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Federal Register

Wednesday
March 14, 1984

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Rules and Regulations

Federal Register
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Wednesday, March 14, 1984

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Northeastern International Airways, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of carriers which have entered into agreements with the Service for the preinspection of their passengers and crews at locations outside the United States by adding the name of Northeastern International Airways, Inc.

EFFECTIVE DATE: February 27, 1984.

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

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Northeastern International Airways, on February 27, 1984 to provide for the preinspection of its passengers and crews as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crews upon arrival at a U.S. port of entry and is a convenience to the traveling public. Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds an air carrier's name to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Air carriers, Airlines, Aliens, Government contracts, Inspections.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.4 [Amended]

Section 238.4 is amended by adding the name "Northeastern International Airways, Inc." under "At Freeport" and "At Nassau".

(Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228))

Dated: March 7, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-6803 Filed 3-13-84; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Docket No. R-0500]

Regulation T; Credit By Brokers and Dealers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Regulation T (12 CFR Part 220, Credit By Brokers and Dealers) is hereby amended to permit an options clearing agency to accept margin securities to meet its deposit requirements. This action is being taken in order to facilitate regulatory coordination with the recent SEC approval of an Options Clearing Corporation program whereby the class of securities eligible for the options clearing agency's deposit requirements were expanded (SEC Release 34–20558, January 13, 1984).

EFFECTIVE DATE: April 13, 1984.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Robert Lord, Attorney, Division of Banking Supervision and Regulation, (202) 452–2781.

SUPPLEMENTARY INFORMATION: The Options Clearing Corporation ("OCC") has a program ("valued securities program") in which it accepts certain margin securities from its clearing members in satisfaction of their OCC deposit requirements. OCC's activities are subject to Regulation T, which currently permits the deposit only of any underlying securities for classes of option contracts outstanding at the time of the deposit. OCC recently filed a proposed rule change (File No. SR–OCC–83–17) with the SEC to expand its valued securities program by eliminating the requirement that only stocks underlying listed options can be deposited with OCC, and permitting the deposit of any common stocks which: (i) Are traded on a national securities exchange, or are NASDAQ securities that are designated as National Market System securities pursuant to SEC Rule 11Aa2–1 (17 CFR 240.11Aa2–1); (ii) have last sale reports disseminated on the consolidated tape; and (iii) have a market value greater than $10 per share; provided that stocks which are suspended from trading or which are subject to special requirements under exchange margin rules may not be deposited with OCC. This rule change was approved by the SEC on January 13, 1984 (SEC Release 34–20558). The Board believes the rule change is appropriate and, therefore, is adopting an amendment to Regulation T that, in conjunction with the SEC rule approval, will permit the expanded deposit program to take place without unnecessary delay. The amendment to Regulation T would permit the deposit of any margin security which also meets SEC-approved criteria for clearing deposits.

Final Regulatory Flexibility Analysis

The change made pursuant to this action reduces specific administrative and regulatory burdens. The Board certifies for purposes of 5 U.S.C. 605(b), therefore, that this amendment to Regulation T will not have any adverse impact on a substantial number of small businesses.

List of Subjects in 12 CFR Part 220

Banks, Banking, Borrowers, Brokers, Credit, Federal Reserve System, Margin, Margin requirements.

Accordingly, pursuant to sections 7, 8, and 23 of the Securities Exchange of Act 1934, as amended (15 U.S.C. 78g, 78h, and 78w) the Board amends Regulation T (12 CFR 220) by removing, in § 220.14(b), paragraphs (3) and (4) and adding a new paragraph (3), which would read as follows:

PART 220—CREDIT BY BROKERS AND DEALERS

§ 220.14 Clearance of securities.

* * * * *

(b) * * *

(3) The deposit consists of any margin security and complies with the rules of the clearing agency which have been approved by the SEC.

By order of the Board of Governors of the Federal Reserve System, March 7, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-6775 Filed 3-13-84; 8:45 am]

BILLING CODE 6210-01-M

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 407

Regulations Governing Public Observation of Eximbank Meetings

AGENCY: Export-Import Bank of the United States (Eximbank).

ACTION: Final rule.

SUMMARY: Pursuant to the "Government is the Sunshine Act, 5 U.S.C. 552b, notice is hereby given that the Office of the Secretary of Eximbank has moved from Room 1012 to Room 1207.

EFFECTIVE DATE: October 18, 1983.

FOR FURTHER INFORMATION CONTACT: Warren W. Glick, General Counsel, (202) 566-8334.

SUPPLEMENTARY INFORMATION: This rule amends the following:

12 CFR 407.3(a) is amended by removing "(Room 1012)," and adding in lieu thereof "(Room 1207),".

List of Subjects in 12 CFR Part 407

Sunshine Act.

Warren W. Glick,

General Counsel, Export-Import Bank of the United States.

[FR Doc. 84-6507 Filed 3-13-84; 8:45 am]

BILLING CODE 6690-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AGL-22]

Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the Delaware, Ohio, transition area to revise/reduce the airspace currently designated for the transition area. A recent review of the currently published description revealed a need to modify the area involved. The modified description is presented in the text 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.

EFFECTIVE DATE: May 10, 1984.

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 action redescribes the Delaware, Ohio, transition area to accommodate existing airspace requirements. A review of designated airspace in the Delaware, Ohio, area prompted a rewrite to better and more accurately describe the airspace associated with the transition area. The new description returns a portion of designated airspace within a 2.5 mile radius of Delaware Municipal Airport to a noncontrolled status. The new description also designates an additional amount of airspace approximately 1 mile x 6 miles located northwest of the Delaware Municipal Airport.

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.

History

On Page 57312 of the **Federal Register** dated December 29, 1983, the FAA proposed to amend § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) so as to alter the transition area airspace near Delaware, Ohio. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

Except for editorial changes, this amendment is the same as that proposed in the notice. 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.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT, May 10, 1984, as follows:

Delaware, OH

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of Delaware Municipal Airport, Delaware, Ohio (latitude 40°16'46" N., longtitude 83°06'22" W.); and within 3 miles either side of the 290° bearing from the Delaware RBN (latitude 40°16'41" N., longtitude 83°06'33" W.) extending from the RBN to 9.5 miles northwest of the RBN.

(Secs. 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))

Notes.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 anitcipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Ill., on February 28, 1984.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 84-6747 Filed 3-13-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

Animal Drugs, Feeds, and Related Products; Cephalexin, Cephaloridine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of three new animal drug applications (NADA's) held by Elanco Products Co. providing for use of Keflodin™ (cephaloridine) Injectable, Keflex® (cephalexin monohydrate) Capsules, and Kleflex® (cephalexin monohydrate) for Oral Suspension for treating bacterial infections in dogs and cats. In a notice published elsewhere in this issue of the **Federal Register**, approval of these NADA's is being withdrawn.

EFFECTIVE DATE: March 26, 1984.

FOR FURTHER INFORMATION CONTACT: Leonard D. Krinsky, Bureau of Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, approval of Elanco's NADA 46–417 for Keflodin™ Injectable, NADA 101–146 for Keflex® Capsules, and NADA 101–147 for Keflex® for Oral Suspension is withdrawn. This document removes those portions of the regulations that reflect approval of these NADA's.

List of Subjects

21 CFR Part 520

Animal drugs, Oral use.

21 CFR Part 522

Animal drugs, Injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), Parts 520 and 522 are amended as follows:

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

§§ 520.316, 520.316a, and 520.316b [Removed]

1. In Part 520 by removing §§ 520.316 *Cephalexin oral dosage forms*, 520.316a *Cephalexin capsules*, and 520.316b *Cephalexin for oral suspension*.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 522.340 [Removed]

2. In Part 522 by removing § 522.340 *Cephaloridine injection*.

Effective date: March 26, 1984.

(Sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))).

Dated: March 6, 1984.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 84–6786 Filed 3–13–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 351

[DOD Directive 5129.1]

Under Secretary of Defense for Research and Engineering; Delegation of Authority

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The Secretary of Defense has assigned responsibilities and functions to the Under Secretary of Defense for Research and Engineering (USDR&E) and has delegated specific authorities. This rule serves as the DOD instrument that authorizes the USDR&E to carry out his charter.

EFFECTIVE DATE: This rule was approved and signed by the Secretary of Defense on January 25, 1984, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Furtner, Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense (Administration), Office of the Assistant Secretary of Defense (Comptroller), Washington, D.C. 20301, telephone 202–695–4281.

SUPPLEMENTARY INFORMATION: In FR Doc. 79–2545, appearing in the **Federal Register** on January 24, 1979 (44 FR 4946), the Office of the Secretary of Defense (OSD) published this Part. OSD has revised this Part and it is being submitted in compliance with the requirements of 552(a)(1) of Title 5, United States Code, and Recommendation 76–2 of the Administrative Conference of the United States.

Lists of Subjects in 32 CFR Part 351

Organization and functions (government agencies), Research, Engineering.

Accordingly, 32 CFR Chapter I, is amended by revising Part 351, reading as follows:

PART 351—UNDER SECRETARY OF DEFENSE FOR RESEARCH AND ENGINEERING

Sec.

Authority: 10 U.S.C. Chapter 4.

§ 351.1 Purpose.

This part is reissued and, pursuant to the authority vested in the Secretary of Defense under title 10, United States Code, assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the Under Secretary of Defense for Research and Engineering (USDR&E).

§ 351.2 Definition.

DOD Components. The Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; and the Defense Agencies.

§ 351.3 Responsibilities.

The *Under Secretary of Defense for Research and Engineering* is the Principal Staff Assistant and advisor to the Secretary of Defense for DOD scientific and technical matters, basic and applied research, environmental services, and the development and acquisition of weapon systems. The USDR&E is also the Defense Acquisition Executive with responsibilities as prescribed in DOD Directive 5000.1. For each assigned area, the USDR&E shall:

(a) Develop policies, conduct analyses, provide advice, make recommendations, and issue guidance on DOD plans and programs.

(b) Develop systems and standards for the administration and management of approved DOD plans and programs.

(c) Develop plans, programs, actions, and taskings to ensure adherence to DOD policies and national security objectives and to ensure that programs and systems are designed to accommodate cross-Service operational requirements and promote modernization consistent with the readiness, sustainability, and efficiency of the Armed Forces of the United States.

(d) Review and evaluate plans and programs to ensure adherence to approved policies, standards, and resource planning guidance.

(e) Inform appropriate organizations and personnel of new and significant scientific trends or initiatives.

