applicable international standards under the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL Protocol) as they apply to the vessels they will be certifying, as evidenced by the authorization of the vessel's flag 9state allowing the CS to perform inspections and certifications on that vessel under the MARPOL Protocol.

(d) Will ensure that the results of any vessel inspections and certifications under these regulations will be made available to the Coast Guard if the need arises.

(e) Will inform the Coast Guard of its inspection and certification of each vessel; this is intended to preclude any undue delay of the vessel on its first entry to a U.S. port.

To conform to the provisions of 46 U.S.C. 3316, the American Bureau of Shipping or other U.S. classification society may perform these functions for U.S. vessels.

3. It is proposed to revise § 157.07 to allow the Coast Guard to accept equivalents in lieu of design and equipment requirements in Part 157 that do not stem from the MARPOL Protocol. The original purpose of § 157.07 was to implement to standards governing the consideration of equivalents in Regulation 3 of the MARPOL Protocol. However, in this and other rulemakings, the Coast Guard has proposed or enacted a limited number of standards which exceed those of the MARPOL Protocol. The purpose of this proposed amendment is to provide vessel owners and operators with the additional flexibility provided by the ability to propose equivalents when complying with those standards.

4. It is proposed to change the heading of § 157.10a for clarity by indicating the coverage of the existing regulation is limited to vessels of 40,000 DWT or more.

5. Proposed § 157.10c provides the substance of the mandated requirements of 46 U.S.C. 3705(c) and 3706(d). The major provisions are:

a. The same contract and delivery dates are used to determine the applicability of the CBT, SBT, and COW standards as are contained in the statute.

b. The statute specifies applicability to vessels of 15 years of age or older, but is silent on how the age of a vessel is to be determined. For simplicity the Coast Guard proposes to base the age of a vessel on the date on which the vessel was delivered to its original owner. Earlier dates, based on the contracting or keel laying of the vessel were rejected; they would have required compliance before the vessels had seen 15 years service and the resulting regulation would have been unduly complicated.

c. The existing standards in 33 CFR Part 157 for SBT, CBT, and COW would be made applicable to these vessels with provision for exceptions in certain cases. The basis of the existing SBT and CBT standards are the draft and trim criteria of the MARPOL Protocol which are contained in both § 157.09(b) and § 157.10a(d). These criteria were developed by the IMO to provide sufficient segregated ballast capacity that a vessel of 150 meters (492 feet) or more in length could be reasonably expected to operate in all but unusually heavy weather conditions without recourse to ballasting its cargo tanks. These criteria, under the MARPOL Protocol and present Coast Guard regulations, are currently applied to new vessels of 20,000 DWT or more. The Coast Guard believes they constitute an appropriate basis for an SBT or CBT standard to apply to existing vessels of 20,000 to 40,000 DWT since these vessels exceed 150 meters in length. However, the Coast Guard realizes that, in retrofitting these older vessels, it may not be practicable to provide ballast tanks to closely meet this standard, and, in some instances, the use of existing tanks will result in appreciably more ballast capacity being provided than is necessary to meet the draft and trim standards. To reduce the loss of capacity in these cases, and to provide some additional flexibility in complying with the standards, the Coast Guard is proposing, in paragraph (d), to accept alternative arrangements.

6. The Coast Guard proposes to add a new § 157.24a governing the submission of calculations, plans and specifications for existing vessels installing segregated ballast tanks. This section creates a plan submittal requirement for vessels that install SBT as a means of complying with § 157.10c and for other vessels which may retrofit SBT to comply with 33 CFR Part 157. The Coast Guard believes that the data specified in the proposed rule should be submitted to ensure that each SBT system meets the applicable requirements and, perhaps more importantly, that the safety of the vessel will not be adversely compromised through the fitting of the SBT system. Of particular concern are longitudinal strength (resistance to buckling or breaking), stability and buoyancy (particularly the capability to remain afloat after damage). Many vessels of 20,000 to 40,000 DWT were designed to operate in either a full load condition or a ballast condition. It is probable that neither the longitudinal strength nor stability was examined by the designers of these vessels for operation in a near full load condition, such as the vessel will be operating after the fitting of SBT. To be assured that compliance with these proposed standards for SBT does not, inadvertently, increase the risk of catastrophic loss of vessels, the Coast Guard is asking for documentation, calculations, or revised stability and loading information which demonstrate that these conditions are acceptable. On foreign flag vessels the Coast Guard proposes in § 157.24a (b)(1) and (c)(1) that the information regarding the acceptability of the vessel loading and stability characteristics take the form of a single document from the authority assigning the vessel's load line which finds the SBT location acceptable.

In § 157.24a(a) (3) and (4), the Coast Guard proposes to include a requirement that, for U.S. vessels, consideration be given to the vessels' stability and longitudinal strength by including applicable standards from Parts 32 and 42 of Title 46, Code of Federal Regulations. The regulations in the rules for tank vessels and the load line regulations, 46 CFR Subchapters D and E, already require that consideration be given to the effect on vessel stability and longitudinal strength of a modification to that vessel. In monitoring the installation of SBT and CBT on existing vessels of over 40,000 DWT to comply with other provisions of the PTSA, the Coast Guard has found that some vessel owners gave consideration to these areas only after having been alerted to possible problems by the Coast Guard. Resolution of those problems resulted in unnecessary contention between the vessel owner and the Coast Guard, potentially costly modification to shipyard plans, and delay of the vessels involved. The Coast Guard is proposing these requirements in 33 CFR Part 157 in the hope that shipyards and vessel owners will give early consideration to the potential impact of the installation of SBT on both the longitudinal strength and stability of a vessel so that unnecessary delays and conflicts can be avoided.

The Coast Guard and ABS have traditionally worked together in assessing the adequacy of stability and longitudinal strength of U.S. tank vessels. On those vessels where near full-load conditions were considered in

the vessel design, further engineering work may not be necessary since acceptable documentation may already be available. This takes the form of a Coast Guard approved trim and stability booklet showing those conditions and an ABS approved loading manual showing acceptable hull stresses in those conditions. On vessels where these conditions were not considered in the original design, the development of engineering calculations to demonstrate acceptability of these conditions would be necessary. The owners of these latter vessels should be aware that the selection of the SBT tanks in these vessels may be critical—selection of tankage without due consideration of its effects on vessel damaged stability may result in rigid restrictions being placed in the loading manual or trim and stability booklet to ensure that the vessel would operate in compliance with the standards.

There is a potential offsetting factor. Since the installation of SBT will result in a capacity loss, most of the modified vessels will not be capable of loading enough cargo to submerge to their maximum permitted load line drafts. Reducing the deadweight of the vessel by reducing the load line draft to correspond to the actual full load condition may, in some cases, ease compliance with the stability requirements.

7. It is proposed to revise § 157.35, which deals with the ballasting of cargo tanks, to clarify its applicability and to include reference to the new § 157.10c.

8. Sections 157.100, 157.102, 157.108, and 157.110, which pertain to the submission of plans for COW systems, would be revised to include reference to § 157.10c. In addition, the recent address changes for the Coast Guard field technical offices, shown in the proposed text, would be rectified in § 157.100(b).

9. Section 157.116, now requiring certain documents for U.S. tank vessels, would be revised to incorporate reference to § 157.10c and to allow a CS to issue the required documents and certifications as well as the Coast Guard. The effective dates by which these documents are required would be removed because the Coast Guard has determined that inclusion of these dates for U.S. vessels is not necessary and is unnecessarily cumbersome since the dates are included in the equipment requirements in §§ 157.10, 157.10a(a)(2), and 157.10c(B)(2), which are referenced.

10. Section 157.118, now requiring documents for foreign tank vessels, would be revised by deleting the effective compliance dates since those dates have already passed, renumbering, and adding a new paragraph to the regulation concerning vessels under § 157.10c(b)(2). This new paragraph would allow documents to be issued by any one of three sources; the Coast Guard, an authorized CS, or the government of the vessel's flag state. The existing regulation for larger vessels and new vessels has not been resided to include acceptance of documents from an authorized CS. These requirements originate from the MARPOL Protocol, and under the MARPOL Protocol, an International Oil Pollution Prevention (IOPP) Certificate will eventually be issued to these vessels by their flag state; however some flag state governments may authorize a CS to issue this document on their behalf. Since the new standards in § 157.10c are based on a unilateral action by the U.S., they are not governed by the MARPOL Protocol; hence; there would be no flag state documentation of compliance with an international standard paralleling the U.S. standard under the PTSA. Therefore, the Coast Guard is proposing to accept documents issued by an authorized CS for the existing foreign vessels of 20,000 to 40,000 DWT.

11. It is proposed to amend §§ 157.124, 157.128, 157.130, 157.132, 157.136, 157.140, 157.152, 157.154, 157.156, 157.160, 157.162, 157.164, 157.166 and 157.172 which contain the design, equipment, installation, inspection, personnel and operating requirements for COW systems to include references to § 157.10c. These amendments would extend these standards to existing vessels of 20,000 to 40,000 DWT which install COW to comply with § 157.10c. In addition, the phone number for contactinig the Environmental Protection Agency in the Note following § 157.166 would be updated.

12. For the same reasons as discussed in paragraph 6, the Coast Guard proposes to amend § 157.200 by adding the requirement for submission of documents showing compliance with stability and loading standards for U.S. tank vessels installing CBT. The Coast Guard also proposes to remove the effective compliance dates from this section and revise the mailing addresses for field technical offices.

13. Sections 157.202, 157.206, and 157.208, which contain procedures for submission of plans and documents relating to CBT installations, would be revised to incorporate references to § 157.10c.

14. The Coast Guard proposes to amend 157.214 by inserting reference to § 157.10c.

15. Section 157.216, specifying certain documents for foreign vessels with CBT, would be amended in a manner parallel to the changes to § 157.118 discussed in paragraph 10.

16. Sections 157.225, 157.226 and 157.228, concerning operation of tank vessels with CBT, would be revised to incorporate references to § 157.10c.

17. The Coast Guard proposes to extend to the vessels under § 157.10c the "specific trade" exemptions presently provided in Subpart F by amending §§ 157.300 and 157.310. Under the provisions of this revised regulation most U.S. vessels currently in the domestic trade could be exempted from the requirement to provide SBT, CBT, or COW. The Coast Guard proposes to exempt these vessels if they (1) load cargo oil only in those ports where there are adequate reception facilities for the processing of all oily ballast discharges from these vessels; and (2) the vessels discharge oily water only to those reception facilities.

18. Sections 157.144, 157.147 and 157.302(a) would be revised to reflect an organizational change within the Coast Guard's Office of Merchant Marine Safety, in which the responsibility for the administration of 33 CFR Part 157 was transferred by the Commandant from the Merchant Marine Technical Division (G–MMT) to the Merchant Vessel Inspection Division (G–MVI).

19. Sections 157.03, 157.04, 157.07, 157.24, 157.118 and 157.216 of the existing and proposed regulations contain references to the MARPOL Protocol or specific regulations contained therein. These references are not directly related to the implementation of 46 U.S.C. 3705(c) and 3706(d), nor do they expand the scope of the present rules. They have been included in this rulemaking to facilitate administration of the Coast Guard's pollution prevention program. Section 157.03 includes a definition of the MARPOL Protocol. As explained above, the reference to the MARPOL Protocol in § 157.07 is proposed as a means to free the Coast Guard to consider equivalents in other areas. The remaining references to the MARPOL Protocol are intended to reduce duplication, permit greater flexibility and reduce the burden on vessel owners by permitting foreign governments to certify compliance with the accepted international standards where they parallel the Coast Guard regulations. This reduces duplication of effort since most of these governments will be certifying their vessels under the MARPOL Protocol. It reduces the burden on foreign vessel owners and shipyards since they are more familiar with, and have more ready access to,

the IMO standards than the U.S. regulations.

The Act to Prevent Pollution from Ships provides implementing legislation for the MARPOL Protocol. The Act became effective when the MARPOL Protocol entered into force on October 2, 1983. As of that date, the MARPOL Protocol became a U.S. treaty in force; as such, reference in the CFR to the MARPOL Protocol does not consitute an incorporation by reference.

Regulatory Evaluation and Environmental Impact Statement

These proposed regulations are being evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and Department of Transportation Order 2100.5, "Policies and Procedures for Simplification, Analysis and Review of Regulations," dated May 22, 1980. The initial estimated cost of the standards was in excess of $100 million annually. Subsequent examination of these costs suggests that the costs may be substantially lower. The proposal is still considered to be a "major rule" under E.O. 12291 because of the economic impact the statutory standards imposed upon the tanker industry. In addition, the proposal is considered a "significant" rule under DOT Order 2100.5 and, pursuant to that order a regulatory evaluation has been prepared. The Office of Management and Budget has cleared this NPRM for publication without a Regulatory Impact Analysis (RIA) in the light of the mandated compliance date of January 2, 1986. The Coast Guard will issue the RIA with the final rule. Respondents should provide comments on the anticipated costs and benefits based on the regulatory evaluation. Additionally, since implementation of the mandated standards will have an effect on the environment, the Coast Guard has decided to prepare an environmental impact statement. To reduce duplication and paperwork these documents, as well as the required initial Regulatory Flexibility Analysis (discussed below), have been combined into a single document.

Copies of the combined preliminary regulatory evaluation and draft environmental impact statement (DEIS/RE) are being sent to individuals, companies, and environmental groups that have commented on previous similar regulatory proposals, to state clearinghouses and to other federal agencies having jurisdiction or special expertise in related areas. A copy will also be sent, on request, to anyone who desires to review or comment on the DEIS/RE. The procedure to obtain a copy of the DEIS/RE is given in **"ADDRESSES"** above. Comments on the content and accuracy of the DEIS/RE, particularly on the key assumptions used in projecting the costs of implementing the rule, are desired by the Coast Guard and may be submitted to the address given above for the submission of comments.

The bulk of the DEIS/RE was prepared in 1981, and includes an estimate of the cost of the mandated standards based on market conditions that existed during the period from 1978 to 1980.

In the fall of 1983, a supplement analysis was prepared to take into consideration more current tanker market conditions. This analysis used a methodology consistent with the earlier cost estimate, but revised the total tanker capacity requirements to reflect the fact that the number of U.S. tankers in active service in the fall of 1983 of 20,000 to 40,000 DWT was about half the number on which the original earlier estimates were based, and that the probable fate of a number of currently idle tankers would be to provide the additional capacity necessitated by the fitting of SBT or CBT. The supplemental analysis concludes that it is possible that no additional tanker construction will be necessitated by implementation of the mandated standards.

On the basis of the above, it is estimated that the total cost of the statutory standards is about 525 million dollars. However, if capacity requirements were to increase, or if a substantial proportion of the idle tankers proved unsuitable for service, some additional new tanker construction might be required and the total cost of the standards would rise accordingly.

The direct benefits, as derived in the DEIS/RE, are presented in terms of reduced operation oil pollution from tank vessels of 20,00 to 40,000 DWT. The total reductions are estimated at about 38,000 metric tons from foreign vessels and 69,000 metric tons from U.S. vessels. These reductions stem primarily from reducing oil discharges during deballasting of cargo thanks and tank cleaning. The areas where the discharges occur are generally areas of open ocean, although some areas of coastal ocean may be affected. The Coast Guard believes that the effect of these standards on reducing oil pollution will be greatest during the decade from 1990 to 2000 and will gradually be reduced thereafter as the existing vessels affected by these regulations are retired from service.

In the analysis we have not placed dollar values on the benefits because of the complexity and subjective nature of such an assessment. As a result, no "net" cost/benefit figure is available. Moreover, and most importantly, we wish to stress that, regardless of what assumptions are used, regardless what our cost estimates are, and regardless of any value assigned to benefits, the requirements we are analyzing are specifically mandated by 46 U.S.C. 3705(c) and 3706(d). In addition, we believe a significant portion of the estimated cost may already have been committed by industry in direct response to the PTSA.

Regulatory Flexibility Act

The proposed rules are being evaluated under Pub. L. 96–354 (94 Stat. 1165, 5 U.S.C. 601) to determine if they will have a significant impact on a substantial number of small entities. An initial regulatory flexibility analysis has been incorporated into the DEIS/RE. The Coast Guard believes that implementing the standards may cause those businesses with substantial portions of their operating equipment in older vessels of 20,000 to 40,000 DWT to go out of business if they are unable to finance required vessel modifications or are unwilling to assume the financial risks of such modifications. However, implementing the standards could stimulate competition by creating market conditions which would permit new companies with new vessels, which can be operated more efficiently but are burdened with high capital costs, to compete effectively with those established companies that have low capital costs but operate older, less efficient, existing vessels.

Sections 3705(c) and 3706(d) of the U.S.Code do not grant to the Coast Guard the discretionary authority to alter these impacts through the establishment of differing compliance requirements or time tables for small entities or the exemption of small entities by this rule. The proposed rules do not prescribe rigid design features, but permit vessel owners flexibility in retrofitting to comply with the SBT, CBT and COW standards. Based on safety condiderations, the Coast Guard does not believe that the establishment of alternative reporting or recordkeeping requirements is justified, nor would such action substantially alter the burden placed on the affected businesses. There are approximately 25 U.S. companies that operate U.S. flag tankships of 20,000 to 40,000 DWT. The Coast Guard has determined that 20 of these companies, operating the vast majority of the U.S.

vessels that would be directly affected by the implementation of the standards, are not small businesses since they are subsidiaries of major oil companies or diversified corporations. The Coast Guard has insufficient data to determine whether any of the remaining companies which operate between 4 and 23 vessels (both tank vessels and cargo vessels), should be considered small entities; however, the Coast Guard does not believe that these rules will have a significant effect on a substantial number of small entities since they only implement statutory standards. Comments from these entities, especially those providing quantifying data, on whether they should be considered a small entity and on the impact of the rules on their business are specifically requested.