(f) In conjunction with the Assistant Secretary of Defense (Comptroller), review proposed resource programs, formulate budget estimates, recommend resource allocations, and monitor the implementation of approved programs.

(g) Fulfill planning, programing, and budgeting activities related to USDR&E responsibilities, including force modernization, program unification and standardization, and cross-program efficiency.

(h) Review and evaluate recommendations on requirements and priorities.

(i) Promote coordination, cooperation, and mutual understanding of all matters related to acquisition.

(j) Serve on boards, committees, and other groups pertaining to assigned functional areas and represent the Secretary of Defense on USDR&E matters outside the Department of Defense.

(k) Perform other duties as the Secretary of Defense may prescribe.

§ 351.4 Functions.

The USDR&E shall carry out the responsibilities described in § 351.3, above, for the following functional areas:

(a) Scientific and technical information.

(b) Basic and applied research.

(c) Acquisition management.

(d) Force modernization.

(e) Production and manufacturing.

(f) Industrial base resources and productivity.

(g) Defense standardization program.

(h) Design and engineering, including life-cycle considerations.

(i) Development and acquisition of weapon systems, including procurement policy and production planning.

(j) Development test and evaluation, as defined in Part 204 of this title, and review and approval of the Test and Evaluation Master Plan.

(k) Environmental services.

(l) Assignment and reassignment of research and engineering and acquisition responsibility for systems, activities, and programs.

(m) Codevelopment, coproduction, and research interchange with friendly and allied nations, in coordination with the Under Secretary of Defense for Policy.

(n) Contract placement and administration for research, development, and weapon systems, acquisition programs.

§ 351.5 Relationships.

(a) In the performance of assigned functions, the USDR&E shall:

(1) Exercise direction, authority, and control over:

(i) The Assistant Secretary of Defense (Development and Support), who also shall serve as the Principal Deputy Under Secretary of Defense for Research and Engineering.

(ii) The Assistant Secretary of Defense (Research and Technology), who also shall serve as the Director, Defense Advanced Research Projects Agency.

(iii) The Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) (ASD(C^3I)), who also shall serve as the Chairman, C^3 Review Council.

(iv) The Assistant to the Secretary of Defense (Atomic Energy).

(v) The Defense Advanced Research Projects Agency, the Defense Mapping Agency, the Defense Nuclear Agency, the Defense Communications Agency, and the Defense Systems Management College.

(2) Exercise staff supervision on resource management matters over:

(i) The Defense Communications Agency, the Defense Intelligence Agency, the National Security Agency/Central Security Service, and the Defense Support Project Office.

(ii) Air Force and Navy special intelligence programs.

(iii) Defense communications and intelligence functions retained by the Military Departments.

(3) Coordinate and exchange information with other OSD officials and heads of DOD Components having collateral or related functions.

(4) Use existing facilities and services of the Department of Defense and other federal agencies, whenever practicable, to achieve an appropriate balance among modernization, readiness, sustainability, efficiency, and economy.

(b) Other OSD officials and heads of DOD Components shall coordinate with the USDR&E all matters concerning the functions cited in § 351.4, above.

§ 351.6 Authorities.

The USDR&E is hereby delegated authority to:

(a) Issue DOD Instructions, DOD publications, and one-time directive-type memoranda, consistent with DOD 5025.1–M, that implement policies approved by the Secretary of Defense in the functions assigned to the USDR&E. Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands shall be issued through the JCS.

(b) Obtain reports, information, advice, and assistance, consistent with DOD Directive 5000.19, as necessary in carrying out assigned functions.

(c) Communicate directly with the heads of DOD Components. Communications to Commanders of the Unified and Specified Commands shall be coordinated through the JCS.

(d) Establish arrangements for DOD participation in nondefense governmental programs for which the USDR&E is assigned primary DOD cognizance.

(e) Approve, modify, or disapprove research and development, environmental services, and acquisition programs and projects of the Military Departments and other DOD Components in assigned fields.

(f) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

March 9, 1984.

[FR Doc. 84–6798 Filed 3–13–84; 8:45 am]

BILLING CODE 3810–01–M

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32 CFR Part 351b

[DoD Directive 5129.3]

Assistant Secretary of Defense (Research and Technology); Delegation of Authority

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The Secretary of Defense has assigned responsibilities and functions to the Assistant Secretary of Defense (Research and Technology) (ASD(R&T)), and has delegated specific authorities. This rule [DoD Directive 5129.3] serves as the DoD instrument that authorizes the ASD(R&T) to carry out his charter.

EFFECTIVE DATE: This rule was approved and signed by the Secretary of Defense on January 25, 1984, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Furtner, Directorate for Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense (Administration), Washington, D.C. 20301, telephone 202–695–4281.

SUPPLEMENTARY INFORMATION: This information is submitted in compliance with the requirements of section 551(a)(1) of Title 5, U.S. Code, and 1 CFR 305.76.

List of Subjects in 32 CFR Part 351b

Organization and functions (government agencies), Research, and Technology.

Accordingly, 32 CFR, Chapter 1, is amended by adding a new Part 351b, reading as follows:

PART 351b—ASSISTANT SECRETARY OF DEFENSE (RESEARCH AND TECHNOLOGY)

Sec.

Authority: 10 U.S.C. 136.

§ 351b.1. Purpose.

(a) Pursuant to section 136 of Title 10, United States Code, this Part designates one of the positions of Assistant Secretary of Defense as the Assistant Secretary of Defense (Research and Technology) (ASD(R&T)). Under Part 351, this position is under the direction, authority, and control of the Under Secretary of Defense for Research and Engineering (USDR&E).

(b) Pursuant to the authority vested in the Secretary of Defense under sections 133 and 136 of Title 10, United States Code, this Part assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(R&T).

§ 351b.2. Definition.

DoD Components. The Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; and the Defense Agencies.

§ 351b.3. Responsibilities.

The *Assistant Secretary of Defense (Research and Technology)* is the Principal Staff Assistant and advisor to the Secretary of Defense and the USDR&E for DoD oversight of the maintenance of a superior U.S. technology base and for the improvement of the DoD approach to selecting the best technology programs to achieve and maintain a qualitative lead in deployed systems. The ASD(R&T) also serves as the Director of the Defense Advance Research Projects Agency (DARPA) and as the principal technical advisor to the USDR&E on space-related matters. For each assigned area, the ASD(R&T) shall:

(a) Develop policies, conduct analyses, provide advice, make recommendations, and issue guidance on DoD plans, programs, and fiscal activities.

(b) Develop systems and standards for the administration and management of approved DoD plans and programs.

(c) Provide a management focus for space-related activities at the ASD level to ensure that activities of all Office of the USDR&E components are coordinated properly.

(d) Develop the broad architecture of the military space program.

(e) Serve as the USDR&E principal for Senior Interagency Group (Space) activities and as the USDR&E alternate on other external bodies concerning space matters.

(f) Develop programs, actions, and taskings to ensure adherence to DoD policies and national security objectives related to maintenance of a superior technology base in relation to the Soviet Union and other potential adversaries.

(g) Improve the DoD approach to selecting the best technology programs to help achieve and maintain a qualitative lead in deployed systems.

(h) Review and evaluate programs for implementing approved policies and standards.

(i) Improve the integration DARPA programs into research and development programs and plans of the Armed Forces of the United States.

(j) Participate in planning, programing, and budgeting activities related to ASD(R&T) responsibilities.

(k) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other federal agencies and the civilian community.

(l) Serve on boards, committees, and other groups pertaining to ASD(R&T) functional areas.

(m) Perform such other duties as the Secretary of Defense or the USDR&E may prescribe.

§ 351b.4. Functions.

The ASD(R&T) shall carry out the responsibilities described in § 351b.3., above, for the following functional areas:

(a) Basic research.

(b) Exploratory development.

(c) Advanced engineering demonstrations.

(d) Space research, space systems, and related activities.

(e) Directed energy weapons.

§ 351b.5. Relationship.

(a) In the performance of assigned duties, the ASD(R&T) shall:

(1) Coordinate and exchange information with other OSB officials and heads of DoD Components having collateral or related functions.

(2) Use existing facilities and services of the Department of Defense and other federal agencies, whenever practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(R&T) on all matters related to the functions cited in § 351b.4., above.

§ 351b.6. Authorities.

The ASD(R&T) is hereby delegated authority to:

(a) Issue one-time directive-type memoranda, consistent with DoD 5025.1–M, that implement policies approved by the Secretary of Defense and the USDR&E, in functions assigned to the ASD(R&T). Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees, through the USDR&E. Instructions to Unified and Sepcified Commands shall be issued through the JCS over the signature of the USDR&E.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 5000.19, as the ASD(R&T) deems necessary.

(c) Communicate directly with heads of DoD Components. Communications to the Commanders of the Unified and Specified Commands shall be coordinated through the JCS.

(d) Established arrangements for DoD participation in nondefense governmental programs for which the ASD(R&T) has been assigned primary cognizance.

(e) Communicate with other government agenices, representatives of the legislative branch, and members of

the public, as appropriate, in carrying out assigned functions.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

March 9, 1984.

[FR Doc. 84-6794 Filed 3-13-84; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 351c

[DoD Directive 5129.4]

Assistant Secretary of Defense (Development and Support); Delegation of Authority

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The Secretary of Defense has assigned responsibilities and functions to the Assistant Secretary of Defense (Development and Support) (ASD(D&S)), and has delegated specific authorities. This rule [DoD Directive 5129.4] serves as the DoD instrument that authorizes the ASD(D&S) to carry out his charter.

EFFECTIVE DATE: This rule was approved and signed by the Secretary of Defense on January 25, 1984, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Furtner, Directorate for Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense (Administration), Washington, D.C. 20301, telephone 202-695-4281.

SUPPLEMENTARY INFORMATION: This information is submitted in compliance with the requirements of section 551(a)(1) of Title 5, U.S. Code, and 1 CFR 305.76.

List of Subjects in 32 CFR Part 351c

Organization and functions (government agencies), Development, and Support.

Accordingly, 32 CFR, Chapter 1, is amended by adding a new Part 351c, reading as follows:

PART 351c—ASSISTANT SECRETARY OF DEFENSE (DEVELOPMENT AND SUPPORT)

Sec.

Authority: 10 U.S.C. 136.

§ 351c.1 Purpose.

(a) Pursuant to section 136 of title 10, United States Code, this Part designates one of the positions of Assistant Secretary of Defense as the Assistant Secretary of Defense (Development and Support) (ASD(D&S)). Under reference (b), this position is under the direction, authority, and control of the Under Secretary of Defense for Research and Engineering (USDR&E).

(b) Pursuant to the authority vested in the Secretary of Defense under sections 133 and 136 of title 10, United States Code, this Part assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(D&S).

§ 351c.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; and the Defense Agencies.

§ 351c.3 Responsibilities.

The *Assistant Secretary of Defense (Development and Support)* is the Principal Staff Assistant and advisor to the Secretary of Defense and the USDR&E for DoD oversight of the development and support of military capabilities represented by deployed systems and equipment with the Armed Forces of the United States. The ASD(D&S) also serves as the Principal Deputy Under Secretary of Defense for Research and Engineering (PDUSDR&E). For each assigned area, the ASD(D&S) shall:

(a) Develop policies, conduct analyses, provide advice, make recommendations, and issue guidance on DoD plans, programs, and fiscal activities, with priority on acquisition objectives (DoD Directive 5000.1, "Major System Acquisitions," March 29, 1982), to meet overall DoD needs.

(b) Develop systems and standards for the administration and management of approved DoD plans and programs.

(c) Develop plans, programs, actions, and taskings to ensure adherence to DoD policies and national security objectives.

(d) Review the quality and timeliness of products and their effectiveness for users.

(e) In conjunction with the Assistant Secretary of Defense (Comptroller), review proposed programs and the resources required to implement them, formulate budget estimates, and recommend resource allocations.

(f) Monitor the implementation of approved programs.

(g) Participate in planning, programing, and budgeting activities related to ASD(D&S) responsibilities.

(h) Serve on boards, committees, and other groups pertaining to assigned functional areas.

(i) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other federal agencies and the civilian community.

(j) Perform such other duties as the Secretary of Defense or the USDR&E may prescribe.

(k) As the PDUSDR&E, exercise, subject to the direction of the USDR&E, the latter's direction, authority, and control over all research, development, and acquisition matters related to USDR&E responsibilities, aiding with daily actions and associated activities.

§ 351c.4 Functions.

The ASD(D&S) shall carry out the responsibilities described in § 351c.3, above, in the following areas:

(a) Scientific and technical information.

(b) Applied research.

(c) Design and engineering, including life-cycle considerations.

(d) Development and acquisition of weapon systems, including procurement planning and production planning.

(e) Development test and evaluation, as defined in Part 204 of this title, and review and approval of the Test and Evaluation Master Plan.

(f) Assignment and reassignment of research, engineering, and acquisition responsibility for systems, activities, and programs.

(g) Coproduction and research interchange with friendly and allied nations, in conjunction with the Under Secretary of Defense for Policy.

(h) Contract placement and administration for research, development, and weapon systems acquisition programs.

§ 351c.5 Relationships.

(a) In the performance of assigned duties, the ASD(D&S) shall:

(1) Coordinate and exchange information with other OSD officials and heads of DoD Components exercising collateral or related functions.

(2) Use existing facilities and services of the Department of Defense or other federal agencies, whenever practicable, to avoid duplication and to achieve maximum readiness, sustainability, efficiency, and economy.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(D&S) on all matters related to the functions cited in § 351c.4, above.

§ 351c.6 Authorities.

The ASD(D&S) is hereby delegated authority to:

(a) Issue one-time directive-type memoranda, consistent with DoD 5025.1–M, "DoD Directives System Procedures," April 1981, that implement policies approved by the Secretary of Defense and the USDR&E in the functions assigned to the ASD(D&S). Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees, through the USDR&E. Instructions to Unified and Specified Commands shall be issued through the JCS over the signature of the USDR&E.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976, as necessary in carrying out assigned functions.

(c) Communicate directly with the heads of the DoD Components. Communications to Commanders of the Unified and Specified Commands shall be coordinated through the JCS.

(d) Establish arrangements for DoD participation in nondefense governmental programs for which the ASD(D&S) has been assigned primary DoD cognizance.

(e) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

March 9, 1984.

[FR Doc. 84–6795 Filed 3–13–84; 8:45 am]

BILLING CODE 3810–01–M

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32 CFR Part 352

[DoD Directive 5124.1]

Assistant Secretary of Defense (Manpower, Installations, and Logistics)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Secretary of Defense has assigned responsibilities and functions to the Assistant Secretary of Defense (Manpower, Installations, and Logistics) (ASD(MI&L)), and has delegated specific authorities. This rule [DoD Directive 5124.1] serves as the DoD instrument that authorizes the ASD(MI&L) to carry out his charter.

EFFECTIVE DATE: The Secretary of Defense signed this rule on January 12, 1984, and it is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Becker, directorate for Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense (Administration), Washington, D.C. 20301, telephone 202–697–0709.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–14374, appearing in the **Federal Register** on May 20, 1977 (42 FR 25856), the Office of the Secretary of Defense (OSD) published Part 352; in FR Doc. 82–21855, appearing in the **Federal Register** on August 11, 1982, the first revision was published. OSD has revised this Part and it is being submitted in compliance with the requirements of section 552(a)(1) of title 5, U.S. Code, and 1 CFR 305.76.

List of Subjects in 32 CFR Part 352

Organization and functions (government agencies), Manpower, Installations, and Logistics.

Accordingly, 32 CFR, Chapter 1, is amended by revising Part 352, reading as follows:

PART 352—ASSISTANT SECRETARY OF DEFENSE (MANPOWER, INSTALLATIONS AND LOGISTICS)

Sec.

Authority: 10 U.S.C., Section 136.

§ 352.1 Purpose.

This Part

(a) Is reissued and designates, pursuant to section 136(b)(3) of title 10, United States Code, one of the positions of Assistant Secretary of Defense as the Assistant Secretary of Defense (Manpower, Installations, and Logistics) (ASD(MI&L)).

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(MI&L) pursuant to the authority vested in the Secretary of Defense under title 10, United States Code.

§ 352.2 Definitions.

(a) *DoD Components.* The Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; and the Defense Agencies.

(b) *Reserve Components.* Refers collectively to the Army National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, and Coast Guard Reserve. The term "National Guard and Reserve" is synonymous with the term "reserve components."

(c) *Total Force.* As used in this Directive, refers to the totality of organizations, units, and personnel (military and civilian), in both active and reserve components of the Department of Defense.

§ 352.3 Responsibilities.

The *Assistant Secretary of Defense (Manpower, Installations, and Logistics),* as the Principal Staff Assistant and advisor to the Secretary of Defense for matters concerning military and civilian manpower and personnel, equal opportunity, weapons support, logistics, readiness, energy, installations management, conservation of resources, and economic adjustment, shall:

(a) Develop policies, conduct analyses, provide advice, make recommendations, and issue guidance on DoD plans and programs.

(b) Develop systems and standards for the administration and management of approved DoD plans and programs.

(c) Promulgate plans, programs, actions, and taskings to ensure adherence to DoD policies and national security objectives, including military mobilization preparedness objectives and Total Force planning objectives, and to ensure that programs and systems are designed to accommodate operational requirements and promote the readiness, sustainability, and efficiency of the Total Force.

(d) Review and evaluate plans and programs to ensure adherence to approved policies and standards.

(e) Participate in planning, programing, and budgeting activities related to ASD(MI&L) functions.

(f) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other federal agencies, state and local governments, and the civilian community.

(g) Serve on boards, committees, and other groups pertaining to assigned functional areas and represent the Secretary of Defense on manpower, personnel, weapons support, installations, energy, and logistics matters outside the Department of Defense.

§ 352.4 Functions.

The ASD(MI&L) shall carry out the responsibilities described in § 352.3., above, for the following functional areas for the Total Force:

(a) Total Force structure analysis as related to quantitative and qualitative manpower requirements, manpower utilization, logistics, readiness, and support.

(b) The allocation of the Total Force structure among DoD Components and between the active and reserve components within the Military Departments.

(c) Development of civilian and military manpower programs and logistics programs to meet peacetime readiness and wartime sustainability requirements of the Department of Defense.

(d) Military mobilization planning guidance and coordination of mobilization plans and their execution.

(e) Military and civilian manpower requirements analysis and resource distribution in support of peacetime operations and mobilization needs.

(f) War reserve materiel requirements analysis in support of wartime operations and mobilization.

(g) Development of construction programs to meet operational requirements.

(h) Development of programs, initiatives, and tools to enhance productivity of DoD operations.

(i) Administration and implementation of controls on military and civilian manpower strengths.

(j) Recruiting, advertising, processing, and retaining military personnel of the Armed Forces of the United States.

(k) Compensation, retired pay, per diem, travel, and transportation allowances for military and civilian personnel.

(l) Training and education of military and civilian personnel.

(m) Personnel management systems.

(n) Labor-Management relations.

(o) Nonappropriated fund instrumentalities.

(p) Commercial affairs, commissaries, and post exchanges.

(q) Morale, discipline, and welfare.

(r) Personnel requirements and utilization.

(s) Community services.

(t) Equal opportunity, equal employment opportunity, and DoD contractor compliance with equal employment opportunity requirements in government contracts.

(u) Career development.

(v) Supply management.

(w) Transportation and traffic management.

(x) Postal services.

(y) Customs inspection.

(z) Warehousing and physical distribution.

(aa) Provision of DoD resources to other agencies for law enforcement and refugee control.

(bb) Review and evaluation of the requirements of Defense System Acquisition Review Council (DSARC) weapon programs and proposed weapon systems for adequacy of readiness goals and resources, including manpower, personnel, training, logistics, installations support, reliability, maintainability, and design safety.

(cc) Accident prevention, occupational health, systems safety, and fire protection.

(dd) Environmental quality and natural resources management.

(ee) Energy.

(ff) International logistics arrangements.

(gg) Installations and real property planning, design, acquisition, maintenance, and disposal.

(hh) Military base structure and utilization.

(ii) Commercial activities, efficiency reviews, and DoD Retail Interservice Support (DRIS) Programs.

(jj) Economic adjustment.

(kk) Interagency and intergovernmental affairs.

(ll) Host nation support.

(mm) Dependent education.

(nn) Repair, overhaul, modification installation, and preventive maintenance of weapons systems, equipment, secondary items, and munitions.

(oo) Personnel, training, materiel, and facilities readiness and sustainability.

(pp) Conventional munitions quantitative sustainability requirements and inventory management, distribution, and programing.

(qq) Research and development for manpower, personnel, training, logistics, weapons support, and energy.

(rr) Post-production support.