Paperwork Reduction Act

The proposed rulemaking contains information collection requirements in the following sections: §§ 157.04, 157.24a, 157.102 and 157.202. These sections require the submission of applications, plans for modifications to vessels, documentation of compliance, and retention of various operating manuals on board vessels. These new reporting and recordkeeping requirements have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). In an effort to reduce the burden of compliance with the standards, the Coast Guard has proposed the alternative of allowing vessel owner to obtain certain third-party certifications. The Coast Guard is interested in receiving any additioal comments which would serve to quantify the burdens which are imposed or which would further decrease the burdens of compliance. Specifically, knowledgeable persons are asked to provide recommendations for alternatives to the reporting or recordkeeping requirements or provide estimates of the burden, both in terms of cost and time, which they believe will be imposed by the reporting and recordkeeping requirements of the rules. The Coast Guard has estimated that the proposed rules would impose a total recordkeeping and reporting burden on the public of approximately 48,000 hours with an estimated cost of approximately $1.15 million (1982 dollars), approximately seventy-five percent of both the hourly burden and cost will be incurred prior to 1987. Persons desiring to comment on these information collection requirements should submit their comments to the Office of Regulatory Policy of OMB, with a copy to the Coast Guard, at the address listed above under **"ADDRESSES"**.

List of Subjects in 33 CFR Part 157

Cargo vessels, Oil pollution.

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 157 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 157 would be revised to read as follows:

Authority: Sec. 4, Pub. L. 96–478, 94 Stat. 2298 (33 U.S.C. 1903); 46 U.S.C. 3703; 49 CFR 1.46 (n) and (hh).

2. By adding a new § 157.04 to read as follows:

§ 157.04 Authorization of classification societies.

(a) The Coast Guard may authorize any classification society (CS) to perform certain plan reviews, certifications, and inspections required by this Part on vessels classed by that CS, except that only U.S. classification societies may be authorized to perform those plan reviews, inspections, and certifications for U.S. vessels.

(b) If a CS desires authorization to perform the plan reviews, certifications, and inspections required under this Part, it must submit to the Commandant (G–MVI), U.S. Coast Guard, Washington, DC 20593, evidence from the governments concerned showing that they have authorized the CS to inspect and certify vessels on their behalf under the MARPOL Protocol.

(c) The Coast Guard notifies the CS in writing whether or not it is accepted as an authorized CS. If authorization is refused, reasons for the refusal are included.

(d) Acceptance as an authorized CS terminates unless the following are met:

(1) The authorized CS must have each Coast Guard regulation that is applicable to foreign vessels on the navigable waters of the United States. .

(2) Each issue concerning equivalents to the regulations in this Part must be referred to the Coast Guard for its determination.

(3) Copies of any plans, calculations, records of inspections, or other documents relating to any plan review, inspection, or certification performed to meet this Part must be made available to the Coast Guard.

(4) Each document certified under §§ 157.116(a)(2), 157.118(b)(1)(ii), and 157.216(b)(1)(ii) must be marked with the name or seal of the authorized CS.

(5) A copy of the final documentation that is issued to each vessel that is certified under this Part must be referred to the Commandant (G–MVI), U.S. Coast Guard, Washington, D.C. 20593.

3. By revising § 157.07 to read as follows:

§ 157.07 Equivalents.

The Coast Guard may accept an equivalent, in accordance with the procedure in 46 CFR 30.15–1, of a design or an equipment to fulfill a requirement in this Part except an operational method may not be substituted for a design or equipment requirement that is also required under the MARPOL Protocol.

4. By revising § 157.10a by changing the heading to read as follows:

§ 157.10a Segregated ballast tanks, crude oil washing systems, and dedicated clean ballast tanks for certain new and existing vessels of 40,000 DWT or more.

* * * * *

5. By adding a new § 157.10c to read as follows:

§ 157.10c Segregated ballast tanks, crude oil washing systems and dedicated clean ballast tanks for certain new and existing tankships of 20,000 to 40,000 DWT.

(a) This section applies to each tankship of 20,000 DWT or more, but less than 40,000 DWT, except each one that—

(1) Is constructed under a building contract awarded after June 1, 1979;

(2) In the absence of a building contract, has the keel laid or is at a similar stage of construction after January 1, 1980;

(3) Is delivered after June 1, 1982; or

(4) Has undergone a major conversion, for which—

(i) The contract is awarded after June 1, 1982; or

(ii) Conversion is completed after June 1, 1982.

(b) Not later than January 1, 1986, or 15 years after the date it was delivered to the original owner, whichever is later, a vessel under this section that carries crude oil must have—

(1) Segregated ballast tanks that have a total capacity to allow the vessel to meet the draft and trim requirements in § 157.09(b); or

(2) A crude oil washing system that meets the design, equipment, and installation requirements of §§ 157.122 through 157.138.

(c) Not later than January 1, 1986, or 15 years after the date it was delivered to the original owner, whichever is later,

a vessel under this section that carries product must have—

(1) Segregated ballast tanks that have a total capacity to allow the vessel to meet the draft and trim requirements in § 157.09(b); or

(2) Dedicated clean ballast tanks that meet the design and equipment requirements under §§ 157.220, 157.222, and 157.224 and have total capacity to allow the vessel to meet the draft and trim requirements in § 157.09(b).

(d) If the arrangement of tanks on a vessel under this section is such that, when using the tankage necessary to comply with the draft and trim requirements in § 157.09(b), the draft amidships exceeds the minimum required draft by more than 10 percent, or the arrangement results in the propeller being fully immersed by more than 10 percent of its diameter, alternative arrangements may be accepted provided—

(1) At least 80 percent of the propeller diameter is immersed, and

(2) The moulded draft amidships is at least 80 percent of that specified in § 157.09(b)(1).

6. By adding a new § 157.24a to read as follows:

§ 157.24a Submission of calculations, plans and specifications for existing vessels installing segregated ballast tanks.

(a) Before modifications are made to a U.S. tank vessel to meet § 157.10a(a)(1), § 157.10a(c)(1), § 157.10c(b)(1), or § 157.10c(c)(1), the vessel's owner or operator must submit the following to the Officer in Charge, Marine Inspection of the zone where the modification will be made or to the appropriate Coast Guard technical office listed in § 157.100(b):

(1) A drawing or diagram of the pumping and piping system for the segregated ballast tanks.

(2) A drawing of the segregated ballast tank arrangement.

(3) Documentation, calculations, or revised stability information to show that the vessel, with the addition of the segregated ballast tanks, meets the stability standards for load line assignment in 46 CFR Part 42.

(4) Documentation, calculations, or a revised loading manual to show that the vessel, with the addition of the segregated ballast tanks, meets the structural standards in 46 CFR Part 32.

(5) Plans and calculations to show that the vessel, as modified, complies with the segregated ballast capacity and distribution requirements in § 157.10a.

(b) Before each foreign vessel under § 157.10a(a)(1) or § 157.10a(c)(1) enters the navigable waters of the United States the owner or operator of that vessel, except those under subparagraph (3) of this paragraph, must submit to the Commandant (G–MVI), U.S. Coast Guard, Washington, D.C. 20593—

(1) A letter from the authority that assigns the load line to the vessel finding that the location of the segregated ballast tanks is acceptable; and

(2) Plans and calculations to substantiate compliance with the segregated ballast capacity requirements in § 157.09(b); or

(3) Submit to the Officer in Charge, Marine Inspection of the zone in which the first U.S. port call is made a letter or document from the government of the vessel's flag state certifying that the vessel complies with the segregated ballast capacity requirements in § 157.09(b) or Regulation 13 of the MARPOL Protocol.

(c) On and after January 1, 1986, or 15 years after the date it was delivered to the original owner, whichever is later, the owner or operator of an existing foreign vessel under § 157.10c(b)(1) or § 157.10c(c)(1), except those under subparagraph (3) of this paragraph, must submit to the Commandant (G–MVI), U.S. Coast Guard, Washington, D.C. 20593, before that vessel enters the navigable waters of the United States—

(1) A letter from the authority that assigns the load line to the vessel finding that the location of the segregeted ballast tanks is acceptable; and

(2) Plans and calculations to substantiate compliance with the applicable segregated ballast capacity requirements in § 157.09(b) or § 157.10c(d); or

(3) Submit to the Officer in Charge, Marine Inspection of the zone in which the first U.S port call is made a letter from an authorized CS or the government of the vessel's flag state certifying that the vessel complies with the segregated ballast capacity requirements in § 157.09(b) or § 157.10c(d).

7. By revising the introductory text in § 157.35 to read as follows:

§ 157.35 Ballast added to cargo tanks.

The master of a tank vessel with segregated ballast tanks or dedicated clean ballast tanks under § 157.09, § 157.10, § 157.10a(a)(1), § 157.10a(b), § 157.10a(c), § 157.10b(a), § 157.10c(b)(1), or § 157.10c(c) shall ensure that ballast water is carried in a cargo tank only if—

* * * * *

8. By revising §§ 157.100 (a) introductory text, (b)(3), and (b)(5) to read as follows:

§ 157.100 Plans for U.S. tank vessels: Submission.

(a) Before each U.S. tank vessel having a COW system under § 157.10(e), § 157.10a(a)(2), or § 157.10c(b)(2) is inspected under § 157.140, the owner or operator of that vessel must submit to the Coast Guard plans that include—

* * * * *

(b) * * *

(3) Commander, 8th Coast Guard District (mmt), Room 845, F. Edward Hebert Federal Building, 600 South Street, New Orleans, LA 70130, for the 2nd, 7th and 8th Coast Guard Districts.

* * * * *

(5) Commander, 12th Coast Guard District (mmt), Government Island, Alameda, CA 94501, for the 11th, 12th, 13th, 14th, and 17th Coast Guard Districts.

9. By revising the introductory text in § 157.102 to read as follows:

§ 157.102 Plans for foreign tank vessels: Submission.

If the owner or operator of a foreign tank vessel having a COW system under § 157.10(e), § 157.10a(a)(2), or § 157.10c(b)(2) desires the letter from the Coast Guard under § 157.106 accepting the plans submitted under this paragraph, the owner or operator must submit to the Commandant (G–MVI), U.S. Coast Guard, Washington, DC 20593, plans that include—

* * * * *

10. By revising § 157.108 to read as follows:

§ 157.108 Crude Oil Washing Operations and Equipment Manual for U.S. tank vessels: Submission.

Before each U.S. tank vessel having a COW system under § 157.10(e), § 157.10a(a)(2), or § 157.10c(b)(2) is inspected under § 157.140, the owner or operator of that vessel must submit two copies of a *Crude Oil Washing Operations and Equipment Manual* that meets § 157.138 to the Officer in Charge, Marine Inspection, of the zone in which the COW system is installed or to the appropriate Coast Guard field technical office listed in § 157.100(b).

11. By revising § 157.110 to read as follows:

§ 157.110 Crude Oil Washing Operations and Equipment Manual for foreign tank vessels: Submission.

If the owner or operator of a foreign tank vessel having a COW system under § 157.10(e), § 157.10a(a)(2), or § 157.10c(b)(2) desires a Coast Guard approved *Crude Oil Washing Operations and Equipment Manual* under § 157.112, the owner or operator

must submit two copies of a manual that meets § 157.138 to the Commandant (G-MVI), U.S. Coast Guard, Washington, DC 20593.

12. By revising § 157.116 to read as follows:

§ 157.116 Required documents: U.S. tank vessels.

The owner, operator, and master of a U.S. tank vessel having a COW system under § 157.10(e), § 157.10a(a)(2), or § 157.10c(b)(2) shall ensure that the vessel does not engage in a voyage unless the vessel has on board the following:

(a) A *Crude Oil Washing Operations and Equipment Manual* that—

(1) Is approved under § 157.121; or

(2) Bears a certification by an authorized CS that the manual contains the information required under § 157.138.

(b) Evidence of acceptance of the tank vessel's COW system consisting of—

(1) A document from an authorized CS that certifies the vessel meets § 157.10c(b)(2) and each amending letter by the authorized CS approving changes in the design, equipment, or installation; or

(2) The letter of acceptance under § 157.106 and each amending letter issued under § 157.158(c).

(c) Evidence that the COW system passed the required inspections by—

(1) A document from an authorized CS that the vessel has passed the inspections under § 157.140; or

(2) The letter of acceptance under § 157.142 after passing the inspection under § 157.140.

13. By revising § 157.118 to read as follows:

§ 157.118 Required documents: Foreign tank vessels.

(a) The owner, operator, and master of a foreign tank vessel under § 157.10(e) or § 157.10a(a)(2) shall ensure that the vessel does not enter the navigable waters of the United States or transfer cargo at a port or place subject to the jurisdiction of the United States unless the vessel has on board—

(1) A *Crude Oil Washing Operations and Equipment Manual* that—

(i) Is approved under § 157.112; or

(ii) Meets the manual standards in Resolution 15 of the MARPOL Protocol and bears the approval of the government of the vessel's flag state; and

(2) Either—

(i) A document from the government of the vessel's flag state that certifies that the vessel complies with Resolution 15 of the MARPOL Protocol; or

(ii) The following letters issued by the Coast Guard:

(A) The letter of acceptance under § 157.106.

(B) The letter of acceptance under § 157.142 after passing the inspection under § 157.140.

(C) Each amending letter issued under § 157.158(c).

(b) On and after January 1, 1986, or 15 years after the date it was delivered to the original owner, whichever is later, the owner, operator, and master of a foreign vessel having a COW system under § 157.10c(b)(2) shall ensure that the vessel does not enter the navigable waters of the United States or transfer cargo at a port or place subject to the jurisdiction of the United States unless the vessel has on board—

(1) A *Crude Oil Washing Operations and Equipment Manual* that—

(i) Is approved under § 157.112; or

(ii) Bears a certification by an authorized CS or the government of the vessel's flag state that the manual contains the information required under § 157.138;

(2) Evidence that the COW system passed the required inspections by—

(i) A document from an authorized CS or the government of the vessel's flag state certifying that the vessel passed the inspections under § 157.140; or

(ii) The letter of acceptance under § 157.142 after passing the inspection under § 157.140; and

(3) Either—

(i) A document from an authorized CS or the government of the vessel's flag state certifying that the vessel complies with the design, equipment and installation standards in §§ 157.122 through 157.136 and any amending letters approving changed COW system characteristics; or

(ii) The letter of acceptance under § 157.106 and any amending letters issued under § 157.158(c).

14. In § 157.124 by revising paragraph (f) introductory text to read as follows:

§ 157.124 COW tank washing; machines.

* * * * *

(f) Each cargo tank on a vessel having a COW system under § 157.10a(a)(2) or § 157.10c(b)(2) with complicated internal structural members does not have to meet paragraph (e) of this section if the following areas of each cargo tank are washed by direct impingement and the tank vessel can pass the inspections under § 157.140:

* * * * *

15. By revising paragraph (a) introductory text of § 157.128 to read as follows:

§ 157.128 Stripping system.

Each tank vessel having a COW system under § 157.10(e), § 157.10a(a)(2), or § 157.10c(b)(2) must have a stripping system that is designed to remove crude oil from—

* * * * *

16. By revising § 157.130 to read as follows:

§ 157.130 Crude oil washing with more than one grade of crude oil.

If a tank vessel having a COW system under §§ 157.10(e), 157.10a(a)(2), or 157.10c(b)(2) carries more than one grade of crude oil, the COW system must be capable of washing the cargo tanks with the grades of crude oil that the vessel carries.

17. By revising the introductory text of § 157.132 to read as follows:

§ 157.132 Cargo tanks: Hydrocarbon vapor emissions.

Each tank vessel having a COW system under § 157.10a(a)(2) or § 157.10c(b)(2) without sufficient segregated ballast tanks or dedicated clean ballast tanks to allow the vessel to depart from any port in the United States without ballasting cargo tanks must have—

* * * * *

18. By revising § 157.136 to read as follows:

§ 157.136 Two-way voice communications.

Each tank vessel having a COW system under § 157.10(e), § 157.10a(a)(2), or § 157.10c(b)(2) must have a means that enables two-way voice communications between the main deck watch required under § 157.168 and each cargo discharge control station.

19. By revising paragraph (b) introductory text of § 157.138 to read as follows:

§ 157.138 Crude Oil Washing Operations and Equipment Manual.

* * * * *

(b) In addition to meeting paragraph (a) of this section, each *Crude Oil Washing Operations and Equipment Manual* on a tank vessel having a COW system under § 157.10a(a)(2) or § 157.10c(b)(2) must include the following:

* * * * * *

20. By revising the introductory text of paragraph (a) of § 157.140 to read as follows:

§ 157.140 Tank vessel inspections.

(a) Before issuing a letter under § 157.142, the Coast Guard makes an initial inspection of each U.S. tank vessel having a COW system under § 157.10e, § 157.10a(a)(2), or § 157.10c(b)(2) and each foreign tank vessel whose owner or operator submitted the plans under § 157.102 to

determine whether or not, when entering a port, the cargo tanks that carry crude oil meet the following:

* * * * *

21. By revising the introductory text of § 157.152 to read as follows:

§ 157.152 Person in charge of COW operations.

The owner, operator, and master of a tank vessel having a COW system under § 157.10(e), § 157.10a(a)(2), or § 157.10c(b)(2) shall ensure that the person designated as the person in charge of COW operations—

* * * * *

22. By revising the introductory text of § 157.154 to read as follows:

§ 157.154 Assistant personnel.

The owner, operator, and master of a tank vessel having a COW system under § 157.10(e), § 157.10a(a)(2), or § 157.10c(b)(2) shall ensure that each member of the crew that has a designated responsibility during COW operations—

* * * * *

23. By revising the introductory text of both paragraphs (a) and (b) of § 157.155 as follows:

§ 157.155 COW operations: General.

(a) The master of a tank vessel having a COW system under § 157.10(e), § 157.10a(a)(2), or 157.10c(b)(2) shall ensure that—

* * * * *

(b) In addition to meeting paragraph (a) of this section, the master of a tank vessel having a COW system under § 157.10a(a)(2) or § 157.10c(b)(2) shall ensure that—

* * * * *

24. By revising the introductory text of § 157.156 to read as follows:

§ 157.156 COW operations: Meeting manual requirements.