(ss) Employee motivation and productivity.

(tt) Travel management.

(uu) Productivity-enhancing capital investments.

(vv) Automated systems.

§ 352.5 Relationships.

(a) In the performance of assigned functions, the ASD(MI&L) shall:

(1) Coordinate and exchange information with officials of DoD Components having functional responsibilities for other Total Force policies and programs and with other officials in the Department of Defense exercising collateral or related functions.

(2) Use existing facilities and services of the Department of Defense or other federal agencies, whenever practicable, to avoid duplication and to achieve maximum readiness, sustainability, efficiency, and economy.

(3) Provide policy guidance to the Transportation Commands of the Military Departments, that is, the Military Traffic Management Command, the Military Sealift Command, and the Military Airlift Command.

(4) Provide policy and guidance on requirements and programs for construction funded by host nations under the North Altantic Treaty Organization Infrastructure Program.

(5) Exercise direction, authority, and control over the Defense Logistics Agency, Department of Defense Dependents Schools, Armed Forces Chaplains Board, DoD Explosives Safety Board, Armed Forces Pest Management Board, Defense Equal Opportunity Management Institute, Defense Advisory Committee on Women in the Services, and Office of Economic Adjustment and over the activities of the President's Economic Adjustment Committee.

(6) Provide policy guidance, goal-setting, and management supervision for the Defense Manpower Data Center, DoD Centralized Referral Activity, DoD Wage Fixing Authority Technical Staff, Logistics Systems Analysis Office, Defense Logistics Studies Information Exchange, Defense Productivity Program Office, Defense Management Journal, Military Entrance Processing Command, Joint Recruiting and Advertising Program, and the Defense Training Data and Analysis Center.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(MI&L) on all matters related to the functions cited in § 352.4, above.

§ 352.6 Authorities.

The ASD(MI&L) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD Directive 5025.1–M, that implement policies approved by the Secretary of Defense in the functions assigned to the ASD(MI&L). Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands shall be issued through the JCS.

(b) Establish and distribute civilian manpower authorizations of the DoD Components and review and approve military and civilian manpower authorization changes during program execution.

(c) Obtain reports, information, advice, and assistance, consistent with

DoD Directive 5000.19, as necessary in carrying out assigned functions.

(d) Communicate directly with the heads of DoD Components. Communications to Commanders of the Unified and Specified Commands shall be coordinated with the JCS.

(e) Establish arrangements for DoD participation in nondefense governmental programs for which the ASD(MI&L) is assigned primary DoD cognizance.

(f) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

M. S. Healy,

OSD Federal Register Liaision Officer, Department of Defense.

March 9, 1984.

[FR Doc. 84-6796 Filed 3-13-84; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 379

[DOD Directive 5125.1]

Assistant Secretary of Defense (Reserve Affairs); Delegation of Authority

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The Secretary of Defense has assigned responsibilities and functions to the Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)), and has delegated specific authorities. This rule [DOD Directive 5125.1] serves as the DOD instrument that authorizes the ASD(RA) to carry out his charter.

EFFECTIVE DATE: This rule was approved and signed by the Secretary of Defense on January 12, 1984, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Becker, Directorate for Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense (Administration), Washington, D.C. 20301, telephone 202-697-0709.

SUPPLEMENTARY INFORMATION: This information is submitted in compliance with the requirements of section 551(a)(1) of Title 5, United States Code, and 1 CFR 305.76.

List of Subjects in 32 CFR Part 379

Organization and functions (government agencies), Reserve affairs.

Accordingly, 32 CFR, Chapter 1, is amended by adding a new Part 379, reading as follows:

PART 379—ASSISTANT SECRETARY OF DEFENSE (RESERVE AFFAIRS)

Sec.

Authority: 10 U.S.C. 136.

§ 379.1. Purpose.

This Part:

(c) Cancels DoD Directive 5120.40.

(b) Implements section 136(b)(4) of title 10, United States Code, which establishes the position of Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)).

(c) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(RA), pursuant to the authority vested in the Secretary of Defense under title 10, United States Code.

§ 379.2. Definitions.

(a) *DoD Components.* The Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; and the Defense Agencies.

(b) *Reserve Components.* Refers collectively to the Army National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, and Coast Guard Reserve. The term "National Guard and Reserve" is synonymous with the term "reserve components."

(c) *Total Force.* As used in this Directive, refers to the totality of organiations, units, and personnel (military and civilian) in both active and reserve components of the Department of Defense.

§ 379.3. Responsibilities.

The *Assistant Secretary of Defense (Reserve Affairs)* shall serve as the Pricipal Staff Assistant and advisor to the Secretary of Defense with specific responsibility for exercising overall supervision of reserve component matters in the Department of Defense. In this capacity, the ASD(RA) shall:

(a) Analyze and develop policies, provide advice and make recommendations to the Secretary of Defense, and issue guidance to DoD Components on matters pertaining to the reserve components.

(b) Develop systems and standards for the administration and management of approved DoD plans and programs.

(c) Promulgate plans, programs, actions, and taskings pertaining to the reserve components and consistent with national security objectives and DoD policies to promote the effective integration of reserve component capabilities into a choesive Total Force of both active and reserve component units and personnel.

(d) Review and evaluate programs of DoD Components that impact on the reserve components; conduct studies and analyses; monitor the activities of reserve component organizations, training facilities, and associations; and undertake other management oversight activities as may be required to ensure that policies, plans, programs, and actions pertaining to the reserve components:

(1) Adhere to approved DoD policies and standards.

(2) Are compatible with and support Total Force objectives and requirements

(3) Enhance the readiness and capabilities of reserve component units and personnel.

(4) Promote the intergration of reserve components with active duty forces.

(5) Make the most effective use of reserve components within the Total Force.

(e) Participate in planning, programing, and budgeting activities related to ASD(RA) functions and responsibilites, including the review, analysis, and development of recommendations concerning program and budget submissions and the Five-Year Defense Program.

(f) Promote, with respect to the reserve components, coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other federal agencies, state and local governments, the civilian community at large, and the families and employers of reserve component personnel.

(g) Serve on boards, committees, and other groups to ensure that reserve component issues and impacts are represented and represent the Secretary of Defense on reserve affairs matters outside the Department of Defense.

(h) Develop, coordinate, monitor, and review legislation, in coordination with the Assistant Secretary of Defense (Legislative Affairs).

(i) Execute such other related responsibilities as the Secretary of Defense may prescribe.

§ 379.4. Functions.

The ASD(RA) shall carry out the responsibilities described in § 379.3, above, for the following functional areas for the reserve components:

(a) Manpower.
(b) Personnel and compensation.
(c) Research, studies, and evaluation.
(d) Operations, training, and force structure.
(e) Mobilization, demobilization, and reconstitution.
(f) Force mix.
(g) Weapons systems, equipment, and materiel.
(h) Construction, installations, and facilities.
(i) Readiness and sustainability.

§ 379.5 Relationships.

(a) In the performance of assigned functions and responsibilities, the ASD(RA) shall:

(1) Coordinate and exchange information with officials of DOD Components having functional responsibilities for Total Force policies and programs and with other officials in the Department of Defense exercising collateral or related functions.

(2) Provide administrative staff support to the Reserve Forces Policy Board (RFPB) and coordinate issues and positions with the RFPB (Pub. L. 90–168).

(3) Exercise direction, authority, and control over the National Committee for Employer Support of the Guard and Reserve.

(4) Use existing facilities and services of the Department of Defense or other federal agencies, whenever practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of DOD Components shall coordinate with the ASD(RA) on all matters related to the functions cited in § 379.4, above, or that otherwise impact on the reserve components.

§ 379.6. Authorities.

The ASD(RA) is hereby delegated authority to:

(a) Issue DOD Instructions, DOD publications, and one-time directive-type memoranda, consistent with DOD 5025.1–M, that implement policies approved by the Secretary of Defense in the functions assigned to the ASD(RA). Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to the Unified and Specified Commands shall be issued through the JCS.

(b) Act for the Secretary of Defense, in accordance with section 502(b) of Pub. L. 97–86 and future authorization acts that contain this provision, to increase the authorized end strength for reserve personnel on active duty in support of the reserve program by up to 2 percent of the prescribed end strength, or such other percentage as shall be authorized by statute, when the increase is in the national interest.

(c) Obtain reports, information, advice, and assistance, consistent with DOD Directive 5000.19, as necessary, in carrying out assigned functions and maintain requisite data base, management information, and decision support systems.

(d) Communicate directly with the heads of DOD Components. Communications to Commanders of the Unified and Specified Commands shall be coordinated with the JCS.

(e) Establish arrangements for DOD participation in nondefense governmental programs for which the ASD(RA) is assigned primary DOD cognizance.

(f) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions and responsibilities.

(g) Establish and maintain liaison with ministry of defense officials dealing with reserve component matters in allied nations.

Dated: March 9, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-6797 Filed 3-13-84; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-3-FRL 2541-4; Docket No. 107PA-17]

Air Programs; Designation of Areas for Air Quality Planning Purposes; Approval of Redesignation of Attainment Status for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval in changing the air quality designation for Area #9 within Allegheny County, Pennsylvania to an attainment status of the primary and secondary National Ambient Air Quality Standards for Total Suspended Particulates (TSP). This change is based on eight consecutive calendar quarters of air quality data showing attainment.

DATES: This action will be effective on May 14, 1984, unless notice is received by April 14, 1984, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Mr. Glenn Hanson, at the EPA; Region III address shown below. Copies of the request for redesignation may be examined during normal business hours at the following locations:

U.S. Environmental Protection Agency Region III, Air Management Branch, Curtis Building—6th & Walnut Streets, Philadelphia, PA 19106, ATTN: Patricia Gaughan (3AW11)

Bureau of Air Quality Control, Pennsylvania Department of Environmental Resources, Fulton Bank Building, Third and Locust Streets, Harrisburg, PA 17120, ATTN: Gary L. Triplett

Allegheny County Health Department, Bureau of Air Pollution Control, 301 Thirty-Ninth Street, Pittsburgh, PA 15201, ATTN: Roger C. Westman.

FOR FURTHER INFORMATION CONTACT: Michael C. Guiranna at the EPA Region III address shown above or telephone (215) 597–8330.

SUPPLEMENTARY INFORMATION: The Pennsylvania Department of Environmental Resources has submitted to the U.S. Environmental Protection Agency (EPA): a request for redesignation of Area #9 within Allegheny County to an attainment area for TSP under section 107 of the Clean Air Act and 40 CFR Part 81. Area #9 is part of the Southwest Pennsylvania Intrastate Air Quality Control Region (AQCR).