Except as allowed in § 157.158, the master of a foreign tank vessel having a COW system under § 157.10(e), § 157.10a(a)(2), or § 157.10c(b)(2) that has a *Crude Oil Washing Operations and Equipment Manual* approved under § 157.112 and is operating in the navigable waters of the United States or transferring cargo at a port or place subject to the jurisdiction of the United States and the master of a U.S. tank vessel having a COW system under § 157.10(e), § 157.10a(a)(2), or § 157.10c(b)(2) shall ensure that during each COW operation—

* * * * *

25. By revising paragraph (b) introductory text of § 157.160 to read as follows:

§ 157.160 Tanks: Ballasting and crude oil washing.

* * * * *

(b) The owner, operator, and master of a tank vessel having a COW system under § 157.10a(a)(2) or § 157.10c(b)(2) shall ensure that—

* * * * *

26. By revising the introductory text of § 157.162 to read as follows:

§ 157.162 Crude oil washing during a voyage.

The master of a tank vessel having a COW system under § 157.10(e), § 157.10a(a)(2), or § 157.10c(b)(2) shall ensure that each cargo tank that is crude oil washed during a voyage other than a ballast voyage—

* * * * *

27. By revising paragraph (a) introductory text of § 157.164 to read as follows:

§ 157.164 Use of inert gas system.

(a) The master of a tank vessel having a COW system under § 157.10(e), § 157.10a(a)(2), or § 157.10c(b)(2) shall ensure the following:

* * * * *

28. By revising § 157.166 to read as follows:

§ 157.166 Hydrocarbon vapor emissions.

If the tank vessel having a COW system under § 157.10a(a)(2) or § 157.10c(b)(2) transfers cargo at a port in the United States that is in an area designated in 40 CFR Part 81 as an area that does not meet the national primary ambient air quality ozone standard under 40 CFR Part 50, issued under the Clean Air Act, as amended (42 U.S.C. 1857), the master of the vessel shall ensure that when cargo tanks are ballasted in that port the hydrocarbon vapors in each tank are contained by a means under § 157.132.

Note.—Question relating to whether or not a particular port is located in an area designated in 40 CFR Part 81 as an area that does not meet the national primary ambient air quality standard under 40 CFR Part 50 should be directed to the Plans Analysis Section of the Environmental Protection Agency at (919) 541-5665.

29. By revising § 157.172 to read as follows:

§ 157.172 Limitations on grades of crude oil carried.

If a tank vessel having a COW system meeting § 157.10a(a)(2) or § 157.10c(b)(2) does not have segregated ballast tanks or dedicated clean ballast tanks that meet § 157.10c(c)(2), the owner, operator, and master shall ensure that the vessel carries only the grades of crude oil that can be used for crude oil washing.

30. By revising paragraph (a), (b)(3), and (b)(5) of § 157.200 to read as follows:

§ 157.200 Plans for U.S. tank vessels: Submission.

(a) Before modifications are made to a U.S. vessel to meet § 157.10a(b), § 157.10b(a)(2), § 157.10a(c)(2), or § 157.10c(c)(2) the owner or operator must submit to the Coast Guard plans or documents that include the following:

(1) The dedicated clean ballast tank arrangement.

(2) Documentation, calculations, or revised stability information to show that the vessel, with the addition of the dedicated clean ballast tanks, meets the stability standards for load line assignment in 46 CFR Part 42.

(3) Documentation, calculations, or a loading manual to show that the vessel, with the addition of the dedicated clean ballast tanks, meets the structural standards in 46 CFR Part 32.

(4) A drawing or diagram of the pumping and piping system for the dedicated clean ballast tanks.

(b) * * *

(3) Commander, 8th Coast Guard District (mmt), Room 845, F. Edward Hebert Federal Building, 600 South Street, New Orleans, LA 70130, for the 2nd, 7th and 8th Coast Guard Districts.

* * * * *

(5) Commander, 12th Coast Guard District (mmt), Government Island, Alameda, CA 94501, for the 11th, 12th, 13th, 14th and 17th Coast Guard Districts.

31. By revising the introductory text of § 157.202 to read as follows:

§ 157.202 Plans and documents for foreign tank vessels: Submission.

The owner or operator of a foreign tank vessel under § 150.10a(b), § 157.10a(c)(2), or § 157.10b(a)(2) who desires the letter from the Coast Guard under § 157.204 accepting the plans submitted under this paragraph, and the owner or operator of a foreign tank vessel under § 150.10c(c)(2) must submit to the Commandant (G-MVI), U.S. Coast Guard, Washington, D.C. 20593—

* * * * *

32. By revising § 157.206 to read as follows:

§ 157.206 Dedicated Clean Ballast Tanks Operations Manual for U.S. tank vessels: Submission.

The owner or operator of a U.S. tank vessel meeting § 157.10a(b), § 157.10a(c)(2), § 157.10b(a)(2), or § 157.10c(c)(2) must submit two copies

of a *Dedicated Clean Ballast Tanks Operations Manual* that meets § 157.224 to the Officer in Charge, Marine Inspection, of the zone in which the dedicated clean ballast tank system is installed or to the appropriate Coast Guard field technical office listed in § 157.200(b).

33. By revising § 157.208 to read as follows:

§ 157.208 Dedicated Clean Ballast Tanks Operations Manual for foreign tank vessels: Submission.

If the owner or operator of a foreign tank vessel meeting § 157.10a(b), § 157.10a(c)(2), § 157.10b(a)(2), or § 157.10c(c)(2) desires a Coast Guard approved *Dedicated Clean Ballast Tanks Operations Manual* under § 157.210, the owner or operator must submit two copies of a manual that meets § 157.224 to the Commandant (G-MVI), U.S. Coast Guard, Washington, D.C. 20593.

34. By revising the introductory text of § 157.214 to read as follows:

§ 157.214 Required documents: U.S. tank vessels.

The owner, operator, and master of a U.S. tank vessel meeting § 157.10a(b), § 157.10a(c)(2), § 157.10b(a)(2), or § 157.10c(c)(2) shall ensure that the vessel does not engage in a voyage unless the vessel has on board—

* * * * *

35. By revising § 157.216 to read as follows:

§ 157.216 Required documents: Foreign tank vessels.

(a) The owner, operator, and master of a foreign tank vessel meeting § 157.10a(b), § 157.10a(c)(2), § 157.10b(a)(2), or § 157.10c(c)(2) shall ensure that the vessel does not enter the navigable waters of the United States or transfer cargo at a port or place subject to the jurisdiction of the United States unless the vessel has on board—

(1) A *Dedicated Clean Ballast Tank Operations Manual* that—

(i) Is approved under § 157.210; or

(ii) Is certified by the government of the vessel's flag state because it meets the manual standards in Resolution 14 of the MARPOL Protocol; and

(2) Either—

(i) A letter from the government of the vessel's flag state that certifies that the vessel with Resolution 14 of the MARPOL Protocol; or

(ii) The letter of acceptance under § 157.204 and each amending letter issued under § 157.218(c).

(b) On and after January 1, 1986, or 15 years after the date it was delivered to the original owner, the owner, operator, and master of a foreign tank vessel under § 157.10c(b)(2) shall ensure that the vessel does not enter the naviagable waters of the United States or transfer cargo at a port or place subject to the jurisdiction of the United States unless the vessel has on board—

(1) A *Dedicated Clean Ballast Tank Operations Manual* that—

(i) Is approved under § 157.210; or

(ii) Bears a certification by an authorized CS or the government of the vessel's flag state that the manual meets § 157.224; and

(2) either—

(i) A letter from an authorized CS or the government of the vessel's flag state certifying the vessels complies with §§ 157.220 and 157.222, and any amending letters issued approving alterations; or

(ii) the letter of acceptance under § 157.204 and each amending letter issued under § 157.218.

36. By revising the introductory text of § 157.225 to read as follows:

§ 157.225 Dedicated clean ballast tanks operations: General.

The master of a tank vessel meeting § 157.10a(b), § 157.10a(c)(2), § 157.10b(a)(2), or § 157.10c(c)(2) shall ensure that—

* * * * *

37. By revising § 157.226 to read as follows:

§ 157.226 Dedicated Clean Ballast Tanks Operations Manual: Procedures to be followed.

The master of a foreign rank vessel meet § 157.10a(b), § 157.10a(c)(2), § 157.10b(a)(2), or § 157.10c(c)(2) that has a *Dedicated Clean Ballast Tanks Operations Manual* approved under § 157.210 and is operating in the navigable waters of the United States or transferring cargo at a port or place subject to the jurisdication of the United States and the master of a U.S. tank vessel meeting § 157.10a(b), § 157.10a(c)(2), § 157.10b(a), or § 157.10c(c)(1) shall ensure that the procedures listed in the *Dedicated Clean Ballast Tanks Operations Manual* are followed.

38. By revising § 157.228 to read as follows:

§ 157.228 Isolating valves: Closed during a voyage.

(a) The master of each U.S. tank vessel under § 157.10a(b), § 157.10a(c)(2), § 157.10b(a)(2) or § 157.10c(c)(2) shall ensure that the valves under § 157.222 remain closed during each voyage.

(b) The master of each foreign tank vessel meeting § 157.10a(b), § 157.10a(c)(2), § 157.10b(a)(2), or § 157.10c(c)2) shall ensure that the valves under § 157.222(d) remain closed when the vessel is on a voyage in the navigable waters of the United States.

39. By revising the heading of Supart F to read as follows:

Subpart F—Exemption From § 157.10a or § 157.10c

* * * * *

40. By revising paragraph (a) introductory text of § 157.300 to read as follows:

§ 157.300 Qualifications for exemptions under this part.

(a) Each vessel under § 157.10a or § 157.10c of this part may qualify for an exemption from the requirements of § 157.10a or § 157.10c of this part if—

* * * * *

41. By revising paragraph (f) of § 157.310 to read as follows:

§ 157.310 Exempted vessels: operations.

* * * * *

(f) The certificate of inspection bearing the following endorsement is on board the vessel.

Exempted under 33 CFR 157.306 from the requirements of (*33 CFR 157.10a or 157.10c, whichever is appropriate, will be inserted*). This vessel may not discharge cargo in any foreign port, nor may it load cargo in a port other than the following: (a list of ports contained in the application that is accepted by the Coast Guard for the exempted vessel will be inserted here).

§§ 157.144, 157.147 and 157.302 [Amended]

42. By striking the words "Commandant (G-MMT)" or "Commandant (G-MMT/13)" wherever they apppear in §§ 157.144, 157.147, and 157.302(a) and inserting the words "Commandant (G-MVI)" in their place.

Dated: January 18, 1984.

J. S. Gracey,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 84-1860 Filed 1-23-84; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 86

Standards for Emission of Particulate Matter From Diesel-Powered Light-Duty Vehicles and Light-Duty Trucks and Technical Amendment to Emission Regulations for Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL 2473-1]

Standards for Emission of Particulate Matter From Diesel-Powered Light-Duty Vehicles and Light-Duty Trucks and Technical Amendment to Emission Regulations for Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action delays for two years the effective date of the particulate emission standards for diesel-powered light-duty vehicles and light-duty trucks (light-duty diesels) that were scheduled for the 1985 model year. The less stringent diesel particulate standards which became effective with the 1982 model year will continue in effect through the 1986 model year for these light-duty diesels. The delay is necessary to provide adequate leadtime for manufactures to complete development and testing of trap-oxidizer systems which will be required by a portion of the light-duty diesel fleet in order to meet the more stringent standards.

This action also delays until the 1987 model year the diesel particulate emissions averaging program which was designed to coincide with the more stringent particulate standards.

Finally, the Agency is taking this opportunity to make four technical amendments to other unrelated motor vehicle regulations. Three of these amendments consist of minor corrections to the high-altitude emission control requirements for light-duty motor vehicles beginning in the 1984 model year. The last amendment eliminates a duplicative provision from the regulations affecting 1984 and later model year heavy-duty engines.

DATES: This Final Rule is effective January 24, 1984.

ADDRESSES: Copies of material relevant to this rulemaking are contained in Public Docket No. A-82-32 at the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Wilcox, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668-4390.

SUPPLEMENTARY INFORMATION:

I. Background

A. Promulgation of the Original Light-Duty Diesel Particulate Program

On March 5, 1980, EPA published a final rule which promulgated a diesel particulate standard of 0.60 gram per mile (g/mi) beginning in the 1982 model year for both light-duty vehicles (LDVs) and light-duty trucks (LDTs) (45 FR 14496). The final rule also established more stringent standards for 1985 and later model year LDVs and LDTs of 0.20 g/mi and 0.26 g/mi, respectively.

The more stringent particulate standards which were to become effective in the 1985 model year were based on EPA's projections that a new device called a trap-oxidizer would be available for use by the 1985 model year, and that its use would allow even the highest emitting light-duty diesels (LDDs) to meet the more stringent standards. This device is similar in construction to exhaust emission catalysts currently found on nearly all new light-duty gasoline-fueled vehicles, and filters (traps) particulate matter from the diesel exhaust. The trapped particulate material is periodically burned (i.e., the trap is regenerated) since a trap which would be large enough to store all of the particulate matter emitted by diesel engine over its lifetime cannot be practically installed on a vehicle.

B. Proposal to Delay the 1985 Particulate Standards

On April 6, 1981, Vice President Bush announced that, as part of President Reagan's program for the U.S. automobile industry ("Actions to Help the U.S. Auto Industry"), EPA would conduct a study of the technological feasibility of the 1985 particulate standards. Such a study is consistent with Section 202(a)(2) of the Clean Air Act which requires that standards are to "take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology * * *"

Shortly after Vice President Bush's announcement, EPA invited all interested parties to submit new data or information (i.e., information which was not considered in the original rulemaking) for the study. The Agency's analysis of these comments is entitled, "Trap-Oxidizer Feasibility Study," and was completed in March 1982.[1] This analysis, which is discussed more fully later in this Preamble, formed the basis of EPA's December 1, 1982 proposal to delay the effective date of the 1985 particulate standards until the 1987 model year (47 FR 54250).

Also pertinent to the proposal was the fact that on September 30, 1981, General Motors (GM) petitioned the Administrator, in part, to suspend the 1985 particulate standards, alleging that the standards continued to be technologically infeasible in the leadtime remaining and would effectively preclude production of LDDs in the 1985 model year.[2] General Motors also raised other issues relating to the allegation that the levels of the 1985 LDD particulate standards were unnecessarily stringent. The proposal to delay the 1985 particulate standards represented a partial grant of GM's petition regarding the technical feasibility of the standards and allowed additional time to consider other issues raised by GM. EPA is continuing to examine other issues such as health needs and relative costs of control as pertinent data are generated.

II. Basis and Contents of the Final Rule

A. Highlights of the Feasibility Study

The "Trap-Oxidizer Feasibility Study" (hereafter the Feasibility Study) formed the technical basis for the proposed 2-year delay. The analysis in the Feasibility Study continues to be central to this rulemaking, particularly since many of the comments on the proposal were directed specifically to its contents. A detailed summary of the Feasibility Study was included in the proposal (47 FR 54250); only the conclusions which are particularly germane to this final rulemaking will be repeated here.

1. *Status of Development.* The Feasibility Study found that trap-oxidizer development had advanced significantly since the 1985 particulate standards were promulgated. Manufacturers had identified two basic trap designs and were concentrating their research efforts on perfecting these designs. One trap utilized a porous, ceramic honeycomb monolith substrate (hereafter the ceramic monolith trap) similar to the ceramic substrates commonly used in catalytic converters. The second design utilized an alumina-coated wire mesh (hereafter the wire

[1] Available for inspection in EPA Docket No. A-82-32.

[2] Available for inspection in EPA Docket No. A-82-32.

mesh trap) which was often coated with catalytic material.

Initial results with these traps were very promising. Trapping efficiency and backpressure were judged to be acceptable for both new traps and traps with up to 50,000 miles of use which had been regenerated 50 to 100 times. Although many cases of trap failure had been reported, durability problems were almost always due to excessively high temperatures in the trap during regeneration. Traps had survived up to 50,000 miles when regeneration was properly controlled.

The Feasibility Study identified the principal remaining developmental task to be the integration of a trap design and a workable regeneration mechanism into an automated on-board system. It projected that most future trap-oxidizer research would concentrate on regeneration control systems.

2. *Leadtime.* In analyzing the issue of how much leadtime the industry needed to introduce workable trap-oxidizers, the Feasibility Study found that the overall leadtime required could be divided into two components: Prototype development leadtime and production leadtime. Prototype development culminates in a working model of an entire trap-oxidizer system (with regeneration controls) that is ready for assurance testing. Based on the information available at the time, the Feasibility Study concluded that prototype development would be completed by about January 1983. Production leadtime includes assurance testing to identify possible problems and refine final design, modifications to the vehicle or engine to accept the trap-oxidizer, acquiring production facilities and tooling, and completing emission certification testing. EPA concluded that production leadtime should require between 25 and 33 months. Adding this requirement to the January 1983 date resulted in production-ready traps sometime between February 1985 and October 1985. This led to two important conclusions. One, a delay of the particulate standards beyond 1985 was necessary if diesel production was not to be restricted. Second, it was possible that traps would be feasible for the 1986 model year (if traps were available by August 1985), however the Agency could not be sure that they would be feasible until the 1987 model year (if trap development and production were not completed until after August 1985).

B. Reconsideration of the Feasibility Study's Conclusions

Many comments on the current status of trap-oxidizer development were received in response to the NPRM. These comments generally included information on manufacturers' progress through the end of 1982. In June 1983, the Agency completed a study based on these comments entitled "An Updated Assessment of the Feasibility of Trap-Oxidizers." [3] A second study, "Trap-Oxidizer Technology for Light-Duty Diesel Vehicles: Feasibility, Costs, and Present Status," which was completed on March 20, 1983 under contract to EPA, involves a recent independent analysis of trap development.[4] These studies have enabled EPA to assess the status of trap-oxidizers as of the end of 1982, a full year later than that possible in the Feasibility Study. The results from these recent studies are summarized in the following discussion. (A more detailed presentation of this analysis can be found in "An Updated Assessment of the Feasibility of Trap-Oxidizers.") [5]

1. *Status of Development.* The information gathered by the Agency as part of this rulemaking continues to show good trap-oxidizer efficiency, backpressure, and durability performance when proper regeneration conditions are maintained. The results of two durability programs have also demonstrated the basic intergrity of the ceramic monolith trap design. Daimler-Benz (producer of Mercedes-Benz vehicles) reported that it successfully completed 50,000-mile durability tests on six naturally aspirated vehicles in 1981 with very little control over the regeneration process. Particulate collection efficiencies were on the order of 80 percent. The testing of three turbocharged vehicles was halted at between 35,000 and 40,000 miles because of driveability problems, while the traps on the three remaining turbocharged vehicles failed, probably due to lack of control over the regeneration process. The Agency completed a 50,000-mile durability program in early 1982 with a ceramic monolith trap installed on a Mercedes turbocharged vehicle. The trap exhibited high efficiency (90 percent), low backpressure, and impressive stability over the entire 50,000 miles.