The air quality data for the second quarter of 1981 through the first quarter of 1983 from Allegheny County's two monitoring sites in Springdale, and one site in Logans Ferry show no primary or secondary violations of the TSP air quality standards. The air quality improvement in this Region is due to the general improvement in air quality of the industries upwind of this area. Since primary and secondary air quality standards for TSP have been attained for the last eight quarters, this area is being redesignated as attainment in accordance with section 107 of the Clean Air Act and EPA policy requirements for section 107 redesignations.

EPA has examined the air quality data collected from the sites used to demonstrate attainment and found that the data was collected in accordance with all EPA requirements. Accordingly, EPA is approving the Department's request for redesignation to attainment.

EPA is today changing the section 107 attainment status designation for Area #9 within Allegheny County to an attainment status for TSP without prior

proposal. The public is advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days from today that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

CONCLUSION: The Administrator's decision to approve the redesignation was based on a determination that it meets the requirements of section 107 of the Clean Air Act and 40 CFR Part 81, Designation of Areas for Air Quality Planning Purposes.

PART 81—[AMENDED]

As a result of EPA's decision to approve this redesignation, 40 CFR Part 81, § 81.339 is being amended by revising entry V.(B)(4) of the table as shown below.

§ 81.339 Pennsylvania.

PENNSYLVANIA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
V. * * *				
(A) * * *				
(B) Allegheny County Air Basin * * *				
(4) The Area #9 within Allegheny County within a radius of 2 miles of the Springdale Monitor			X	

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

Under 5 U.S.C. section 605(b), I have certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas, Intergovernmental relations.

(Sec. 107 of the Clean Air Act [42 U.S.C. 7407])

Dated: March 2, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-6243 Filed 3-13-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 160

[OPP-30023D; PH-FRL 2543-7]

Good Laboratory Practice Standards; Clarification of Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification of effective date.

SUMMARY: EPA issued Good Laboratory Practice Standards for Pesticides which were published in the **Federal Register** of November 29, 1983 (48 FR 53946). The date of applicability of the part to a new study under § 160.1(a) is incorrectly given in § 160.1(b) as December 29, 1983. As noted at page 53946 under "**EFFECTIVE DATE**" and explained in detail at page 53963 under Unit VII.

EFFECTIVE DATE, the Federal Insecticide, Fungicide, and Rodenticide Act requires EPA to submit final regulations to Congress for review. The rule cannot become effective before the end of 60 calendar days of continuous session of Congress after the date of publication of the rule. EPA will announce the effective date of the rule in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

By mail: Bruce Jaeger, Hazard Evaluation Division (TS-769), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 816, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-3713).

Dated: February 29, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 84-6782 Filed 3-13-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PH-FRL 2537-6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: This document makes technical changes to 40 CFR 180.1001 by correcting entries for ethylene glycol monomethyl ether, butane, propane, and soybean oil-derived fatty acids.

EFFECTIVE DATE: Effective on March 14, 1984.

FOR FURTHER INFORMATION CONTACT: John Richards, Federal Register Unit, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202-382-3630.

SUPPLEMENTARY INFORMATION: This document corrects entries for ethylene glycol monomethyl ether in § 180.1001(d) and entries for butane, propane, and soybean oil-derived fatty acids in § 180.1001 (c) and (d).

1. *The double entry for ethylene glycol monomethyl ether in § 180.1001(d).* The listing for ethylene glycol monomethyl ether was added in the **Federal Register** of December 22, 1971 (36 FR 24217), as a single entry with the "uses" portion reading, "Solvent for formulations used before crop emerges from soil." In Title 40 of the Code of Federal Regulations (CFR) revised as of July 1, 1977, a second entry for ethylene glycol monomethyl ether with the "uses" portion reading "Solvent" appeared. This second entry is incorrect and should be deleted.

2. *Entries for butane, propane, and soybean oil-derived fatty acids in § 180.1001(c).* Entries for butane, propane, and soybean oil-derived fatty acids were added to § 180.1001(c) by an amendment published in the **Federal Register** of December 20, 1977 (42 FR 63783). The entries were incorrectly added to § 180.1001(d) in Title 40 of the CFR revised as of July 1, 1978. Therefore, entries for butane, propane, and soybean oil-derived fatty acids should be added to paragraph (c) and deleted from paragraph (d).

List of Subjects in 40 CFR Part 180

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

(Sec. 408(e), 68 Stat. 514 [21 U.S.C. 346a(e)])

Dated: February 23, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1001 is corrected in paragraph (c) by alphabetically inserting entries for butane, propane and soybean oil-derived fatty acids under "Inert ingredients" and in paragraph (d) by removing the entries for butane, ethylene glycol monomethyl ether, propane, and soybean oil-derived fatty acids as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
• • • • •		
Butane		Propellant.
• • • • •		
Propane		Propellant.
• • • • •		
Soybean oil-derived fatty acids.		Solvent, cosolvent.
• • • • •		

(d) * * *

Inert ingredients	Limits	Uses
• • • • •		
Butane [removed]		Propellant [removed].
• • • • •		
Ethylene glycol monomethyl ether [removed].		Solvent [removed].
• • • • •		
Propane [removed]		Propellant [removed].
• • • • •		
Soybean oil-derived fatty acids [removed].		Solvent, cosolvent [removed].
• • • • •		

* * * * *

[FR Doc. 84-5955 Filed 3-13-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 80-286]

Amendment of the Commission's Rules and Establishment of a Joint Board; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: In the Decision and Order in this proceeding regarding jurisdictional separations procedures (published on March 2, 1984, 49 FR 7934), the effective date was misstated in the Preamble as being April 3, 1983. The correct date is April 3, 1984.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo, Common Carrier Bureau (202) 632-9342.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-6757 Filed 3-13-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

Anthropomorphic Test Dummies; Thorax

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 400 to 999, revised as of October 1, 1983, the text of § 572.8(c) is incorrect. In § 572.8(c) appearing on page 430, the figure "1400" should read "1450".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC-43 (Sub-12)]

Leasing Rules Modifications

AGENCY: Interstate Commerce Commission.

ACTION: Final rules, notice of court action.

SUMMARY: By order entered February 2, 1984, the United States Court of Appeals for the Eleventh Circuit lifted its stay of the Commission's decision in Ex Parte No. MC-43 (Sub-No. 12) (47 FR 53858, November 30, 1982). These new rules modify the prior trip-leasing exemption to allow private carriers to trip lease their equipment and drivers to authorized carriers. The final rules delete certain portions of 49 CFR 1057.22 and added a new § 1057.42.

EFFECTIVE DATE: The revised rules in the November 30, 1982 decision will become effective on March 14, 1984.

FOR FURTHER INFORMATION CONTACT: Robert G. Rothstein, (202) 275-7912, or Mary Kelly, (202) 275-7292.

SUPPLEMENTARY INFORMATION: By decision entered February 2, 1984, in No. 82-8787, *Osborne Truck Line, Inc. et al. v. Interstate Commerce Commission and United States of America*, the Court of Appeals for the Eleventh Circuit vacated the stay of the Commission's decision in Ex Parte No. MC-43 (Sub-No. 12), 47 FR 53858 (November 30, 1982). In an unpublished per curiam decision entered February 17, 1984, the Eleventh Circuit denied the petition for review. Therefore, the final rules adopted by the Commission in that decision are now in effect. These new rules modify the prior trip-leasing exemption to allow private carriers to trip lease their equipment and drivers to authorized carriers. The final rules delete certain portions of 49 CFR 1057.22 and add a new § 1057.42.

For the convenience of the reader, the text revised and added at 47 FR 53858, November 30, 1982 is set forth below:

1. The text of § 1057.22 (a), (b) and (c) (1)–(3) of the Code of Federal Regulations, Title 49, was revised to read as follows:

§ 1057.22 Exemption for private carrier trip leasing and trip leasing between authorized carriers.

Regardless of the leasing regulations set forth in this part, an authorized carrier may lease equipment to or from another authorized carrier, or a private carrier may lease equipment to an authorized carrier under the following conditions:

(a) The identification of equipment requirements in § 1057.11(c) must be complied with;

(b) The lessor must own the equipment or hold it under a lease of 30 days or more;

(c) There must be a written agreement between the authorized carriers or between the private carrier and authorized carrier, as the case may be, concerning the equipment as follows:

(1) It must be signed by the parties or their authorized representatives.

(2) It must provide that control and responsibility for the operation of the equipment shall be that of the lessee from the time possession is taken by the lessee and the receipt required under § 1057.11(b) is given to the lessor until: (i) possession of the equipment is returned to the lessor and the receipt required under § 1057.11(b) is received by the authorized carrier; or (ii) in the event that the agreement is between authorized carriers, possession of the equipment is returned to the lessor or given to another authorized carrier in an interchange of equipment.

(3) A copy of the agreement must be carried in the equipment while it is in the possession of the lessee.

2. Part 1057 of the Code of Federal Regulations, Title 49, was amended by the addition of the following section:

§ 1057.42 Lease of equipment by regulated carriers.

Authorized carriers may lease equipment and drivers from private carriers, for periods

of less than 30 days, in the manner set forth in 49 CFR 1057.22

Decided: March 2, 1984.

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

James H. Bayne,

Acting Secretary.

[FR Doc. 84-6807 Filed 3-13-84; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Parts 1201, 1207, and 1241

Indexing the Annual Operating Revenues of Railroads and Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Rule-related notice.

SUMMARY: The Interstate Commerce Commission has adopted a methodology for indexing gross annual operating revenues for railroads and motor carriers of property to eliminate the effects of inflation from the classification process. The Commission's price deflator formula will provide assurances that carriers are moved to a higher classification because of real business expansion and not from inflationary consequences.

The annual average Railroad Freight Price Index will be used as the railroad deflator. The annual average Producer Price Index for all commodities will be used as the motor carrier deflator. Each index is developed by the Bureau of Labor Statistics. The base years for railroads and motor carriers are 1978 and 1980, respectively. The indexes and deflators are listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

EFFECTIVE DATE: January 1, 1984.

ADDRESSES: Copies of this notice may be purchased by contacting: TS Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, D.C. 20423, (202) 289-4357—D.C. Metropolitan Area, (800) 424-5403—toll free for outside D.C. area.

FOR FURTHER INFORMATION CONTACT: Leonardo A. Rodriguez or William G. Norris, (202) 275-7448.