Johnson Matthey, Inc. proved the basic durability of the catalyzed wire mesh trap with a successful 50,000-mile demonstration which was also completed in early 1982. Particulate reductions varied between 40 and 60 percent, as the trap was only designed to be 50 percent efficient due to the low engine-out emissions of the test vehicle. The trap produced moderate backpressure increases, and also reduced hydrocarbon (HC) and carbon monoxide (CO) emissions as would be expected with a catalyzed trap. Clearly both ceramic monolith and wire mesh traps are capable of maintaining particulate collection efficiencies of 50 to 90 percent with moderate overall increases in backpressure for up to 50,000 miles (and likely more) when regeneration conditions are properly controlled.

Much of the industry's recent trap-oxidizer research has concentrated on the design and development of regeneration mechanisms and control systems. There are two general approaches to regeneration—positive and self-regeneration. Positive regeneration systems regenerate the trap at a specific point in time by activating a mechanism to ensure that regeneration occurs. Self-regeneration systems utilize no periodic mechanisms, but instead rely on attaining regeneration conditions during normal vehicle operation.

Positive regeneration systems for non-catalyzed traps typically involve the addition of an external heat source or the modification of engine parameters in order to raise the exhaust gas temperature. Systems which have been tested on non-catalyzed traps include fuel burners, electrical heaters, and intake air throttling. Catalyzed traps can also utilize mechanisms which raise the concentrations of HC and CO in the exhaust. The HC and CO are oxidized by the catalyst, with the additional heat then igniting the particulate in the trap. Proposed systems for raising HC and CO levels include exhaust stroke fuel injection, adjustment of engine parameters (such as exhaust gas recirculation rates and/or timing), and individual cylinder throttling. At this time, it appears that the most promising positive regeneration systems are the fuel burner for non-catalyzed traps and exhaust stroke fuel injection for catalyzed traps. These mechanisms are explained in greater detail in the Agency reports cited above.

Positive regeneration systems require on-board systems to initiate and control the regeneration process. Manufacturers have accumulated considerable data on the minimum levels of trapped particulate, exhaust oxygen, and exhaust temperature necessary to initiate successful regeneration, as well as the time necessary to complete regeneration. Manufacturers have also characterized the maximum particulate

[3] Available for inspection in EPA Docket No. A-82-32.

[4] This study was prepared under EPA Contract No. 68-01-6543 by Energy and Resource Consultants, Inc., and is available for inspection in EPA Docket No. A-82-32.

[5] Available for inspection in EPA Docket No. A-82-32.

loadings and inlet temperatures which can be permitted without risk of overheating the trap. Several sophisticated control systems have been designed, fabricated, and installed on experimental vehicles. To date, regeneration systems have not been completely automated but that is not expected to be a major barrier.

The components of a regeneration control system will likely involve sensors, actuators, and a central processing unit. Sensors may be required for some or all of the following parameters: Exhaust and trap termperature, engine revolutions and load, burner ignition detection, accelerator pedal position, backpressure, etc. Actuators which would be required include valves, solenoids, relays, and possibly remotely operated accessory clutches for air pumps. Most of these sensors and actuators are either used already in automotive applications or are similar to items which are available. Development of a durable and accurate backpressure sensor, thought to be difficult at the time of the Feasibility Study, now appears to be imminent.

The addition of a microprocessor to control and monitor regeneration should also be fairly straightforward. It is expected that by the late 1980's many diesel manufacturers will utilize microprocessors to determine fuel injection rate and timing based on information provided by a variety of sensors. Control logic for trap-oxidizer regeneration would simply be one additional function for vehicles equipped with electronic controls. Those vehicles without microprocessors would require a separate logic system, but adding such a system would be fairly straightforward compared to the sophisticated electronics used on today's gasoline-fueled vehicles.

While the successful development of positive regeneration systems is expected, the design and application of such systems have proved to be somewhat more complex and time consuming than projected at the time of the Feasibility Study. This is the primary reason for the delay in implementation of the more stringent particulate standards. This fact has also renewed interest in the concept of self-regeneration. Recent work in this area has centered on the use of diesel fuel additives.

It has been found that organometallic compounds added to diesel fuel can effectively lower the ignition temperature of trapped particulate. Several fuel additives have been evaluated, including copper, lead, manganese, calcium, and their various combinations. The results have been very promising and fuel additives are now the leading area of regeneration research for many manufacturers.

There are still several unresolved issues with respect to the applicability of fuel additives to induce self-regeneration. Should the additive be premixed into diesel fuel at the refinery or added on-board the vehicle? Will the additive and any combustion by-products be compatible with fuel injection and engine hardware? The two most serious, and somewhat interrelated, concerns of fuel additives are the environmental consequences of their usage and the possibility of trap plugging with metal deposits. Preliminary testing indicates that nearly 100 percent of the additive is collected in the trap, with only negligible amounts emitted into the atmosphere. This is very beneficial from an environmental standpoint, since many of the metals are toxic. However, the trapping of the additive raises concerns about trap plugging and excessive backpressure. In addition, if the additive were stored on-board the vehicle, this would raise concerns over occupant safety, since some of the additives are toxic in concentrated form.

If the above concerns can be satisfactorily resolved, self-regeneration would pose a simpler and cheaper alternative to positive regeneration systems, since the need for an elaborate control system could be eliminated. Possibly the only control requirement would be a fail-safe system to prevent excessive particulate loading and resultant trap overheating. Such a self-regeneration system would require little engine/vehicle modification as well.

2. *Leadtime.* The technical information available as of February 1983 (i.e., the close of the public comment period for this action) indicated that diesel manufacturers did not meet the projected January 1983 date for successful prototype development. However, that same information showed that much progress had occurred with positive regeneration design and development, and that the final remaining task was to integrate specific regeneration mechanisms into an overall control system. In this regard, most, if not all, of the necessary components for completing this task are available or easily adapted from existing sources.

Somewhat greater uncertainties exist with respect to self-regeneration systems based on fuel additives. Given the high rate of progress in the last year, however, and the fact that self-regeneration systems involve less complexity and fewer design modifications, the Agency considers fuel additives to have the potential of being developed on a similar schedule as positive regeneration systems. Of course, both positive and self-regeneration systems need not be developed; only one is necessary.

Although the inherent uncertainties involved in prototype development work make it difficult to specifically project the completion of this task, such a projection is a necessary part of any leadtime analysis. Based on the technical information mentioned above, the straightforward nature of the remaining engineering tasks, and the progress that had been achieved as of February 1983, the Agency projects that an additional six to nine months of optimization would permit manufacturers to develop workable prototype trap-oxidizer systems. This means that industry-wide assurance testing could begin as early as the fall of 1983.

Information that has recently become available supports the Agency's projection for the completion of prototype development. Daimler-Benz and GM have publicly announced they are currently testing trap-oxidizer systems.[6] Daimler-Benz stated in August 1983, and reiterated in November 1983, that if its current test program is successful, a trap-equipped vehicle will be introduced in California for the 1985 model year. General Motors stated in November 1983 that equipping its diesel LDT for the California market was infeasible by the 1985 model year, and was "borderline" for the 1986 model year.

These comments by Daimler-Benz and GM suggest that the automotive industry has met EPA's projected date for completing prototype development, i.e., about the fall of 1983. This is based on the fact that the programs described by these manufacturers must involve assurance testing if there is to be any hope of achieving the referenced model year dates. Otherwise, the leadtimes associated with manufacturing production hardware would make these dates unattainable. Therefore, manufacturers appear to be basically on schedule for complying with the more stringent particulate standards on a nationwide basis for the 1987 model year.

The Agency has reviewed its analysis of production leadtime and reaffirmed the Feasibility Study's conclusion that 25 to 33 months would likely be necessary to produce trap-oxidizers for

[6] Available for inspection in EPA Docket No. A-82-32.

the national fleet.[7] Adding this time to the above projection that successful prototypes could be developed around the fall of 1983, EPA projects that trap-oxidizers should be available for production vehicles sometime between the fall of 1985 and the summer of 1986. Under this entire range, trap-oxidizers will be available in time for the 1987 model year. Therefore, EPA concludes that delaying the 1985 particulate standards for two years is sufficient to allow for the complete development of trap-oxidizer technology.

C. Technical Amendments for Light-Duty Vehicles and Light-Duty Trucks

Three technical amendments are being made to the high-altitude emission control regulations for 1984 and later light-duty motor vehicles. The first amendment involves the designation of high-altitude locations where only vehicles certified to emission standards at high altitude may be sold.

On October 19, 1983, a high-altitude rulemaking adopted the revised list of "designated high-altitude locations" for 1984 and later LDVs, that was previously applicable only to LDTs (48 FR 48598). Although the text of the regulations correctly stated that the associated list of high-altitude locations applied to both LDVs and LDTs, the actual title of the list continued to refer only to LDTs. This oversight in 40 CFR Part 86 (§ 86.084–30 and § 86.085–30) is being corrected by simply deleting the title. This revision along with the existing text makes it clear that the list of "designated high-altitude locations" applies to both vehicle classes.

The second amendment revises a typographical error that occurred in the above-referenced rulemaking when the high-altitude standards for 1985 and later LDTs were reinstated after being inadvertently deleted by the diesel particulate emissions averaging program (48 FR 33456). The carbon monoxide standard in 40 CFR Part 86 (§ 86.085–9) for high-altitude LDTs was incorrectly published as 14.0 g/mi. The corrected value is 14 g/mi.

The third amendment affects the control of crankcase emissions from high-altitude LDTs beginning in the 1984 model year. Currently, crankcase emissions from both gasoline-fueled and diesel-powered LDTs are prohibited at low altitude. However, the January 13, 1983 high-altitude LDT rulemaking specifically restricted crankcase emissions from gasoline-fueled LDTs only (45 FR 5988). The intent of the high-altitude regulations was to restrict these emissions from both types of LDTs because: (1) Crankcase controls at high altitude have historically mirrored those at low altitude, and (2) there is no technical need for diesel-powered vehicles to have open crankcases at high altitude when they are already sealed at low altitude. Therefore, 40 CFR Part 86 (§ 86.084–9 and § 86.085–9) is being revised to prohibit crankcase emissions from all LDTs, regardless of elevation.

This amendment will have no adverse effect on the automotive industry since light-duty diesel truck manufacturers are already complying with the requirement.

D. Technical Amendment for Heavy-Duty Engines

The rulemakings of January 21, 1980, governing 1984 and later model year heavy-duty engines (45 FR 4136), and September 25, 1980, governing 1984 and later model year light-duty trucks (45 FR 63734) each created a new section in 40 CFR Part 86 dealing with the automatic expiration of reporting requirements. In addition to being duplicative, one of these sections, 86.084–39, was incorrectly numbered. This had the unintended effect of overriding the provisions of § 86.079–39, which deals with the submission of maintenance instructions to the Administrator.

Today's action deletes one of these duplicative sections, 86.084–39, in favor of retaining the correctly numbered § 86.084–40. This deletion effectively restores the provisions of § 86.079–39, which were never intended to be overridden.

III. Public Participation

This section summarizes and analyzes comments to the proposed rule which were received during the public comment period, including those presented at the public hearing held in Ann Arbor, MI on January 18, 1983. The comments covered several topics, including the need, cost, and technical feasibility of the LDD particulate standards. As clearly stated in the proposal, however, only the technical feasibility of the standards was being considered as the basis for the 2-year delay. Therefore, only comments relevant to that issue are considered in this Final Rule. EPA is continuing to examine other issues such as health needs and relative costs of control as pertinent data are generated, and the comments received on these issues will be considered in that examination. The comments pertinent here have been organized into three areas by subject matter: (1) The status of trap-oxidizer development, (2) leadtime, and (3) alternative control strategies.

A. Status of Trap-Oxidizer Development

The only commenter to challenge the Feasibility Study's conclusions directly regarding efficiency, backpressure, and durability was Ford. First, Ford claimed that the collection efficiencies of nominally identical trap-oxidizers can vary by up to 20 percent, but supplied no evidence to support this statement. While the Agency agrees that general types of trap-oxidizers can show various efficiencies—the Feasibility Study expresses typical efficiencies in ranges—EPA is not aware of data which would quantify the amount of variability which would occur between properly functioning, identical traps. However, even if the claim by Ford was correct, current engine-out particulate levels are low enough that such variability would not affect a manufacturer's ability to comply with the standards.

Ford stated that EPA ignored the fuel economy and performance impacts of loaded-trap backpressure. The Agency did not ignore these impacts, but focused in the Feasibility Study on a trap's ability to return to zero-mile backpressure after regeneration. This being the case, the regeneration system can be designed to regenerate before backpressure reaches a level where significant impacts would be observed. This has been demonstrated in vehicle testing by both Daimler-Benz and the Southwest Research Institute (the latter under contract to EPA).

Ford objected that EPA's conclusions regarding durability, based on test data with manually initiated regeneration under steady-state conditions, were premature since regeneration will have to be automated and achievable under transient conditions. The Agency did not in the Feasibility Study, and cannot now, argue that trap durability has been proved under all possible regeneration conditions. Rather, EPA believes that several successful 50,000-mile tests show that trap durability is satisfactory when regeneration conditions are properly controlled. However, it should be noted that Ford has investigated routing the exhaust around the trap during regeneration to isolate the trap from transient conditions. Such a bypass

[7] It should be noted that these conservative leadtime projections consider only the time necessary to enable manufacturers to introduce trap-oxidizers on most or all models requiring them in order to meet the 0.2 g/mi particulate standard on a nationwide basis. The Agency's decision to grant a delay until the 1987 model year to provide adequate leadtime on a Federal basis does not consider whether trap-oxidizer technology may be available at an earlier date in the California market if needed to meet that State's planned 1986 model year implementation of the 0.2 g/mi standard for light-duty motor vehicles. For more information on California's waiver request, see 48 FR 22625, May 19, 1983.

system may avoid any problems associated with transient operations.

Several vehicle manufacturers reported examples of traps physically failing (i.e., cracking, melting, plugging). Some observers have commented that such failures indicate that trap-oxidizers are infeasible. The Agency disputes this analysis. In the development of any new technology there will be many failures before success is achieved. When traps have failed, it is almost invariably due to excessive particulate loading in the trap prior to regeneration, leading to destructive temperatures during regeneration. The frequency of trap failure has receded in the recent past as researchers have expanded their knowledge of the limitations of various trap designs. The Agency expects trap failure to become infrequent as regeneration systems are refined.

The only other significant comment on non-regeneration trap performance came from the Manufacturers of Emission Control Association (MECA). MECA stated that "several of our members will be able to make available that portion of the control system which they plan to produce," (i.e., a satisfactory trap). This position, by the companies which would manufacture traps, is consistent with the Agency's position that trap efficiency, backpressure, and durability are acceptable given workable regeneration control systems.

Ford also commented on EPA's analysis of regeneration in the Feasibility Study. First, Ford questioned EPA's conclusion in the Feasibility Study regarding the types of sensors which would be required for a successful regeneration control system. Ford argued that mileage and engine revolution counters would not be acceptable, but at the same time implicitly supported the Feasibility Study's statement that preferable backpressure sensors of sufficient reliability and durability should be available very soon. At the public hearing, Ford stated that it was already testing backpressure sensors on an experimental basis. Volkswagen also stated at the hearing that such sensors should not present a problem.

Ford also claimed that EPA ignored the issue of regeneration under transient operating conditions. The Agency agrees with Ford that regeneration must be achievable under transient engine operating conditions. However, many manufacturers, including Ford, have investigated positive regeneration systems using an exhaust bypass to route the exhaust away from the trap during regeneration. As already mentioned, this would isolate the trap from engine operation and remove any problems associated with transient exhaust flow conditions. Emission levels during trap-bypass would be significantly higher than during trapping and would have to be accounted for during determinations of compliance with the standards. The Agency will be considering alternative methods for doing this as more exact features of trap-bypass systems become available.

The most significant development in trap-oxidizer regeneration is the recognition of the potential of fuel additives to induce self-regeneration. General Motors' comment was indicative of the trend towards fuel additives—

> [M]ost of the systems currently under development are much different than any described in our October 1981 response. Our emphasis on fuel additives began after that submission. The use of additives arose out of necessity. Burner systems were proving to be too costly, and the high temperatures and temperature gradients experienced with these systems were causing trap failures during regeneration. Systems employing additives appeared to be less costly, and they offered several other potential advantages. . . . [T]he main motivation for using additives is that they allow regeneration at lower temperatures, resulting in fewer trap failures as a result of overheating and thermal shock. However, we also pointed out at the hearing that there are still major concerns with additives.

Volkswagen also stated that additives were its preferred regeneration mechanism at the time of its comment. Other major commenters, such as Ford and Daimler-Benz, did not rank their various systems. Daimler-Benz, in fact, argued against the use of organometallic fuel additives on the basis of unregulated emissions, trap plugging, and engine wear.

As discussed above, EPA considers the possibility of self-regeneration with the use of fuel additives to be a potential alternative to positive regeneration systems, and the Agency agrees with GM that the use of additives may be simpler and less expensive. EPA also agrees with GM and other commenters that there are several unresolved issues with respect to additive usage. These were discussed in a previous section. Accordingly, at this time the Agency only considers positive regeneration systems, such as the fuel burner and exhaust stroke fuel injection, as being definitely available for 1987 production. Successful application of additives is considered an alternative which will require additional investigation.

With respect to overall evaluations of the status of trap-oxidizer development, the vehicle manufacturers were unanimous in saying that they had not yet identified a trap/regeneration control system as of February 1983 (i.e., the close of the comment period) which could be committed to production. The Agency has evaluated the progress made by the manufacturers and agrees that workable trap/regeneration control systems were not available as of that date. Nevertheless, the Agency found the manufacturers to be in the final stage of trap-oxidizer development and no manufacturer offered evidence to the contrary.

B. Leadtime

Many commenters discussed the issue of leadtime. Some of the comments specifically dealt with the primary leadtime components as identified in the Feasibility Study (i.e., prototype and production development). Others, however, provided more general remarks about the implementation date of the particulate standards. The specific comments will be discussed in the first two sections followed by a discussion of the general comments in the final section.

1. *Prototype Development Leadtime.* Chrysler, Ford, Nissan, and the National Automobile Dealers Association (NADA) suggested that because the January 1983 milestone for the completion of prototype development had not been attained, EPA's subsequent conclusion that trap-oxidizers would be available for the 1987 model year was invalidated. At the public hearing, GM stated that its September 1983 estimate for the completion of prototype development, which was submitted for the Feasibility Study, could not be revised because of the uncertainties involved. Nonetheless, GM found EPA's projection to be unrealistic. In its subsequent written comments, GM expressed a concern that prototype development may not even be completed by June 1984, which it regarded as necessary for a 1987 model year introduction.

The relative significance of the January 1983 date, with regard to the technical feasibility of trap-oxidizers for the 1987 model year, can only be explained in the context of the entire leadtime schedule that was presented in the Feasibility Study. The analysis in that document showed that even under "worst case" production leadtime assumption (33 months), trap-oxidizers should be ready for mass production by about October 1985 if this first milestone were reached. While this is 2–3 months after the 1986 model year begins, it is also 9–10 months before the beginning of the 1987 model year. Therefore, even under these worst case conditions, it

would be possible for manufacturers to "miss" the January 1983 prototype development milestone by up to 10 months and still have traps ready for the 1987 model year. This clearly provided manufacturers a significant amount of additional leadtime and diminishes the importance of achieving the January 1983 milestone.

Regarding GM's prototype leadtime projections, EPA reassessed the status of trap-oxidizer development within the automotive industry in the previous section. That analysis shows it is reasonable to expect prototype development could be completed around the fall of 1983, well ahead of the June 1984 deadline mentioned in GM's last submittal. Subsequent statements by GM suggest this is indeed the case.

2. *Production Development Leadtime.* Ford stated that the most significant difference between its production development schedule and EPA's was for assurance testing. Ford estimated 31 months and EPA estimated 7–9 months. (The Agency's projection includes 3.5–5 months for a 50,000-mile test and 3–4 months for data analysis.) Daimler-Benz commented that EPA's 5-month allowance for a 50,000-mile test is overly optimistic because the projection is based primarily on high-load driving with only a small fraction of part-load and idle operation and with few cold starts. It stated that guaranteeing and controlling regeneration during these latter phases of the operating regime is a special concern with current regeneration systems. Thus, Daimler-Benz claimed that including more part-load and idle operation in the 50,000-mile test could easily double the time required.

General Motors commented at the public hearing that its earlier estimate of production leadtime, submitted for the Feasibility Study, remained unchanged. That submittal included a projection of 24 months to complete production development, but also contained a statement that a limited production-built fleet would be necessary to evaluate trap-oxidizers before mass production of the systems could begin. The period of time required for such a test program was unspecified, however. General Motors also commented on production development leadtime in its subsequent written comments. That submission included an estimate of about 26 months for post-prototype, production-related facilities without specific mention of the need for a limited production-built test fleet.

The Natural Resources Defense Council (NRDC) requested that EPA reevaluate its leadtime projections "with a cautious eye to the Agency's legal obligation to force the rapid introduction of these controls." NRDC suggested allowing only one round of assurance testing (a total of 6 months) and 12–18 months for tooling.

Ford's production leadtime comments were taken from its "Corporate Timing Standard" for normal product development. However, no justification was given for why this standard included 31 months of assurance testing nor why this standard should apply to trap-oxidizer development. Even accepting the fact that 31 months of assurance testing is a necessary part of this standard, the Agency believes that Ford's preferred internal timing standard should not be used as the basis in developing emission control technology. Rather, emission controls which are necessary to protect public health should be developed along a more aggressive schedule. Therefore, EPA rejects Ford's position that 7–9 months for assurance testing is inadequate. EPA believes that the 7–9 month estimate was developed using reasonable times for the component efforts as discussed earlier.

The Agency is in basic agreement with Daimler-Benz's comment concerning the need for more part-load and idle operation during the 50,000-mile assurance test than was assumed in the Feasibility Study. However, it does not necessarily follow that this test must take longer than the 3.5–5 months allotted by EPA. The Agency's estimate is based on data used in past rulemaking actions. It is conservative in that the test vehicles are assumed to accumulate mileage 8 hours per day. If adding more part-load and idle operation to the test sequence requires more time, it could be accommodated by running the vehicles for more than 8 hours each day. While this would increase the cost of the test, it would not add to the number of months which are necessary to conduct the program. Therefore, EPA does not agree with Daimler-Benz's comment that conducting a 50,000-mile assurance test will take longer than the 3.5–5 months projected by the Agency.

The two comments from GM on production leadtime appear to be somewhat inconsistent in that the need for a production-built test fleet after tooling and production facilities are operational was specifically mentioned only once. The lack of any reference to such a test program in GM's most recent submittal may mean that it is no longer regarded as necessary. (No other manufacturer mentioned the need for a similar program.) In this case, GM's estimates of 24–26 months for total production development are in general agreement with the lower bound of EPA's 25–33 month estimate. On the other hand, not specifically mentioning the production-built test program in its latest submittal may have been a simple oversight. If GM continues to believe it is necessary, up to 9 months could be allotted for the test program and still be within EPA's projected range of 25–33 months (9+24=33). Nine months of critical path should be more than adequate for such a program. Therefore, in either case, GM's production leadtime estimates are consistent with EPA's estimate.

Based on the leadtime analysis presented in section II.B above, EPA cannot agree with NRDC's recommendation to shorten the production leadtime schedule. Adequate leadtime must be provided to ensure that trap-oxidizers will function properly in-use, and the lower limits of the estimated leadtime range cannot be arbitrarily applied to the entire industry. EPA has adequate discretion under Sections 202(a) (1) and (2) of the Act to select the appropriate model year for trap introduction based in part on leadtime estimates.

3. *Applicable Model Year.* Most of the general leadtime comments from manufacturers regarding their assessment of the model year in which trap-oxidizers would be available were unsupported. American Motors stated the 2-year delay appeared to be inadequate. Peugeot stated that trap-oxidizers definitely would be unavailable for the 1986 model year and that it was unsure whether they would be available in time for the 1987 model year. Volkswagen commented that there was no possibility of introducing traps by the 1986 model year and that it was "cautiously optimistic" about meeting the 1987 model year. Daimler-Benz commented that EPA's leadtime projections were overly optimistic, but did not state that more than a 2-year delay was necessary to perfect trap-oxidizers.

General Motors and Ford provided more specific leadtime information. However, as their overall leadtime projections depend on their specific comments which have already been addressed, their general comments will only be briefly mentioned here.

The Natural Resources Defense Council commented that Daimler-Benz' testimony to the California Air Resources Board (CARB) concerning the availability of trap-oxidizer control technology by the 1985 model year was evidence that the 1985 model year deadline could be met, or 1986 at the latest.

The unsubstantiated model year assessments of some manufacturers make it impossble for EPA to review such comments critically. It can only be noted that no manufacturer, except Ford, went so far as to say that trap-oxidizers were definitely infeasible for the 1987 model year. For example, VW stated that it is "cautiously optimistic," while GM stated that the 2-year delay "will probably not be enough." Although such unsubstantiated statements do not directly support the feasibility of trap-oxidizers for the 1987 model year, they also do nothing to counter EPA s conclusion that this expectation is reasonable.

Concerning NRDC's comment, the Daimler-Benz testimony to CARB would appear to be much more complex than a simple statement that trap-oxidizers would be feasible for the 1985 model year In its testimony, Daimler-Benz was actually requesting relief from CARB's stringent 1984 NOx standard, which it stated would otherwise preclude its marketing of any diesel vehicles in California. In return, Daimler-Benz committed to meeting a particulate standard more stringent than 0.40 g/mi in 1985 (approximately 0.32 g/mi) if averaging were allowed. Also, in its written comments to EPA, Daimler-Benz refuted NRDC's interpretation of its testimony to CARB. Daimler-Benz clarified that its statement to CARB was that *if* trap-oxidizers were available by the 1985 model year, they could only be applied to part of its fleet. Finally, even if Daimler-Benz is able to equip some of its vehicles with trap-oxidizers by 1985, this does not necessarily demonstrate that these devices are technically feasible for other manufacturers in that timeframe, especially on a nationwide basis.

Based on the status of trap-oxidizer development throughout the industry, as well as at Daimler-Benz, the Agency disagrees with NRDC's assessment of the feasibilty of trap-oxidizers prior to the 1987 model year. While it may appear that Daimler-Benz's trap-development program is proceeding ahead of many others, this does not automatically demonstrate nationwide feasibility in 1985 or 1986 for a sufficient portion of the overall fleet.

C. Alternative Control Strategies

An alternative control strategy was suggested by NRDC in which no delay would be granted for those diesel models which do not need trap-oxidizers to meet the 1985 standards. If there is a delay, however, then NRDC felt that interim standards at or below 0.40 g/mi should be established to prevent air quality deterioration.

The Agency expects there would be no real nationwide evironmental benefit either by implementing the 0.20 g/mi standard for only a portion of the fleet or by establishing an interim standard at or below 0.40 g/mi. Under the existing 0.6 g/mi particulate standard, manufacturers are generally using the best available non-trap control technology and as a result particulate emissions from current light-duty diesel vehicles are generally significantly below the standard. Moreover, manufacturers have fairly strong incentives (relative to the low cost of these non-trap technologies) to keep particulate emissions low because of the deleterious effects of high particulate levels on oil change intervals, durability of the exhaust gas recirculation system, cylinder durability, and smoke levels. Therefore, the Agency finds that on a nationwide basis NRDC's alternative strategy would result in little, if any environmental gain.

D. EPA's Responsibility Under the Clean Air Act

Natural Resources Defense Council commented that EPA's approach to the proposed delay does not fulfill its obligation to establish technology-forcing standards. Instead, it argued, EPA is taking a very conservative approach, evidenced by the lack of a thorough technology-forcing inquiry, which is inconsistent with the Agency's mandate to protect health and welfare.

In responding to this comment, four points need to be discussed. First, the 0.20 g/mi LDV and 0.26 g/mi LDT particulate standards are certainly technology-forcing in that at the time they were promulgated, the requisite control technology did not exist. Even now a significant amount of development remains to be accomplished before trap-oxidizers are ready for commercial introduction. The 2-year delay does nothing to reduce this aspect of the particulate standards.

Second, while EPA agrees that its mission is to protect the public health and welfare, Congress has provided the Agency with guidelines for discharging this responsibility. Section 202(a)(2) of the Act clearly states that standards are to take effect after allowing adequate leadtime for development. As discussed in the preceding section of this preamble, the Agency has determined that it is reasonable to expect that trap-oxidizer systems will not be generally available on a national basis until the 1987 model year. Therefore, the Agency's action in this matter is wholly consistent with its duties under the Act.

Third, EPA's analysis of the status and leadtime requirements of trap-oxidizer technology was both detailed and thorough. The Agency's effort to secure all the facts relating to trap-oxidizer technology included: (1) Publishing a request for information in the **Federal Register** (46 FR 31677), (2) conducting a number of meetings with the automotive industry, the emission-control manufacturing industry, and NRDC, (3) publishing EPA's comprehensive analysis of trap-oxidizer development (i.e., the Feasibility Study), and (4) conducting a subsequent and completely independent analysis under contract (i.e., the Technology Study). Also, the notice and comment period associated with this rulemaking action provided an opportunity to receive and review additional information. Therefore, the record clearly demonstrates the Agency's effort to conduct a thorough technological investigation.

Fourth, even with a 2-year delay to 1987, EPA has shown a commitment to the concept of technology forcing. A more conservative 1988 effective date for particulate standards was recommended by the National Academy of Science (NAS). Also, some manufacturers that commented on the proposal either explicitly recommended or suggested this same date. This supports the Agency's position that the adoption of the 1987 model year in this Final Rule is not overly conservative. Rather, it is the earliest model year for which trap-oxidizers can be projected to be commercially available throughout the industry on a nationwide basis. In reaching this conclusion, EPA has balanced the risks of an overly optimistic prediction against the environmental consequences of implementing these standards in 1987, rather than 1986. The Agency has concluded that the consequences of a wrong decision (i.e., if 1986 proved infeasible on a nationwide basis) would be severe, and that these potential consequences are not overcome by the deferral of the benefits of more stringent standards until 1987.

IV. Authority

Statutory authority for this final rule is provided by Sections 202(a) and 301(a) of the Clean Air Act (42 U.S.C. 7521(a) and 7601(a)). Section 202(a)(1) of the Act provides, in part, that "[t]he Administrator shall by regulation prescribe * * * standards applicable to the emission of any pollutant from any class or classes of new motor vehicles . . . which may reasonably be anticipated to endanger public health or welfare." Section 202(a)(2) of the Act provides, in part, that "[a]ny regulation

prescribed under paragraph (1) * * * shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." Section 301(a) provides, in part, that "[t]he Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act."

I find that good cause exists to make this rule effective immediately since some manufacturers will soon be producing 1985 model year vehicles that would be required to meet this standard or be prohibited from sale. Moreover, because this rule simply delays the effective date of the standard, it relieves a restriction.

Judicial Review: Under Section 307(b)(1) of the Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under Section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

Administrative Designation: Under Executive Order 12291 EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final rule delays the implementation date of an existing regulation and as a result does not impose either new costs or significant adverse effects on competition, productivity, investment, employment, or innovation. This final rule is, therefore, not major and is not subject to the requirements of a Regulatory Impact Analysis.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA or EPA's response to these comments are available for public inspection in the docket cited at the beginning of this preamble.

Effect on Small Entities: Section 605 of the Regulatory Flexibility Act requires that the Administrator determine whether regulations will have a significant impact on a substantial number of small entities. I certify that this regulation indeed does not have any significant impact on small entities. Few, if any, small entities market diesel engines or are involved in trap-oxidizer development, which is the subject of these regulations. Therefore, no small entities should see any significant impact.

Impacts of Reporting Requirements: There are no information collection requirements in this final rule, as it merely delays for two years the implementation date of a standard already promulgated in a separate rulemaking.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: January 16, 1984.

William D. Ruckelshaus,

Administrator.

For the reasons discussed in the Preamble, Subpart A of 40 CFR Part 86 is amended as follows:

1. The Authority citation for Part 86 reads as follows:

Authority: 42 U.S.C. 7521(a) and 7601(a).

§ 86.084-39 [Removed]

2. Section 86.084-39 is removed.

3. Section 86.084-9 is amended by revising paragraph (f) to read as follows:

§ 86.084-9 Emission standards for 1984 and later model year light-duty trucks.

* * * * *

(f) No crankcase emissions shall be discharged into the ambient atmosphere from any 1984 and later model year light-duty trucks sold for principal use at a designated high-altitude location.

* * * * *

4. Section 86.084-30 is amended by revising paragraph (a)(5)(ii) to read as follows:

§ 86.084-30 Certification

(a) * * *

(5)(i) * * *

(ii) The designated high-altitude locations defined in paragraph (a)(5)(i) of this section are listed below:

State of Colorado

Adams	Garfield
Alamosa	Gilpin
Arapahoe	Grand
Archuleta	Gunnison
Boulder	Hinsdale
Chaffee	Huerfano
Cheyenne	Jackson
Clear Creek	Jefferson
Conejos	Kit Carson
Costilla	Lake
Crowley	La Plata
Custer	Larimer
Delta	Las Animas
Denver	Lincoln
Dolores	Mesa
Douglas	Mineral
Eagle	Moffat
Elbert	Montezuma
El Paso	Montrose
Fremont	Morgan
Otero	Saguache
Ouray	San Juan
Park	San Miguel
Pitkin	Summit
Pueblo	Teller
Rio Blanco	Washington
Rio Grande	Weld
Rutt	

State of Nevada

Carson City	Lyon
Douglas	Mineral
Elko	Nye
Esmeralda	Pershing
Eureka	Storey
Humboldt	Washoe
Lander	White Pine
Lincoln	

State of New Mexico

Bernalillo	Otero
Catron	Rio Arriba
Colfax	Roosevelt
Curry	Sandoval
De Baca	San Juan
Grant	San Miguel
Guadalupe	Santa Fe
Harding	Sierra
Hidalgo	Socorro
Lincoln	Taos
Los Alamos	Torrance
Luna	Union
McKinley	Valencia
Mora	

State of Utah

Beaver	Morgan
Box Elder	Piute
Cache	Rich
Carbon	Salt Lake
Daggett	San Juan
Davis	Sanpete
Duchesne	Sevier
Emery	Simmit
Garfield	Tooele
Grand	Uintah
Iron	Utah
Juab	Wasatch
Kane	Wayne
Millard	Weber

* * * * *

5. Section 86.085-8 is amended by revising paragraph (a)(1)(iv) to read as follows:

§ 86.085-8 Emission standards for 1985 light-duty vehicles.

(a)(1) * * *

(iv) *Particulate emissions* (diesels only). 0.60 gram per vehicle mile (0.373 gram per vehicle kilometer).

* * * * *

6. Section 86.085-9 is amended by revising paragraphs (a)(1)(iv), (d)(1)(ii) and (f) to read as follows:

§ 86.085-9 Emission standards for 1985 and later model year light-duty trucks.