SUPPLEMENTARY INFORMATION: By Final Rule in Docket No. 38559, *Railroad Classification Index*, served and published in the **Federal Register** on January 20, 1983 (48 FR 2542) and Final Rule in Docket No. 38377, *Indexing the Annual Operating Revenues of Motor Carriers of Property*, served on October 7, 1982, and published in the **Federal Register** on October 12, 1982 (47 FR 44731), the Commission revised the method of classifying railroads and motor carriers of property for accounting and reporting purposes. The new methodology continues to classify carriers based on gross operating revenues. However, a price deflator formula was adopted to assess whether a carrier's gross operating revenue increases are caused by inflation or a real business expansion. Both Final Rules stated that the Commission would publish the deflators in the **Federal Register**. The deflators for 1981, 1982, and 1983 are:

Railroads—Railroad freight index		Motor carriers of property—Producer prices index	
Index	Deflator percent	Index	Deflator percent
1978—213.1		1980—252.4	
1981—327.6	65.05	1981—275.5	91.62
1982—351.4	60.64	1982—281.0	89.82
1983—355.8	59.89	1983—284.6	88.69

James H. Bayne,

Acting Secretary.

[FR Doc. 84-6808 Filed 3-13-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 30104-201]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendments.

SUMMARY: NOAA issues this final rule implementing technical amendments to Amendment 1 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). Paragraphs of § 655.21, Allowable levels of harvest, differ from the Council-submitted FMP text for Amendment 1. The intent is to correct the implementing regulations of Amendment 1 so that the method of determining allowable levels of harvest for Atlantic Mackerel is stated as the Council intended.

EFFECTIVE DATE: March 9, 1984.

FOR FURTHER INFORMATION CONTACT: William B. Jackson, 202-634-7432.

SUPPLEMENTARY INFORMATION: A 15-day comment period was provided to allow the public an opportunity to comment beyond the previous 75-day period provided for Amendment 1 and its implementing regulations that were proposed on October 24, 1983 (48 FR 49077), and published as final on January 4, 1984 (49 FR 402). No comments were received. Therefore, NOAA issues the final rule unchanged from the proposed rule found at 49 FR 5140, February 10, 1984.

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: March 8, 1984.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 655—[AMENDED]

For the reason set forth in the summary, 50 CFR 655.21 is amended as follows:

A new sentence is added to the end of the introductory text of paragraph (b)(2); and

In paragraph (b)(2)(ii), the introductory text of (A),(A)(*1*) and (A)(*2*); (B); and the introductory text of (C) and (C) (*2*) are revised to read as follows:

§ 655.21 Allowable levels of harvest.

* * * * * *

(b)* * *

(2) *Atlantic Mackerel.* * * * Terms used in specifying mackerel OY, DAH, DAP, and TALFF are:

C=Estimated mackerel catch in Canadian waters for the upcoming fishing year

US=Estimated U.S. mackerel catch for the upcoming year

S=Mackerel spawning-stock size in the year after the upcoming fishing year

Bycatch=2% of allocated portion of the silver hake TALFF and 1% of the allocated portions of the *Loligo, Illex,* and red hake TALFFs

AC=Acceptable catch in U.S. waters for the upcoming fishing year

T=Total catch in all waters (U.S. and Canadian) for the upcoming fishing year.

* * * * *

(ii) * * *

(A) If AC is less than 30,000 mt, and US is less than 30,000 mt, then:

(*1*) TALFF equals Bycatch.

(*2*) DAH equals US minus Bycatch (to the extent necessary).

* * * * *

(B) If AC is greater than or equal to 30,000 mt, and US is less than 30,000 mt, then:

(*1*) *TALFF plus reserve.* If OY minus DAH is less than 10,000 mt, then TALFF equals OY minus DAH (but no less than the fixed percentages specified in paragraph (b)(2)(i) (A) of this section).

and there is no Reserve. If OY minus initial DAH is greater than or equal to 10,000 mt, then the difference between OY and initial DAH is divided evenly between TALFF and Reserve.

(2) OY equals AC minus (30,000 mt, minus US).

(3) DAH equals US minus Bycatch (to the extent necessary).

(C) If AC is equal to or greater than 30,000 mt, and US is equal to or greater than 30,000 mt, then:

* * * * *

(2) DAH equals US minus Bycatch (to the extent necessary).

* * * * *

(16 U.S.C. 1801 *et seq.*)

[FR Doc. 84-6791 Filed 3-9-84; 1:58 pm]

BILLING CODE 3510-22-M

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50 CFR Part 662

[Docket No. 40227-16]

Northern Anchovy Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues notice that Amendment 5 to the Northern Anchovy Fishery Management Plan (FMP) is approved and issues this final rule to implement the amendment. The FMP was prepared by the Pacific Fishery Management Council and originally implemented in 1978. These regulations are necessary partly to incorporate harvest limitation measures consistent with improved scientific assessments and partly to implement approved changes resulting from a complete review by the Council of all northern anchovy management measures in the FMP. In addition, this action will recodify existing anchovy regulations to conform them to currently acceptable format. The intended effect of these regulations is to improve management of the northern anchovy fishery in the fishery conservation zone off California.

EFFECTIVE DATE: April 8, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney McInnis, Acting Chief, Fisheries Management Division, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731, (213) 548-2518.

SUPPLEMENTARY INFORMATION: A notice of proposed regulations to implement Amendment 5 to the FMP was published in the **Federal Register** on December 23, 1983 (48 FR 56806). Two correction notices were published on January 10, 1984, and January 16, 1984 (49 FR 1255 and 1919 respectively). Comments on the proposed regulations were invited until February 3, 1984. No comments were received; however, three technical changes are being made in the final regulations for clarification. The first change adds cross-hatched markings to indicate the Oxnard area closure as shown in Figure 2, which extends to four miles offshore. Although the FMP and the proposed regulations describe this closed area in terms of specific latitude and longitude, the accompanying figure did not indicate it. The second change adds the term "special allocations" to the definitions (§ 662.2) since it is used but not defined in § 662.20(a). The third change adds to § 662.24(b) a sentence which specifies the dimension of the wedge which is used to measure trawl mesh size.

Classification

The Southwest Regional Director, National Marine Fisheries Service, has determined that Amendment 5 to the FMP is necessary for the conservation and management of the northern anchovy fishery and that it is consistent with the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and other applicable laws.

The Council prepared a final supplemental environmental impact statement for this FMP amendment; a notice of availability was published on February 3, 1984 (49 FR 4257).

The NOAA Administrator determined that this rule is not a "major rule" requiring a Regulatory impact analysis under Executive Order 12291. The Council prepared a regulatory impact review which is integrated with the amendment. A summary was published in the preamble to the proposed regulations on December 23, 1983, at 48 FR 56807. You may obtain a copy of this review at the address listed above.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. A summary of this certification is published at 48 FR 56807. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement for purpose of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 662

Fisheries, Reporting and recordkeeping requirements.

Dated: March 9, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 662 is revised as follows:

PART 662—NORTHERN ANCHOVY FISHERY

Subpart A—General

Sec.

Subpart B—Management Measures

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 662.1 Purpose and scope.

This part governs fishing for northern anchovy by vessels of the United States in the Pacific anchovy fishery area (PAFA). These regulations implement the Northern Anchovy Fishery Management Plan (FMP) developed by the Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended.

§ 662.2 Definitions.

For the purpose of this part, the following terms mean—

Anchovy means fish of the species *Engraulis mordax*, or parts or products thereof.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement agent or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Act; and

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Council means the Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, Oregon 97201.

Fish means finfish, mollusks, crustaceans, and all other forms of marine animal or plant life other than marine mammals, birds and highly migratory species of tuna.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the boundary of each of the coastal states to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other water craft which is used for, equipped to be used for, or of a type which is normally used for fishing, except for seine skiffs which are an integral part of fishing operations conducted under this part.

Fishing year means a 12-month period beginning August 1 and extending through July 31 of the following year.

Live bait fishery means fishing for northern anchovies for use as live bait in other fisheries.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, Pub. L. 94–265 (16 U.S.C. 1801 *et seq.*) as amended.

Nonreduction fishery means fishing for northern anchovies for use as dead bait or providing fish for human consumption.

Northern anchovy means fish of the species *Engraulis mordax*, or parts or products thereof.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means—

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b), or (c) of this definition.

PAFA means the Pacific anchovy fishery area which is the FCZ seaward of California, and between 38° N. latitude (Point Reyes) and the United States-Mexico International Boundary which is a line connecting the following coordinates:

32°35'22" N. latitude, 117°27'49" W. longitude
32°37'37" N. latitude, 117°49'31" W. longitude
31°07'58" N. latitude, 118°36'18" W. longitude
30°32'31" N. latitude, 121°51'58" W. longitude

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, of foreign government or entity of any such government.

Reduction fishery means fishing for northern anchovies for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, or other fishery products or byproducts for purposes other than direct human consumption.

Reduction harvest quota means the amount of anchovies, by weight, which may be harvested during a fishing year for reduction purposes.

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, or a designee.

Secretary means the Secretary of Commerce or a designee.

Spawning biomass means the estimated amount, by weight, of all sexually mature northern anchovies in the central subpopulation (defined as) from 38° N. latitude (Point Reyes) south to approximately 30° N. latitude at Punta Baja, Baja California.

Special allocations means that part of the total harvest quota reserved for nonreduction fishing, reduction fishing in subarea A, and any conservation purpose.

Subarea A means the northern portion of the PAFA between 38° N. latitude (Point Reyes), and a southern limit at 35°14' N. latitude (Point Buchon).

Subarea B means the southern portion of the PAFA between 35°14' N. latitude (Point Buchon), and the United States-Mexico International Boundary described in this section.

Subarea B harvest quota means the amount of anchovies, by weight, which may be harvested during a fishing year for reduction purposes in Subarea B.

Total harvest quota means the total amount of anchovies, by weight, which may be harvested during a fishing year by the reduction and nonreduction fisheries.

§ 662.3 Relation to other laws.

These regulations recognize that any State law which pertains to vessels registered under the laws of that State while fishing in the FCZ and which is consistent with the Federal Regulations shall continue to have force and effect on fishing activities addressed by these regulations.

§ 662.4 Recordkeeping and reporting.