(a)(1) * * *

(iv) *Particulate emissions* (diesels only). 0.60 gram per vehicle mile (0.373 gram per vehicle kilometer);

* * * * *

(d) * * *

(1) * * *

(ii) *Carbon Monoxide.* 14 grams per vehicle mile (8.7 grams per vehicle kilometer);

* * * * *

(f) No crankcase emissions shall be discharged into the ambient atmosphere from any 1984 and later model year light-duty trucks sold for principal use at a designated high-altitude location.

* * * * *

7. Section 86.085–21 is amended by revising paragraph (a), and by removing and reserving paragraph (b)(5) as follows:

§ 86.085–21 Application for certification.

(a) A separate application for a certificate of conformity shall be made for each set of standards and each class of new motor vehicles or new motor vehicle engines. Such application shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment.

(b) * * *

(5) [Reserved]

* * * * *

8. Section 86.085–23 is amended by revising paragraphs (b)(1)(ii) and (e)(1), and by removing and reserving paragraph (f) as follows:

§ 86.085–23 Required data.

* * * * *

(b)(1) * * *

(ii) Exhaust emission deterioration factors for light-duty trucks and heavy-duty engines and all test data that are derived from the testing described under § 86.085–21(b)(4)(iii)(A) as well as a record of all pertinent maintenance. Such testing shall be designed and conducted in accordance with good engineering practice to assure that the engines covered by a certificate issued under § 86.085–30 will meet the emission standards in § 86.085–09, § 86.085–10, or § 86.085–11, as appropriate, in actual use for the useful life of the engine.

* * * * *

(e)(1) A statement that the test vehicles (or test engines) with respect to which data are submitted to demonstrate compliance with the applicable standards of this subpart are in all material respects as described in the manufacturer's application for certification, have been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification and that on the basis of such tests the vehicles (or engines) conform to the requirements of this part. If such statements cannot be made with respect to any vehicle (or engine) tested, the vehicle (or engine) shall be identified, and all pertinent data relating thereto shall be supplied to the Administrator. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test vehicle (or test engine) was not as described in the application for certification or was not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the vehicle (or engine) does not meet the applicable standards. The provisions of § 86.085–30(b) shall then be followed.

* * * * *

(f) [Reserved]

* * * * *

9. Section 86.085–28 is amended by revising paragraphs (a)(2), (a)(3), (a)(4) introductory text, (a)(4) (iii) and (iv), (a)(5), (b)(2), (b)(3), (b)(4) (i) and (iv), (b)(5), and (b)(7), and by removing (a)(6) to read as follows:

§ 86.085–28 Compliance with emission standards.

(a) * * *

(2) The applicable exhaust and fuel evaporative emission standards of this subpart apply to the emissions of vehicles for their useful life.

(3) Since it is expected that emission control efficiency will change with mileage accumulation on the vehicle, the emission level of a vehicle which has accumulated 50,000 miles will be used as the basis for determining compliance with the standards.

(4) The procedure for determining compliance of a new motor vehicle with exhaust emission standards is as follows, except where specified by paragraph (a)(5) of this section for the Alternative Durability Program:

* * * * *

(iii) The emissions to compare with the standard shall be the adjusted emissions of paragraphs (a)(4)(ii) (A) and (B) of this section for each emission-data vehicle. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTME 29–67, to two significant figures. The rounded emission values may not exceed the standard.

(iv) Every test vehicle of an engine family must comply with the exhaust emission standards, as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

* * * * *

(5) The procedure to determine the compliance of new motor vehicles in the Alternative Durability Program (described in § 86.085–13) is the same as described in paragraphs (a)(4)(iii) through (a)(4)(v) of this section. For the engine families that are included in the Alternative Durability Program, the exhaust emission deterioration factors used to determine compliance shall be those that the Administrator has approved under § 86.085–13(c). The evaporative emission deterioration factor for each evaporative emission family shall be determined and applied according to paragraph (a)(4) of this section. The procedures to determine the minimum exhaust emissions deterioration factors required under § 86.085–13(d) are as follows:

(i) Separate deterioration factors shall be determined from the exhaust emission results of the durability-data vehicles for each engine family group. A separate factor shall be established for exhaust HC, exhaust CO, and exhaust NO_x for each engine family group. The evaporative emission deterioration factor for each evaporative family will be determined and applied in accordance with paragraph (a)(4) of this section.

(ii) The deterioration factors for each engine family group shall be determined by the Administrator using historical durability data from as many as three previous model years. These data will consist of deterioration factors generated by durability-data vehicles representing certified engine families and of deterioration factors from vehicles selected under § 86.085–24(h). The Administrator shall determine how these data will be combined for each engine family group.

(A) The test results to be used in the calculation of each deterioration factor to be combined for each engine family group shall be those test results specified in paragraph (a)(4)(i)(A) of this section.

(B) For each durability-data vehicles selected under § 86.085–24(h), all applicable exhaust emissions results shall be plotted as a function of the mileage on the system rounded to the nearest mile, and the best fit straight lines, fitted by method of least squares, shall be drawn through all these data points. The exhaust deterioration factor for each durability-data vehicles shall be calculated as specified in paragraph (a)(4)(i)(B) of this section.

(C) Line-crossing. For the purposes of paragraph (a)(5) of this section, line crossing occurs when either of the interpolated 4,000- and 50,000-mile points of the best fit straight line exceeds the applicable emission standard and at least one applicable data point exceeds the standard.

(1) The Administrator will not accept for certification line-crossing data from preproduction durability-data vehicles selected under § 86.085–24(c)(1), § 86.085–24 (h)(2), or (h)(3).

(2) The Administrator will not accept for certification line-crossing data from production durability-data vehicles selected under § 86.085–24(h)(1) unless the 4,000-mile test result multiplied by the engine family group deterioration factor does not exceed the applicable emission standards. The deterioration factors used for this purpose shall be those that were used in the certification of the production vehicle. Manufacturers may calculate this product immediately after the 4,000-mile test of the vehicle. If the product exceeds the applicable standards, the manufacturer may, with the approval of the Administrator, discontinue the vehicle and substitute a new vehicle. The manufacturer may continue the original vehicle, but the data will not be acceptable if line crossing occurs.

(b)(1) * * *

(2) The exhaust and fuel evaporative emission standards of § 86.085–9 apply to the emissions of vehicles for their useful life.

(3) Since emission control efficiency generally decreases with the accumulation of mileage on the vehicle, deterioration factors will be used in combination with emission-data vehicle test results as the basis for determining compliance with the standards.

(4)(i) Paragraph (b)(4) of this section describes the procedure for determining compliance of a new vehicle with exhaust emission standards, based on deterioration factors supplied by the manufacturers, except where specified by paragraph (b)(5) of this section for the Alternative Durability Program.

* * * * *

(iv) The emission values to compare with the standards shall be the adjusted emission values of paragraph (b)(4)(iii) of this section rounded to two significant figures in accordance with ASTME 29–67 for each emission data engine.

(5) The procedure to determine the compliance of new motor vehicles in the Alternative Durability Program (described in § 86.085–13) is the same as described in paragraphs (b)(4)(iv), (b)(6)(iv) and (b)(7) of this section. For the engine families that are included in the Alternative Durability Program, the exhaust emission deterioration factors used to determine compliance shall be those that the Administrator has approved under § 86.085–13(c). The evaporative emission deterioration factor for each evaporative emission family shall be determined and applied according to paragraph (b)(6) of this section. The procedures to determine the minimum exhaust emissions deterioration factors required under § 86.085–13(d) are as follows:

(i) Separate deterioration factors shall be determined from the exhaust emission results of the durability-data vehicles for each engine family group. A separate factor shall be established for exhaust HC, exhaust CO, and exhaust NO_x for each engine family group. The evaporative emission deterioration factor for each evaporative family will be determined and applied in accordance with paragraph (b)(6) of this section.

(ii) The deterioration factors for each engine family group shall be determined by the Administrator using historical durability data from as many as three previous model years. These data will consist of deterioration factors generated by durability data vehicles representing certified engine families and of deterioration factors from vehicles selected under § 86.085–24(h). The Administrator shall determine how these data will be combined for each engine family group.

(A) The test results to be used in the calculations of each deterioration factor to be combined for each engine family group shall be those test results specified in paragraph (a)(4)(i)(A) of this section.

(B) For each durability data vehicle selected under § 86.085–24(h), all applicable exhaust emission results shall be plotted as a function of the mileage on the system rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The exhaust deterioration factor for each durability data vehicle shall be calculated as specified in paragraph (a)(4)(i)(B) of this section.

(C) Line crossing. For the purposes of paragraph (b)(5) of this section, line crossing occurs when either of the interpolated, 4,000- and 50,000-mile points of the best fit straight line exceeds the applicable emission standard and at least one applicable data point exceeds the standard.

(1) The Administrator will not accept for certification line-crossing data from preproduction durability data vehicles selected under § 86.085–24(c)(1), § 86.085–24 (h)(2), or (h)(3).

(2) The Administrator will not accept for certification line-crossing data from production durability data vehicles selected under § 86.085–24(h)(1) unless the 4,000-mile test result multiplied by the engine family group deterioration factor does not exceed the applicable emission standard. The deterioration factors used for this purpose shall be those that were used in the certification of the production vehicle. Manufacturers may calculate this product immediately after the 4,000-mile test of the vehicle. If the product exceeds the applicable standard, the manufacturer may, with the approval of the Administrator, discontinue the vehicle and substitute a new vehicle, but the data will not be acceptable if line crossing occurs.

* * * * *

(7) Every test vehicle of an engine family must comply with all applicable standards, as determined in paragraph (b)(4)(iv) or (b)(5)(iv) and paragraph (b)(6) of this section, before any vehicle in that family will be certified.

* * * * *

10. Section 86.085–29 is amended by revising paragraph (a)(3)(i) to read as follows:

§ 86.085–29 Testing by the Administrator.

(a) * * *

(3)(i) Whenever the Administrator conducts a test on a test vehicle, the results of that test shall, unless subsequently invalidated by the Administrator, comprise the official data for the vehicle at the prescribed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission standards.

* * * * *

11. Section 86.085–30 is amended by revising paragraphs (a)(3)(i) (A) and (B), (a)(5)(ii), (b)(1), (b)(2), (b)(3), (b)(4) introductory text, (b)(4)(ii)(A), and (b)(4)(iii) and (iv), and by removing and reserving paragraphs (a)(3)(iii) and (a)(11) to read as follows:

§ 86.085–30 Certification.

(a) * * *

(3) * * *

(i) * * *

(A) *Light-Duty Vehicles.* Each certificate will certify compliance with no more than one set of standards.

(B) *Light-Duty Trucks.* Each certificate will certify compliance with no more than one set of standards except for low-altitude standards and high-altitude standards. The certificate shall state that it covers vehicles sold or delivered to an ultimate purchaser for principal use at a designated high-altitude location only if the vehicle conforms in all material respects to the design specifications that apply to those vehicles described in the application for certification at high altitude.

* * * * *

(iii) [Reserved]

* * * * *

(5)(i) * * *

(ii) The designated high-altitude locations defined in paragraph (a)(5)(i) of this section are listed below:

State of Colorado

Adams	Kit Carson
Alamosa	Lake
Arapahoe	La Plata
Archuleta	Larimer
Boulder	Las Animas
Chaffee	Lincoln
Cheyenne	Mesa
Clear Creek	Mineral
Conejos	Moffat
Costilla	Montezuma
Crowley	Montrose
Custer	Morgan
Delta	Otero
Denver	Ouray
Dolores	Park
Douglas	Pitkin
Eagle	Pueblo
Elbert	Rio Blanco
El Paso	Rio Grande
Fremont	Routt
Garfield	Saguache
Gilpin	San Juan
Grand	San Miguel
Gunnison	Summit
Hinsdale	Teller
Huerfano	Washington
Jackson	Weld
Jefferson	

State of Nevada

Carson City	Lyon
Douglas	Mineral
Elko	Nye
Esmeralda	Pershing
Eureka	Storey
Humboldt	Washoe
Lander	White Pine
Lincoln	

State of New Mexico

Bernalillo	Mora
Catron	Rio Arriba
Colfax	Roosevelt
Curry	Sandoval
De Baca	San Juan
Grant	San Miguel
Guadalupe	Santa Fe
Harding	Sierra
Hidalgo	Socorro
Lincoln	Taos
Los Alamos	Torrance
Luna	Union
McKinley	Valencia
Otero	

State of Utah

Beaver	Morgan
Box Elder	Piute
Cache	Rich
Carbon	Salt Lake
Daggett	San Juan
Davis	Sanpete
Duchesne	Sevier
Emery	Summit
Garfield	Tooele
Grand	Uintah
Iron	Utah
Juab	Wasatch
Kane	Wayne
Millard	Weber

* * * * *

(11) [Reserved].

(b)(1) The Administrator will determine whether a vehicle (or engine) covered by the application complies with applicable standards by observing the following relationships:

(i) *Light-duty vehicles.* (A) The durability-data vehicle(s) selected under § 86.085–24(c)(1)(i) shall represent all vehicles of the same engine-system combination.

(B) The emission-data vehicle(s) selected under § 86.085–24 (b)(1)(ii) through (b)(1)(iv) shall represent all vehicles of the same engine-system combination, as applicable.

(C) The emission-data vehicle(s) selected under § 86.085–24 (b)(1)(vii)(A) and (b)(1)(vii)(B) shall represent all vehicles of the same evaporative control system within the evaporative family.

(ii) *Light-duty trucks.*

(A) [Reserved].

(B) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(ii) shall represent all vehicles of the same engine-system combination, as applicable.

(C) The emission-data vehicle(s) selected under § 86.085–24 (b)(1)(vii)(A) and (b)(1)(vii)(B) shall represent all vehicles of the same evaporative control system within the evaporative family.

(D) The emission-data vehicle(s) selected under § 86.085-24(b)(1)(v) shall represent all vehicles of the same engine-system conbination, as applicable.

(E) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(viii) shall represent all vehicles of the same evaporative control system within the evaporative emission family, as applicable.

(iii) *Heavy-duty engines.* (A) A gasoline-fueled emission test engine selected under § 86.085–24(b)(2)(iv) shall represent all engines in the same family of the same engine displacement-exhaust emission control system combination.

(B) A gasoline-fueled emission test engine selected under § 86.085–24(b)(2)(iii) shall represent all engines in the same family of the same engine displacement-exhaust emission control system combination.

(C) A diesel emission-data test engine selected under § 86.085–24(b)(3)(ii) shall represent all engines in the same engine-system combination.

(D) A diesel emission-data test engine selected under § 86.085–24(b)(3)(iii) shall represent all engines of that emission control system at the rated fuel delivery of the test engine.

(E) [Reserved].

(iv) *Gasoline-fueled heavy-duty vehicles.* A statement of compliance submitted under § 86.085–23(b)(4)(i) or § 86.085–23(b)(4)(ii) shall represent all vehicles in the same evaporative emission family-evaporative emission control system combination.

(2) The administrator will proceed as in paragraph (a) of this section with respect to the vehicles (or engines) belonging to an engine family or engine family-evaporative emission family combination (as applicable), all of which comply with all applicable standards.

(3) If, after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.085–29, data or information derived from any inspection carried out under § 86.078–7(c) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards, he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(4) For light-duty vehicles and light-duty trucks the manufacturer may, at its option, proceed with any of the following alternatives with respect to an emission-data vehicle determined not in compliance with all applicable standards for which it was tested:

* * * * *

(ii) * * *

(A) If the failed vehicle was tested for compliance with exhaust emission standards only: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission data vehicle to be tested for exhaust emission compliance only.

* * * * *

(iii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed from the application and add a vehicle configuration(s) (or evaporative vehicle configuration(s), as applicable) not previously listed. The Administrator

may require, if applicable, that the failed vehicle be modified to the new engine code (or evaporative emission code, as applicable) and demonstrate by testing that it meets applicable standards for which it was originally tested. In addition, the Administrator may select, in accordance with the vehicle selection criteria given in § 86.085–24(b), a new emission-data vehicle or vehicles. The vehicles selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicles selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards, or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component the failed vehicle meets applicable standards for which it was originally tested. The Administrator may require a new emission-data vehicle, of identical vehicle configuration (or evaporative vehicle configuration, as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards for which the failed vehicle was originally tested.

* * * * *

12. Section 86.085–35 is amended by revising the introductory text of paragraphs (a), (a)(1)(iii)(D), (a)(2)(iii)(D), and the introductory text of (c)(1), and by removing and reserving paragraphs (a)(1)(iii)(F) and (a)(2)(iii)(K) as follows:

§ 86.085–35 Labeling.

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the pubic and covered by a certificate of conformity under § 86.085–30(a).

(1) * * *

(iii) * * *

(D) Engine tuneup specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards, including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation;

* * * * *

(F) [Reserved]

(2) * * *

(iii) * * *

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards, including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation. If adjustments or modifications to the vehicle are necessary to insure compliance with emission standards at either high or low altitude, the manufacturer shall either include the instructions for such adjustments on the label, or indicate on the label where instructions for such adjustments may be found. The label shall indicate whether the engine tune-up or adjustment specifications are applicable to high altitude, low altitude, or both;

* * * * *

(K) [Reserved]

* * * * *

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or on an additional label located in proximity to the DOT label and affixed as described in 40 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrast with the background of the label:

* * * * *

13. A new § 86.087–8 is added to read as follows:

§ 86.087–8 Emission standards for 1987 light-duty vehicles.

(a) (1) Exhaust emissions from 1987 and later model year light-duty vehicles shall not exceed:

(i) *Hydrocarbons.* 0.41 gram per vehicle mile (0.255 gram per vehicle kilometer).

(ii) *Carbon monoxide.* 3.4 grams per vehicle mile (2.11 grams per vehicle kilometer).

(iii) *Oxides of nitrogen.* 1.0 gram per vehicle mile (0.629 gram per vehicle kilometer).

(iv) *Particulate emissions* (diesels only). 0.20 gram per vehicle mile (0.124 gram per vehicle kilometer). A manufacturer may elect to include all or some of its diesel light-duty vehicle engine families in the particulate averaging program, provided that vehicles produced for sale in California or in designated high-altitude areas may be averaged only within each of these areas. If the manufacturer elects to average diesel light-duty vehicles and diesel light-duty trucks together in the particulate averaging program, its composite particulate standard applies to the combined set of diesel light-duty vehicles and diesel light-duty trucks included in the average and is calculated as defined in § 86.087–2.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures.