Data regarding fishing vessels, fishing activities, landings and processing activities required by the FMP for the reduction and nonreduction fisheries are collected by the State of California under existing data collection provisions. No additional reports will be required of fishermen or processors as long as the data collection and reporting systems operated by the State of California continue to provide the Secretary with statistical information adequate for management. Reporting requirements may be promulgated by emergency regulations if this reporting system becomes inadequate for management purposes.

§ 662.5 Vessel identification.

(a) *Official number.* Each fishing vessel in the reduction fishery must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. The official number is the anchovy reduction registration number issued by the State of California.

(b) *Numerals.* The official number must be affixed to each vessel subject to this part in block Arabic numerals at least 14 inches in height. Markings must be legible and of a color that contrasts with the background.

(c) *Declaration.* If a vessel has filed with the State of California a declaration of intent to take anchovies for reduction purposes, it will be conclusively presumed that any fishing for anchovies by that vessel is for reduction purposes unless an exemption to the declaration has been filed with the State of California.

§ 662.6 Prohibitions.

It is unlawful for any person to—

(a) Fish for anchovies in the PAFA: (1) During any applicable closed season or in any applicable closed area specified in this part;

(2) During any applicable closure specified in this part; or

(3) Aboard a fishing vessel which has not filed an applicable declaration of intent with the State of California;

(b) Take or retain anchovies for reduction purposes in the PAFA unless they are taken with authorized fishing gear as specified in § 662.24;

(c) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land, any anchovy which was taken in violation of the Magnuson Act, this part, or any other regulation issued under the Magnuson Act;

(d) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of enforcement of the Magnuson Act, this part, or any other regulation issued under the Magnuson Act;

(e) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in enforcing provisions of this part;

(f) Resist a lawful arrest for any act prohibited by this part;

(g) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such person has committed any act prohibited by this part;

(h) Fail to comply immediately with instructions issued by authorized officers to facilitate safe boarding and inspection of the vessel as required by procedures specified under § 662.7; or

(i) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested fish to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act.

§ 662.7 Enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method of communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placecards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, or flashing light signal or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone should consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must—

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these additional signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA", repeated (.-.-) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessels' identification.

(2) "RY-CY" (.-.-.—./-.-.-.—) meaning "you should proceed to slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

§ 662.8 Penalties.

Any person or fishing vessel found to be in violation of this part, the Magnuson Act, or any other regulation issued under the Magnuson Act is subject to the civil and criminal penalty provisions of the Magnuson Act, and to 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), 15 CFR Part 904 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 662.20 Harvest quota.

(a) *Announcement of harvest quotas.* The total harvest quota, reduction harvest quota, subarea B harvest quota, and special allocations will be determined by the Regional Director from the estimated spawning biomass according to the formulas in paragraph (b) of this section. An announcement of the estimated spawning biomass and preliminary determination of harvest quotas will be made by notice in the **Federal Register** on or about July 1 each year. Opportunity for public comment will be provided in the preliminary announcement. A final announcement of harvest quotas and special allocations will be made by notice in the **Federal Register** on or about August 1 of each year.

(b) *Determination of harvest quotas.* The total harvest quota in the PAFA will be determined by adding the nonreduction fishery allocation in the PAFA and the reduction harvest quota in the PAFA which will be separately determined by the following formulas. There is no harvest quota in the PAFA for the live bait fishery.

(1) When the estimated spawning biomass is less than 300,000 mt, there will be no reduction harvest quota and the nonreduction allocation in the PAFA will be 4,900 mt.

(2) When the estimated spawning biomass is equal to or greater than 300,000 mt, the reduction harvest quota in the PAFA will be 70 percent of the estimated spawning biomass in excess of 300,000 mt or 140,000 mt, whichever is less, and the nonreduction fishery allocation in the PAFA will be 4,900 mt except as specified in § 662.21(b).

(c) *Subarea B harvest quota.* The reduction harvest quota for subarea B will be equal to the reduction harvest

quota in the PAFA minus a reserve of 10 percent of the reduction harvest quota or 9,072 mt, whichever is less. This reserve is allocated to the reduction fishery in subarea A except as provided in paragraph (d) of this section.

(d) *Reallocation of subarea A reserve.* The Secretary may reallocate on June 1 from subarea A to subarea B that portion of the reserve allocated to subarea A under paragraph (c) of this section which will not be harvested in subarea A by the end of the fishing year. This amount will be estimated based on catch to date in the current year and the expected intentions of processors and fishermen in the reduction fishery north of Point Buchon to harvest anchovies in the remaining fishing year. Reallocation under this paragraph will be based first, on a need to increase the subarea B harvest quota and secondly, on the projected reduction harvest in subarea A to the end of the fishing year.

(e) *Procedure for reallocation of subarea A reserve.* (1) The Secretary may, by May 1 each year, determine the need to increase the subarea B harvest quota as provided in paragraph (d) of this section if the expected reduction fishery harvest in subarea B is an amount equal to or greater than the subarea B harvest quota. After making a determination that the subarea B harvest quota needs to be increased as provided in paragraph (d) of this section, the Secretary will make the estimate under paragraph (d) of this section on or about May 15 and, as soon as practicable after June 1, announce to all reduction fishing vessel owners and operators and licensed anchovy reduction plant operators by notice in the **Federal Register** and other appropriate notice—

(i) The change in the subarea B quota;

(ii) The reasons for the change; and

(iii) A summary of, and responses to, any comments submitted under paragraph (e)(3) of this section.

(2) The Regional Director will compile in aggregate form all data used to make the estimates under paragraph (d) of this section and make them available for public inspection during normal business hours at the Southwest Regional Office, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

(3) Comments from the public on the estimates made under paragraph (d) of this section may be submitted to the Regional Director until May 31.

(f) Anchovies harvested for reduction and nonreduction purposes in the PAFA and adjacent territorial sea will be counted toward the total harvest quota.

§ 662.21 Closures.

(a) *Closure of the reduction fishery.* The Secretary will close the reduction fishery during the open season provided in § 662.22 when the total harvest quota in the PAFA is taken. The Secretary will close only the reduction fishery in subarea B when the subarea B reduction harvest quota is taken.

(b) *Closure of the nonreduction fishery.* The Secretary will close the nonreduction fishery in the PAFA only if the total harvest quota is taken.

(c) *Procedure for closing.* (1) When the harvest quotas prescribed in § 662.20 are about to be taken, the Secretary will announce, by notice in the **Federal Register** and to the Council and the California Department of Fish and Game, the date of closure in one or both subareas.

(2) If a reduction fishery closure is announced, the reduction fishery in the affected subarea will cease on the date of closure specified in the **Federal Register** notice provided by paragraph (c)(1) of this section, and will not resume until a final determination of new harvest quotas is announced under § 662.20.

(3) The nonreduction fishery in the PAFA ceases on the date that a total harvest quota closure is announced under paragraph (c)(1) of this section, and will not resume until a new harvest quota is announced under § 662.20.

§ 662.22 Fishing seasons.

All open seasons will begin at 0001 hours and terminate at 2400 hours local time. The PAFA is closed to anchovy fishing except as follows:

(a) *Nonreduction fishing season.* The open season for nonreduction fishing in the PAFA is from August 1 to July 31.

(b) *Reduction fishing season.* (1) In subarea A, the open season for reduction fishing in the PAFA is from August 1 to June 30; and

(2) In subarea B, the open season for reduction fishing in the PAFA is from September 15 to June 30.

§ 662.23 Closed areas.

(a) *Nonreduction fishery.* There are no closed areas for nonreduction fishing in the PAFA.

(b) *Reduction fishery.* The following areas are closed to reduction fishing: (1) *Farallon Islands closure* (see Figure 1). The portion of subarea A bounded by—

(i) A straight line joining Pigeon Point Light (37°10.9′ N. latitude, 122°23.6′ W. longitude) and the U.S. navigation light on Southeast Farallon Island (37°42.0′ N. latitude, 123°00.1′ W. longitude); and

(ii) A straight line joining the U.S. navigation light on Southeast Farallon Island (37°42.0′ N. latitude, 123°00.1′ W. longitude) and the U.S. navigation light on Point Reyes (37°59.7′ N. latitude, 123°01.3′ W. longitude).

(2) *Subarea B closures* That portion of subarea B described as—

(i) *Oxnard closure.* (see Figure 1). The area that extends offshore four (4) miles from the mainland shore between lines running 250° true from the steam plant stack at Manadalay Beach (34°12.4′ N. latitude, 119°15.0′ W. longitude) and 220° true from the steam plant stack at Ormond Beach (34°07.8′ N. latitude, 119°10.0′ W. longitude).

(ii) *Santa Monica Bay closure* (see Figure 1). Santa Monica Bay shoreward of that line from Malibu Point (34°01.8′ N. latitude, 188°40.8′ W. longitude) to Rocky Point (Palos Verdes Point) (33°46.5′ N. latitude, 118°25.7′ W. longitude).

(iii) *Los Angeles Harbor closure* (see Figure 1). The area outside Los Angeles Harbor described by a line extending six miles 180° true from Point Fermin (33°42.3′ N. latitude, 118°17.6′ W. longitude) and then to a point located three (3) miles offshore on a line 225° true from Huntington Beach Pier (33°39.2′ N. latitude, 118°00.3′ W. longitude).

(iv) *Oceanside to San Diego closure* (see Figure 1). The area six (6) miles from the mainland shore south of a line running 225° true from the tip of the outer breakwater (33°12.4′ N. latitude, 117°24.1′ W. longitude) of Oceanside Harbor to the United States-Mexico International Boundary.