(b)(1) Fuel evaporative emissions from 1987 and later model year gasoline-fueled light-duty vehicles shall not exceed: *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1987 and later model year gasoline-fueled light-duty vehicle.

(d) [Reserved]

(e) [Reserved]

(f) [Reserved]

(g) Any 1985 and later model year light-duty vehicle that a manufacturer wishes to certify for sale shall meet the emission standards under both low- and high-altitude conditions as specified in section 86.082–2, except as provided in paragraphs (h) and (i) of this section. Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. Any emission control device used to meet emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(h) The manufacturer may exempt 1985 model year vehicles from compliance at high altitude with the

emission standards set forth in paragraphs (a) and (b) of this section if the vehicles are not intended for sale at high altitude and if the requirements of paragraphs (h) (1) and (2) of this section are met.

(1) A vehicle configuration shall only be considered eligible for exemption under paragraph (h) of this section if the requirements of either paragraph (h)(1)(i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle-speed ratio (N/V)] fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the equivalent vehicle test weight expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$, where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(C) The exemption line is then defined by the equation, $N/V = C(0.84\ D/W)^{-0.9}$, where the constant, C is the same as that found in paragraph (h)(1)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (h)(1)(i) of this section and by using the product line $N/V = C(hp/W)^{-0.9}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349, or any subsequent version of that test procedure. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (1)(ii) of this subsection to any manufacturer that has exempted vehicle configurations as set forth in paragraph (1)(i) of this subsection.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 miles per hour to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in making this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicle configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (h)(1)(iii)(A) of this section above.

(iv) In lieu of performing the test procedure of paragraphs (h)(1)(iii) (A) and (B) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (h)(1)(iii) of this section.

(2) A vehicle shall only be considered eligible for exemption under this paragraph if at least one configuration of its model type (and transmission configuration in the case of vehicles equipped with manual transmissions, excluding differences due to the presence of overdrive) is certified to meet emission standards under high-altitude conditions as specified in paragraphs (a) through (g) of this section. The Certificate of Conformity (the Certificate) covering any exempted configuration(s) will also apply to the corresponding non-exempt configuration(s) required under this subparagraph. As a condition to the exemption, any suspension, revocation, voiding, or withdrawal of the Certificate as it applies to a non-exempt configuration for any reason will result in a suspension of the Certificate as it applies to the corresponding exempted configuration(s) of that model type, unless there is at least one other corresponding non-exempt configuration of the same model type still covered by the Certificate. The suspension of the Certificate as it applies to the exempted configuration(s) will be terminated when any one of the following occurs:

(i) Another corresponding non-exempt configuration(s) receive(s) coverage under the Certificate; or

(ii) Suspension of the Certificate as it applies to the corresponding non-exempt configuration(s) is terminated; or

(iii) The Agency's action(s), with respect to suspension, revocation, voiding or withdrawal of the Certificate as it applies to the corresponding non-exempt configuration(s), is reversed.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (h) of this section will be considered a violation of Section 203(a)(1) of the Clean Air Act.

(i)(1) The manufacturers may exempt 1985 and later model year vehicles from compliance at low altitude with the emission standards set forth in paragraphs (a) and (b) of this section if the vehicles:

(A) Are not intended for sale at low altitude; and

(B) Are equippped with a unique, high-altitude axle ratio (rear-wheel drive vehicles) or a unique, high-altitude drivetrain (front-wheel drive vehicles) with a higher N/V ratio than other configurations of that model type which are certified in compliance with the emission standards of paragraphs (a) and (b) of this section under low-altitude conditions.

(2) The sale of a vehicle for principal use at low altitude that has been exempted as set forth in paragraph (h)(1) of this section will be considered a violation of Section 203(a)(1) of the Clean Air Act.

14. A new § 86.087–9 is added to read as follows:

§ 86.087–9 Emission standards for 1987 light-duty trucks.

(a)(1) The standards set forth in paragraphs (a) through (c) of this section shall apply to light-duty trucks sold for principal use at other than a designated high-altitude location. Exhaust

emissions from 1984 and later model year light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 0.8 gram per vehicle mile (0.5 gram per vehicle kilometer).

(ii)(A) *Carbon monoxide.* 10 grams per vehicle mile (6.2 grams per vehicle kilometer).

(B) *Gasoline-fueled vehicles.* 0.50 percent of exhaust gas flow at curb idle.

(iii) *Oxides of nitrogen.* 2.3 grams per vehicle mile (1.4 grams per vehicle kilometer).

(iv) *Particulate emissions* (diesels only). 0.26 gram per vehicle mile (0.162 gram per vehicle kilometer). A manufacturer may elect to include all or some of its diesel light-duty truck engine families in the particulate averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. If the manufacturer elects to average both diesel light-duty vehicles and diesel light-duty trucks together in the particulate averaging program, its composite particulate standard applies to the combined set of diesel light-duty vehicles and diesel light-duty trucks included in the average and is calculated as defined in § 86.087–2.

(2) The standards set forth in paragraph (a)(1)(i), (a)(1)(ii)(A), (a)(1)(iii), and (a)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (a)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(b)(1) Fuel evaporative emissions from 1987 and later model year gasoline-fueled light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1987 and later model year light-duty truck.

(d)(1) Model year 1987 and later light-duty trucks sold for principal use at a designated high-altitude location shall be capable of meeting the following exhaust emission standards when tested under high-altitude conditions:

(i) *Hydrocarbons.* 1.0 grams per vehicle mile (0.62 grams per vehicle kilometer);

(ii) *Carbon Monoxide.* 14 grams per vehicle mile (8.7 grams per vehicle kilometer);

(iii) *Oxides of Nitrogen.* 2.3 grams per vehicle mile (1.43 grams per vehicle kilometer).

(2) The standards set forth in paragraph (d)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures.

(e)(1) Fuel evaporative emissions from 1987 and later model year gasoline-fueled light-duty trucks sold for principal use at a designated high-altitude location shall not exceed 2.6 grams per test when tested under high-altitude conditions.

(2) The standard set forth in paragraph (e)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(f) No crankcase emissions shall be discharged into the ambient atmosphere from any 1987 and later model year light-duty trucks sold for principal use at a designated high-altitude location.

(g)(1) Any light-duty truck that a manufacturer wishes to certify for sale at low altitude must be capable of meeting high-altitude emission standards (specified in paragraphs (d) through (f) of this section). The manufacturer may specify vehicle adjustments or modifications to allow the vehicle to meet high-altitude standards but these adjustments or modifications may not alter the vehicle's basic engine, inertia weight class, transmission configuration, and axle ratio.

(i) A manufacturer may certify unique configurations to meet the high-altitude standards but is not required to certify these vehicle configurations to meet the low-altitude standards.

(ii) Any adjustments or modifications that are recommended to be performed on vehicles to satisfy the requirements of paragraph (g)(1) of this section:

(A) Shall be capable of being effectively performed by commercial repair facilities.

(B) Must be included in the manufacturer's application for certification.

(2) The manufacturer may exempt 1985 and later model year vehicles from compliance with the high-altitude emission standards set forth in paragraphs (d) and (e) of this section if the vehicles are not intended for sale at high altitude and if the following requirements are met. A vehicle configuration shall only be considered eligible for exemption if the requirements of either paragraph (g)(2)(i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle-speed ratio (N/V)) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the gross vehicle weight (GVW) expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$, where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(C) The exemption line is then defined by the equation, $N/V = C(0.84\ D/W)^{-0.9}$, where the constant, C is the same as that found in paragraph (g)(2)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (g)(2)(i) of this section and by using the product line $N/V = C(hp/W)^{-0.9}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349, or any subsequent version of that test procedure. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the

manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (g)(2)(ii) of this section to any manufacturer that has exempted vehicle configurations as set forth in paragraph (g)(2)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in making this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicle configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (g)(2)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraph (g)(2)(iii) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (g)(2)(iii) of this section.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (g)(2) of this section will be considered a violation of Section 203(a)(1) of the Clean Air Act.

15. A new § 86.087–29 is added to read as follows:

§ 86.087–29 Testing by the Administrator.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

(2) The Administrator may require that any one or more of the test vehicles be submitted to him, at such place or places as he may designate, for the purposes of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on a test vehicle, the results of that test shall, unless subsequently invalidated by the Administrator, comprise the official data for the vehicle at the prescribed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission standards (or the family particulate emission limit, as appropriate).

(ii) Whenever the Administrator does not conduct a test on a test vehicle at a test point, the manufacturer's test data will be accepted as the offical data for that point: *Provided,* That if the Administrator makes a determination based on testing under paragraph (a)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer, *and further provided,* That if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provisions of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission or further information. If the manufacturer conducts more than one test on a vehicle, as authorized under § 86.084–26 (a)(3)(i)(A) or (b)(4)(i)(A), the data from the last test in that series of tests on that vehicle, will constitute the official data.

(iii)(A)(*1*) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission data vehicle or engine which the Administrator has determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.085–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.086–22(e)(3)(i), prior to the performance of any tests to determine whether such vehicle or engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.087–23(c)(1). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on vehicle performance characteristics and surveillance information from similar in-use vehicles.

(*2*) For those vehicles or engine parameters which the Administrator has not determined to be subject to adjustment during certification and Selective Enforcement Audit testing in accordance with § 86.087–22(3)(1), the emission-data vehicle presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the vehicle label (see § 86.087–35(a)(1)(iii)(D) or (a)(2)(iii)(D)) as specified in the application for certification. If the Administrator determines that a vehicle is not within such tolerances, the vehicle will be adjusted, at the facility designated by the Administrator, prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the vehicle will be used as an emission-data vehicle.

(B) If the Administrator determines that the test data developed on an emission-data vehicle under paragraph (a)(3)(i) of this section would cause that vehicle to fail due to excessive 4,000-mile emissions or by application of the appropriate deterioration factor, then the following procedure shall be observed:

(*1*) The manufacturer may request a retest. Before the retest, those vehicle or engine parameters which the Administrator has not determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.085–22(e)(1) may be readjusted to manufacturer's specification, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be

subject to adjustment to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(i). Other maintenance or repairs may be performed in accordance with § 86.084–25. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(*2*) The vehicle will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data vehicle.

(iv) If sufficient durability data are not available at the time of any emission test conducted under paragraph (a)(2) of this section to enable the Administrator to determine whether an emission-data vehicle would fail, the manufacturer may request a retest in accordance with the provisions of paragraphs (a)(3)(iii) (A) and (B) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the vehicle from the test premises.

(b)(1) Paragraph (b) of this section applies to heavy-duty engines.

(2) The Administrator may require that any one or more of the test engines be submitted to him, at such place or places as he may designate, for the purpose of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on a test engine the results of that test, unless subsequently invalidated by the Administrator, shall comprise the official data for the engine at that prescribed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission standards.

(ii) Whenever the Administrator does not conduct a test on a test engine at a test point, the manufacturer's test data will be accepted as the official data for that test point: *Provided,* That if the Administrator makes a determination based on testing under paragraph (b)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer: *And further provided,* That if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provision of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission of further information.

(iii)(A)(*1*) The Administratior may adjust or cause to be adjusted any adjustable parameter of an emission-data engine which the Administrator has determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(i), prior to the performance of any tests to determine whether such engine conforms to applicable emmission standards, including tests performed by the manufacturer under § 86.087–23(c)(2). The Administrator, in making or specifying such adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine performance characteristics and surveillance information from similar in-use engines.

(*2*) For those engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1), the emission-data engine presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the engine label (see § 86.087–35(a)(3)(iii)) as specified in the application for certification. If the Administrator determines that an engine is not within such tolerances, the engine shall be adjusted at the facility designated by the Administrator prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the engine shall be used as an emission-data engine.

(B) If the Administrator determines that the test data developed under paragraph (b)(3)(iii)(A) of this section would cause the emission-data engine to fail due to excessive 125-hour emission values or by the application of the appropriate deterioration factor, then the following procedure shall be observed:

(*1*) The manufacturer may request a retest. Before the retest, those engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1) may be readjusted to the manufacturer's specifications, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment in accordance with § 86.085–22(e)(3)(i). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. Other maintenance or repairs may be performed in accordance with § 86.084–25. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(*2*) The engine will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data engine.

(iv) If sufficient durability data are not available at the time of any emission test conducted under paragraph (b)(2) of this section to enable the Administrator to determine whether an emission-data engine would fail, the manufacturer may request a retest in accordance with the provisions of paragraph (b)(3)(iii)(B) (1) and (2) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the engine from the test premises.

(c)(1) Paragraph (c) of this section applies to gasoline-fueled heavy-duty vehicles.

(2) The Administrator may require that any one or more of the evaporative emission family-system combinations included in the manufacturer's statement(s) of compliance be installed on an appropriate vehicle and such vehicle be submitted to him, at such place or places as he may designate, for the purpose of conducting emissions

tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on an evaporative emission family-system combination the results of that test, unless subsequently invalidated by the Administrator, shall comprise the official data for the evaporative emission family-system combination and the manufacturer's data, analyses, etc., shall not be used in determining compliance with emission standards.

(ii) Whenever the Administrator does not conduct a test on an evaporative emission family-system combination, the manufacturer's test data will be accepted as the offical data: *Provided,* That if the Administrator makes a determination based on testing under paragraph (c)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer: *And further provided,* That if the Administrator has reasonable basis to believe that any test data, analyses, or other information submitted by the manufacturer is not accurate or has been obtained in violation of any provision of this part, the administrator may refuse to accept those data, analyses, etc., as the official data pending retesting or submission of further information.

16. A new § 86.087–30 is added to read as follows:

§ 86.087–30 Certification.

(a)(1)(i) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.078–7(c), and any other pertinent data or information, the administrator determines that a test vehicle(s) (or test engine(s)) meet(s) the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicles(s) (or engine(s)) except in cases covered by paragraphs (a)(1)(ii) and (c) of this section.

(ii) *Gasoline-fueled heavy-duty vehicles.* If, after a review of the statement(s) of compliance submitted by the manufacturer under § 86.087–23(b)(4) and any other pertinent data or information, the Administrator determines that the requirements of the Act and this subpart have been met, he will issue one certificate of conformity per manufacturer with respect to the evaporative emission family(s) covered by such statement(s) except in cases covered by paragraph (c) of this section.

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary or appropriate to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part.

(3)(i) One such certificate will be issued for each engine family. For gasoline-fueled light-duty vehicles and light-duty trucks, one such certificate will be issued for each engine family-evaporative emission family combination.

(A) *Light-Duty Vehicles.* Each certificate will certify compliance with no more than one set of standards (or one family particulate emission limit, as appropriate).

(B) *Light-Duty Trucks.* Each certificate will certify compliance with no more than one set of standards (or one family particulate emission limit, as appropriate) except for low-altitude standards and high-altitude standards. The certificate shall state that it covers vehicles sold or delivered to an utlimate purchaser for principal use at a designated high-altitude location only if the vehicle conforms in all material respects to the design specifications that apply to those vehicles described in the application for certification at high altitude.

(ii) For gasoline-fueled heavy-duty vehicles, one such certificate will be issued for each manufacturer and will certify compliance for those vehicles previously identified in that manufacturer's statement(s) of compliance as required in § 86.087–23(b)(4) (i) and (ii).

(iii) For diesel light-duty vehicles and light-duty trucks included in the particulate avereging program, the manufacturer may at any time during production elect to change the level of any family particulate emission limit by demonstrating compliance with the new limit as described in §§ 86.087–28(a)(6) and 86.087–28(b)(7). New certificates issued under this paragraph will be applicable only for vehicles produced subsequent to the date of issuance.

(4)(i) The adjustment or modification or any light-duty truck in accordance with instructions provided by the manufacturer for the altitude where the vehicle is principally used will not be considered a violation of Section 203(a)(3) of the Clean Air Act.

(ii) A violation of Section 203(a)(1) of the Clean Air Act occurs when a manufacturer sells or delivers to an ultimate purchaser any light-duty vehicle or light-duty truck, subject to the regulations under the Act, under any of the conditions specified in the remainder of this paragraph.

(A) When a light-duty vehicle or light-duty truck is not configured to meet high-altitude requirements;

(*1*) At a designated high-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated high-altitude location; or

(*2*) At a location other than a designated high-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated high-altitude location.

(B) When a light-duty vehicle is not configured to meet low-altitude requirements, as provided in § 86.085–8(i):

(*1*) At a designated high-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated low-altitude location; or

(*2*) At a location other than a designated low-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated low-altitude location.

(iii) A manufacturer shall be deemed to have reason to believe that a light-duty vehicle that has been exempted from compliance with emission standards at high-altitude, or a light-duty truck which is not configured to meet high-altitude requirements, will not be sold to an ultimate purchaser for principal use at a designated high-altitude location if the manufacturer has informed its dealers and field representatives about the terms of these high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraph (a)(4)(iii) (A) or (B), and (C) of this section:

(A) Requiring dealers in designated high-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; requiring dealers in counties

contiguous to designated high-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; and for each sale or delivery of fleets of ten or more such vehicles in a high-altitude location or in counties contiguous to high-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold) sales, warranty, or other information pertaining to sales of vehicles by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configurartion of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of low-altitude vehicles by high-altitude dealers, or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser for principal use at a designated high-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a State or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser residing in a designated high-altitude location, or based on information obtained pursuant to paragraph (a)(4)(iii) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet high-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

(iv) A manufacturer shall be deemed to have reason to believe that a light-duty vehicle which has been exempted from compliance with emission standards at low-altitude, as provided in Section 86.084–8(i), will not be sold to an ultimate purchaser for principal use at a designated low-altitude location if the manufacturer has informed its dealers and field representatives about the terms of these high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraph (a)(4)(iv) (A) or (B), and (C) of this section:

(A) Requiring dealers in designated low-altitude locations to summit written statements to the manufacturer signed by the ultimate purchaser that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated low-altitude location; requiring dealers in counties contiguous to designated low-altitude locations to submit written statements to the manfacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated low-altitude location, that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated low-altitude location; and for each sale or delivery of fleets of ten or more such vehicles in a low-altitude location or in counties contiguous to low-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated low-altitude location, that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold), sales, warranty, or other information pertaining to sales of vehicles by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of high-altitude vehicles by low-altitude dealers or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the low-altitude requirements to an ultimate purchaser for principal use at a designated low-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a state or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the low-altitude requirements to an ultimate purchaser residing in a designated low-altitude location, or based on information obtained pursuant to paragraph (a)(4)(iv) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet low-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chaper.

(5)(i) For the purpose of paragraph (a) of this section, a "designated high-altitude location" is any county which has substantially all of its area located above 1,219 meters (4,000 feet) and:

(A) Requested an extension past the attainment date of December 31, 1982, for compliance with either the National Ambient Air Quality Standards for carbon monoxide or ozone, as indicated in Part 52 (Approval and Promulgation of Implementation Plans) of this title; or

(B) Is in the same state as a county designated as a high-altitude location according to paragraph (a)(5)(i)(A) of this section.

(ii) The designated high-altitude locations defined in paragraph (a)(5)(i) of this section are listed below:

State of Colorado

Adams	Chaffee
Alamosa	Cheyenne
Arapahoe	Clear Creek
Archuleta	Connejos
Boulder	Costilla

Crowley	Lincoln
Custer	Mesa
Delta	Mineral
Denver	Moffat
Dolores	Montezuma
Douglas	Montrose
Eagle	Morgan
Elbert	Otero
El Paso	Ouray
Fremont	Park
Garfield	Pitkin
Gilpin	Pueblo
Grand	Rio Blanco
Gunnison	Rio Grande
Hinsdale	Routt
Huerfano	Saguache
Jackson	San Juan
Jefferson	San Miguel
Kit Carson	Summit
Lake	Teller
La Plata	Washington
Larimer	Weld
Las Animas	

State of Nevada

Carson City	Lyon
Douglas	Mineral
Elko	Nye
Esmeralda	Pershing
Eureka	Storey
Humboldt	Washoe
Lander	White Pine
Lincoln	

State of New Mexico

Bernalillo	Otero
Catron	Rio Arriba
Colfax	Roosevelt
Curry	Sandoval
De Baca	San Juan
Grant	San Miguel
Guadalupe	Santa Fe
Harding	Sierra
Hidalgo	Socorro
Lincoln	Taos
Los Alamos	Torrance
Luna	Union
McKinley	Valencia
Mora	

State of Utah

Beaver	Morgan
Box Elder	Piute
Cache	Rich
Carbon	Salt Lake
Daggett	San Juan
Davis	Sanpete
Duchesne	Sevier
Emery	Summit
Garfield	Tooele
Grand	Uintah
Iron	Utah
Juab	Wasatch
Kane	Wayne
Millard	Weber

(iii) For the purpose of paragraph (a) of this section, a "designated low-altitude location" is any county which has substantially all of its area located below 1,219 meters (4,000 feet).

(iv) The designated low-altitude locations so defined include all counties in the United States which are not listed in either paragraph (a)(5)(ii) of this section or in the list below:

State of Arizona

Apache	Navajo
Cochise	Yavapai
Coconino	

State of Idaho

Bannock	Franklin
Bear Lake	Fremont
Bingham	Jefferson
Blaine	Lemhi
Bonneville	Madison
Butte	Minidoka
Camas	Oneida
Caribou	Power
Cassia	Tenton
Clark	Valley
Custer	

State of Montana

Beaverhead	Meagher
Deer Lodge	Park
Gallatin	Powell
Jefferson	Silver Bow
Judith Basin	Wheatland
Madison	

State of Nebraska

Banner	Kimball
Cheyenne	Sioux

State of Oregon

Harney	Lake
Klamath	

State of Texas

Jeff Davis	Parmer
Hudspeth	

State of Wyoming

Albany	Natrona
Campbell	Niobrara
Carbon	Park
Converse	Platte
Fremont	Sublette
Goshen	Sweetwater
Hot Springs	Teton
Johnson	Uinta
Laramie	Washakie
Lincoln	Weston

(6) Catalyst-equipped vehicles, otherwise covered by a certificate, which are driven outside the United States, Canada, and Mexico will be presumed to have been operated on leaded gasoline resulting in deactivation of the catalysts. If these vehicles are imported or offered for importation without retrofit of the catalyst, they will be considered not to be within the coverage of the certificate unless included in a catalyst control program operated by a manufacturer or a United States Government agency and approved by the Administrator.

(7) For incomplete light-duty trucks, a certificate covers only those new motor vehicle which, when completed by having a primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in §86.087–21(d).

(8) For heavy-duty engines, a certificate covers only those new motor vehicle engines installed in heavy-duty vehicles which conform to the minimum gross vehicle weight rating, curb weight, or frontal area limitations for heavy-duty vehicles described in § 86.082–2.

(9) For incomplete gasoline-fueled heavy-duty vehicles a certificate covers only those new motor vehicles which, when completed, conform to the nominal maximum fuel tank capacity limitations as described in the application for certification as required in § 86.087–21(e).

(10) For diesel light-duty vehicles and diesel light-duty truck families which participate in a particulate averaging program, the manufacturer's production weighted average of the particulate emission limits of all engine families in a participating class or classes shall not exceed the applicable diesel particulate standard, or composite standard, as appropriate, at the end of the model year, as determined in accordance with 40 CFR Part 86. The certificate shall be void *ab initio* for those vehicles causing any exceedance of the particulate standard.

(b)(1) The Administrator will determine whether a vehicle (or engine) covered by the application complies with applicable standards (or family particulate emission limit, as appropriate) by observing the following relationships:

(i) *Light-duty vehicles.* (A) The durability-data vehicle(s) selected under § 86.085–24(c)(1)(i) shall represent all vehicles of the same engine-system combination.

(B) The emission-data vehicle(s) selected under § 86.085–24(b)(1) (ii) through (iv) shall represent all vehicles of the same engine-system combination as applicable.

(C) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(vii) (A) and (B) shall represent all vehicles of the same evaporative control system within the evaporative family.

(ii) *Light-duty trucks.*

(A) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(ii), shall represent all vehicles of the same engine-system combination as applicable.

(B) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(vii) (A) and (B) shall represent all vehicles of the same evaporative control system within the evaporative family.

(C) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(v) shall represent all vehicles of the same engine-system combination as applicable.

(D) The emission-data vehicle(s) selected under § 86.085–24(b)(1)(viii) shall represent all vehicles of the same evaporative control system within the

evaporative emission family, as applicable.

(iii) *Heavy-duty engines.* (A) A gasoline-fueled emission-data test engine selected under § 86.085–24(b)(2)(iv) shall represent all engines in the same family of the same engine displacement-exhaust emission control system combination.

(B) A gasoline-fueled emission-data test engine selected under § 86.085–24(b)(2)(iii) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(C) A diesel emission-data test engine selected under § 86.085–24(b)(3)(ii) shall represent all engines in the same engine-system combination.

(D) A diesel emission-data test engine selected under § 86.085–24(b)(3)(iii) shall represent all engines of that emission control system at the rated fuel delivery of the test engine.

(iv) *Gasoline-fueled heavy-duty vehicles.* A statement of compliance submitted under § 86.087–23(b)(4)(i) or (ii) shall represent all vehicles in the same evaporative emission family-evaporative emission control system combination.

(2) The Administrator will proceed as in paragraph (a) of this section with respect to the vehicles (or engines) belonging to an engine family or engine family-evaporative emission family combination (as applicable), all of which comply with al applicable standards (or the family emission limit, as appropriate).

(3) If, after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to §86.087–29, data or information derived from any inspection carried out under § 86.078–7(c) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards (or family particulate emission limits, as appropriate), he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(4) For light-duty vehicles and light-duty trucks the manufacturer may, at its option, proceed with any of the following alternatives with respect to an emission-data vehicle determined not in compliance with all applicable standards (or the family particulate emission limit, as appropriate) for which it was tested:

(i) Request a hearing under § 86.078–6; or

(ii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed, from his application;

(A) If the failed vehicle was tested for compliance with exhaust emission standards (or the family particulate emission limit, as appropriate) only: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle to be tested for exhaust emission compliance only.

(B) If the failed vehicle was tested for compliance with both exhaust and evaporative emission standards: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle which will be tested for compliance with both exhaust and evaporative emission standards. If one vehicle cannot be selected in accordance with the selection criteria employed in selecting the failed vehicle, then two vehicles may be selected (i.e., one vehicle to satisfy the exhaust emission vehicle selection criteria and one vehicle to satisfy the evaporative emission vehicle selection criteria). The vehicle selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicle selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed from the application and add a vehicle configuration(s) (or evaporative vehicle configuration(s), as applicable) not previously listed. The Administrator may require, if applicable, that the failed vehicle be modified to the new engine code (or evaporative emission code, as applicable) and demonstrate by testing that it meets applicable standards (or the family particulate emission limit, as appropriate) for which it was originally tested. In addition, the Administrator may select, in accordance with the vehicle selection criteria given in § 86.084–24(b), a new emission-data vehicle or vehicles. The vehicles selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards (or the family particulate emission limit, as appropriate) only. The vehicles selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards (or the family particulate emission limit, as appropriate); or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component the failed vehicle meets applicable standards (or the family particulate emission limit, as appropriate) for which it was originally tested. The Administrator may require a new emission-data vehicle, of identical vehicle configuration (or evaporative vehicle configuration, as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards (or the family particulate emission limit, as appropriate) for which the failed vehicle was originally tested.

(5) For heavy-duty engines the manufacturer may, at his option, proceed with any of the following alternatives with respect to any engine family represented by a test engine(s) determined not in compliance with applicable standards:

(i) Request a hearing under § 86.078–6; or

(ii) Delete from the application for certification the engines represented by the failing test engine. (Engines so deleted may be included in a later request for certification under 86.079–32.) The Administrator may then select in place of each failing engine an alternate engine chosen in accordance with selection criteria employed in selecting the engine that failed; or

(iii) Modify the test engine and demonstrate by testing that it meets applicable standards. Another engine which is in all material respects the same as the first engine, as modified, may then be operated and tested in accordance with applicable test procedures.

(6) If the manufacturer does not request a hearing or present the required data under paragraphs (b) (4) or (5) of this section (as applicable), the Administrator will deny certification.

(c)(1) Notwithstanding the fact that any certification vehicle(s) (or

certification engine(s)) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of a certificate of conformity (or suspend or revoke any such certificate which has been issued) with respect to any such vehicle(s) (or engine(s)) if:

(i) The manufacturer submits false or incomplete information in his application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which he submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such vehicle (or engine);

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 86.078–7(c) to any facility or portion thereof which contains any of the following:

(A) The vehicle (or engine);

(B) Any components used or considered for use in its modification or buildup into a certification vehicle (or certification engine);

(C) Any production vehicle (or production engine) which is or will be claimed by the manufacturer to be covered by the certificate;

(D) Any step in the construction of a vehicle (or engine) described in paragraph (c)(iii)(C) of this section;

(E) Any records, documents, reports, or histories required by this part to be kept concerning any of the above;

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.078–7(c)) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

(2) The sanctions of withholding, denying, revoking, or suspending of a certificate may be imposed for the reasons in paragraphs (c)(1)(i), (ii), (iii), or (iv) of this section only when the infraction is substantial.

(3) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void ab initio.

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under pargraph (c)(1) (iii) or (iv) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.078–7(c) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding denial, revocation, or suspension of certification under either paragraph (c)(1)(iii) or (iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(5) Any revocation or suspension of certification under paragraph (c)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.078–6 hereof.

(ii) Extend no further than to forbid the introduction into commerce of vehicles (or engines) previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct as makes the certification invalid ab initio.

(6) The manufacturer may request in the form and manner specified in paragraph (b)(3) of this section that any determination made by the Administrator under paragraph (c)(1) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 86.078–6. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he will grant the request with respect to such issue.

(d)(1) *For light-duty vehicles.* Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.603; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.603; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.609; or

(iv) The manufacturer renders inaccurate any test data which he submits pursuant to § 86.609; or

(v) Any EPA Enforcement Officer is denied access to a facility on the terms specified in § 86.606; or

(vi) Any EPA Enforcement Officer is denied the opportunity on the terms specified in § 86.606, to:

(A) Monitor vehicle selection pursuant to § 86.607, or

(B) Select vehicles for testing pursuant to § 86.607, or

(C) Monitor vehicle testing performed to satisfy any of the requirements of this part; or

(vii) Any EPA Enforcement Officer is denied "reasonable assistance" as defined in § 86.606 in examining any of the items listed in that section; or

(viii) The manufacturer refuses to comply with the requirements of §§ 86.604(a), 86.605, and 86.607, 86.608, 86.610, or 86.611.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraphs (d)(1)(i), (ii), or (viii) of this section where such refusal is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but not be limited to, any uncontrollable factors which results in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanctions of suspending a certificate may be imposed for the reasons in paragraphs (d)(1)(iii), (iv), (v), (vi), or (vii) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate or conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a vehicle is proposed to be suspended under paragraph (d)(1)(v), (vi), or (vii) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.606 in fact occurred, the manufacturer, if he wishes to contend that even though the violation occurred, the vehicle configuration or engine family in question was not involved in the violation to the degree that would warrant suspension of certification

under either paragraph (d)(1)(v), (vi), or (vii) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (d)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.613 hereof, and

(ii) Not apply to vehicles no longer in the hands of the manufacurer.

(e) *For light-duty trucks and heavy-duty engines.* (1) Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle or engine configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.1003; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.1003; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.1009; or

(iv) The manufacturer renders inaccurate any test data submitted pursuant to § 86.1009; or

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.1006 of this part and in a warrant or court order presented to the manufacturer or the party in charge of a facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access as authorized in § 86.1006 of this part because a manufacturer has located a facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with the requirements of §§ 86.1004(a), 86.1005, 86.1007, 86.1008, 86.1010, 86.1011, or 86.1013.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraphs (e)(1) (i), (ii), or (vii) of this section where such refusal or denial is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturers to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanction of suspending a certificate may be imposed for the reasons outlined in paragraph (e)(1) (iii), (iv), or (v) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a light-duty truck or heavy-duty engine is proposed to be suspended under paragraph (e)(1)(v) of this section and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.1006 in fact occurred, if the manufacturer wishes to contend that, although the violation occurred, the vehicle or engine configuration or engine family in question was not involved in the violation to a degree that would warrant suspension of certification under paragraph (e)(1)(v) of this section, he shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (e)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014, and

(ii) Not apply to vehicles or engines no longer in the hands of the manufacturer.

(7) Any voiding of a certificate of conformity under paragraph (e)(4) of this section shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014.

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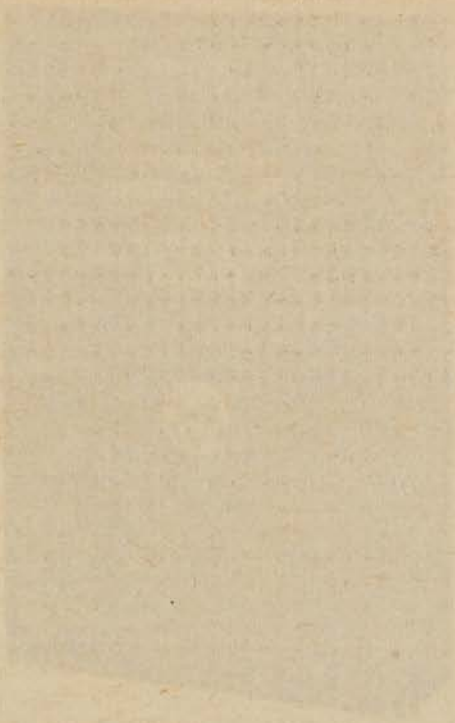

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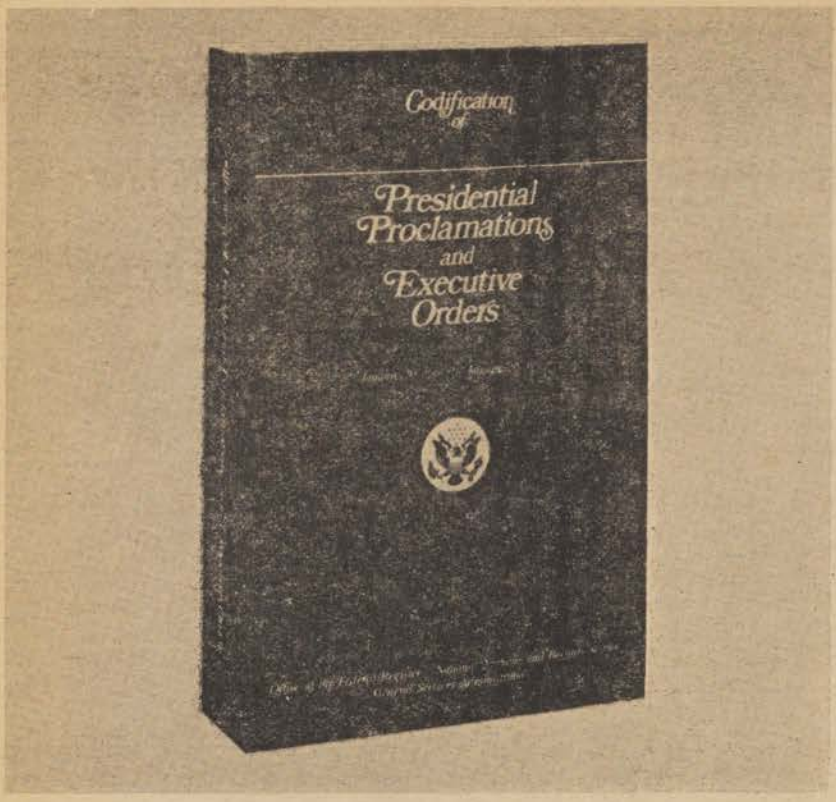

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