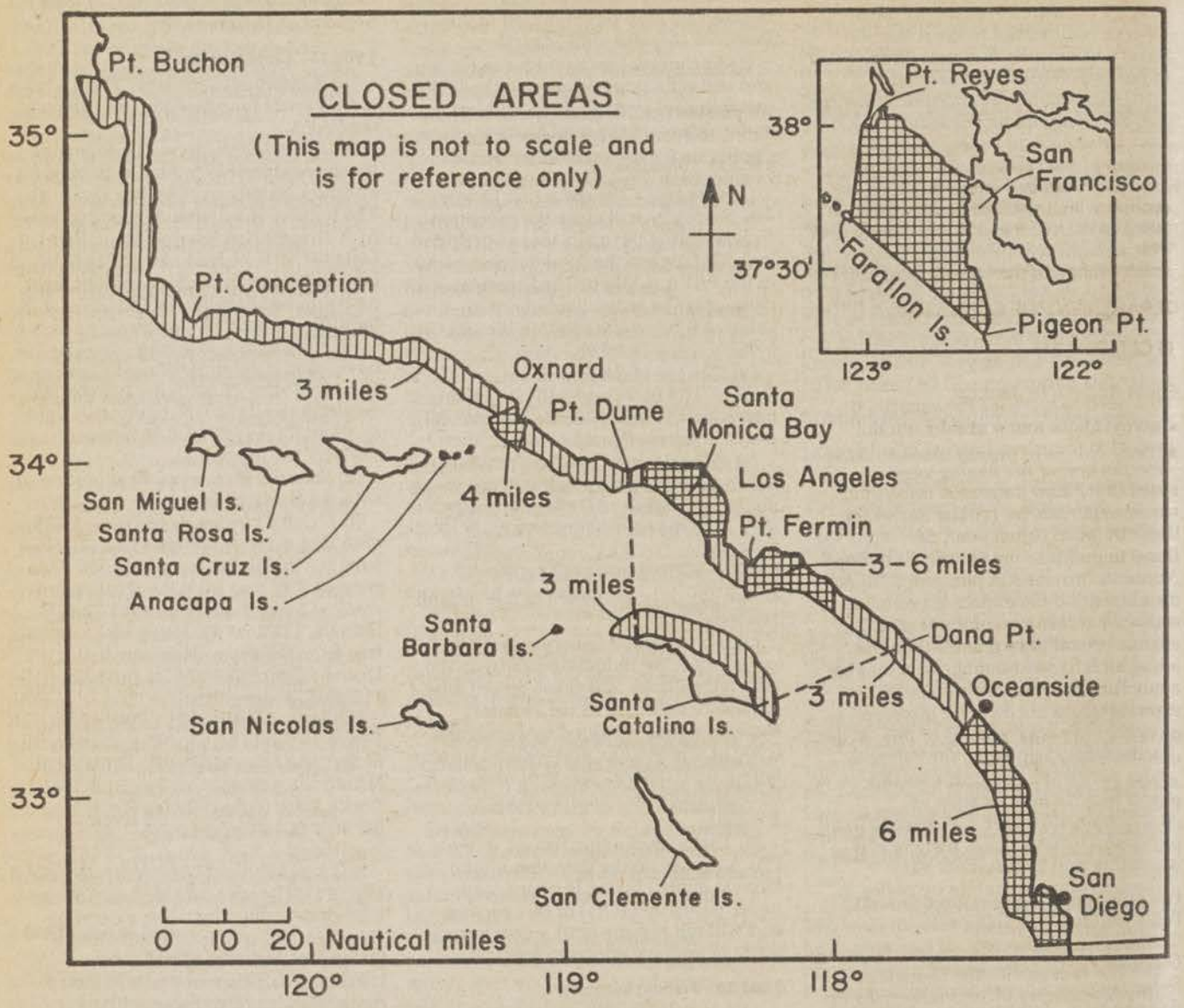

Figure 1. Existing California area closures (hatched areas extend to 3 miles offshore; cross-hatched areas extend beyond 3 miles offshore) and optional Catalina Channel foreign vessel closure (outlined by dashed lines).

§ 662.24 Gear limitations.

(a) *Nonreduction fishery.* There are no limitations on gear used in the nonreduction fishery.

(b) *Reduction fishery.* Authorized fishing gear only may be used in the reduction fishery. Beginning on April 1, 1986, authorized fishing gear will be round haul nets which have a minimum wet-stretch mesh size of 1⅜ of an inch excluding the bag portion of a purse seine. The bag portion must be constructed as a single unit and must not exceed a rectangular area adjacent to 20 percent of the total corkline of the purse seine. Minimum mesh size requirements are met if a stainless steel wedge can be passed with only thumb pressure through 16 of 20 sets of two meshes each of wet mesh. The wedges used to measure trawl mesh size are made of 20 gauge stainless steel, and will be no wider than 1⅜ of an inch less one thickness of the metal at the widest part.

[FR Doc. 84-6853 Filed 3-9-84; 4:52 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 51
Wednesday, March 14, 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 EDUCATION

34 CFR Part 21

Equal Access to Justice

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would establish the procedures of the Department of Education (the Department) for implementing the Equal Access to Justice Act (the Act). The Act mandates that Government agencies establish uniform regulations enabling eligible prevailing parties in adversary adjudications before those agencies to apply for the award of fees and other expenses.

DATES: Comments must be received on or before April 30, 1984.

ADDRESS: Send comments to EAJA Rulemaking, Office of the General Counsel, U.S. Department of Education, Room 4091, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Peter Wathen-Dunn, Division of Business and Administrative Law, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 755-1106.

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act (Title II of Pub. L. 96-481, 94 Stat. 2325 (1980), 5 U.S.C. 504) was created by the Congress to diminish the deterrent effect on certain entities—individuals, partnerships, corporations, and labor and other organizations—or seeking review of, or defending against, unreasonable action by the Federal Government. The Congress provided that, in specified situations, prevailing parties in civil actions or administrative proceedings would be entitled to receive from the United States an award of fees for attorneys and expert witnesses and other costs.

The Act requires each agency, after consultation with the Chairman of the Administrative Conference of the United States, to establish by rule uniform procedures for the submission and consideration of applications for an award of fees and other expenses.

The proposed regulations in this part would apply to administrative proceedings only. Awards in civil actions are covered under section 204 of the Act (28 U.S.C. 2412).

The Department participated in meetings held by the Administrative Conference to draft a set of comprehensive model regulations.

The Administrative Conference published its proposed model rules on March 10, 1981 (46 FR 15895) and solicited public comments. The Administrative Conference received and examined numerous comments from governmental agencies and other interested individuals and organizations. Adjustments were made to include some of the changes suggested, and the Administrative Conference published the final version of its model rules on June 25, 1981 (45 FR 32900).

In its adaptation of the model rules, the Department has changed the order of various provisions to make it easier for applicants to use the regulations. The Department has also made a number of changes to ensure that a minimal burdern is placed on applicants.

In addition the Department—

- Omitted provisions having no application to the types of adversary adjudications conducted in the Department;
- Changed other provisions to reflect departmental policy more clearly; and
- Excerpted from the model rules difinitions of various terms and collected them in these regulations under the section entitled "Definitions."

In general, the Department's regulations describe the parties eligible for awards, the types of adversary adjudications covered under the Act, the procedures used in the submission and consideration of applications, and the standards the Department uses to make awards.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The purpose of the regulations is to establish procedures for eligible prevailing parties in adversary adjudications before the Department to apply for an award of fees and other expenses. The only costs to small entities will be for preparing the documentation required in the application for award.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document.

All comments received on or before April 30, 1984, will be considered before the Secretary issues final regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4122, FOB-6, 400 Maryland Avenue, S.W., Washington, D.C. between the hours of 9:30 a.m. and 5:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the overall requirement of reducing regulatory burden, public comment is invited on whether there may be found further opportunities to reduce any regulatory burdens found in these proposed regulations. The Department is also interested in comment on what effect the differences between these proposed regulations and the model regulations of the Administrative Conference may have on applicants.

List of Subjects in 34 CFR Part 21

Equal Access to Justice, Administrative practice and procedure, Adjudications, Attorney fees, Claims, Expert witnesses, Lawyers.

Citation of Legal Authority

A Citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: March 9, 1984.

(Catalog of Federal Domestic Assistance number does not apply)

T. H. Bell,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 21 to read as follows:

PART 21—EQUAL ACCESS TO JUSTICE

Subpart A—General

Subpart B—Which Adversary Adjudications Are Covered?

Subpart C—How Is Eligibility Determined?

Subpart D—How Does One Apply for an Award?

Subpart E—What Procedures Are Used in Considering Applications?

Subpart F—How Are Awards Determined?

Subpart G—How Are Awards Paid?

Authority: Equal Access to Justice Act (Title II of Pub. L. 96–481), 94 Stat. 2325 (5 U.S.C. 504).

Subpart A—General

§ 21.1 Equal Access to Justice Act.

(a) The Equal Access to Justice Act (the Act) provides for the award of fees and other expenses to applicants that—

(1) Are prevailing parties in adversary adjudications before the Department of Education; and

(2) Meet all other conditions of eligibility contained in this part.

(b) An eligible applicant, as described in paragraph (a) of this section, is entitled to receive an award unless—

(1) The adjudicative officer—or the Secretary, on review—determines that—

(i) The Department's position in the proceeding was substantially justified; or

(ii) Special circumstance make an award unjust; or

(2) The adversary adjudication is under judicial review, in which case the applicant may receive an award only as described in § 21.12.

(5 U.S.C. 504 (a)(1) and (c)(1))

§ 21.2 Time period when the Act applies.

(a) The Act applies to any adversary adjudication covered under this part and pending before the Department at any time between October 1, 1981 and September 30, 1984.

(b) The adversary adjudications referred to in paragraph (a) of this section include—

(1) Proceedings begun before October 1, 1981 if final departmental action has not been taken before that date; and

(2) Proceedings pending on September 30, 1984 regardless of when they were initiated or when final department action occurs.

(5 U.S.C. 504(d)(2); Sec. 203(c), Pub. L. 96–481, 94 Stat. 2327)

§ 21.3 Definitions.

The following definitions apply to this part:

"Act" means the Equal Access to Justice Act.

"Adjudicative officer" means the deciding official who presided at the adversary adjudication.

(5 U.S.C. 504(b)(1)(D))

"Adversary adjudication" means a proceeding—

(a) Conducted by the Department for the formulation of an order arising from a hearing on the record under the Administrative Procedure Act (5 U.S.C. 554);

(b) Listed in § 21.10; and

(c) In which the position of the Department was represented by counsel or by another representative.

(5 U.S.C. 504(b)(C))

"Department" means the U.S. Department of Education.

"Employee."

(a) This term means a person who regularly performs for an applicant services—

(1) For remuneration; and

(2) Under the applicant's direction and control.

(b) The term also includes, on a proportional basis, a part-time or seasonal employee who meets the conditions of paragraph (a) of this definition.

(5 U.S.C. 504(c)(1))

"Fees and other expenses" means an eligible applicant's reasonable fees and expenses—

(a) Related to the issues on which it was the prevailing party in the adversary adjudication; and

(b) Further described in §§ 21.33 and 21.50.

"Party" means a "person" or a "party" as those terms are defined in the Administrative Procedure Act (5 U.S.C. 551 (2) and (3)); that is, an individual, partnership, corporation, association, or public or private organization. The term does not include an agency of the Federal Government.

(5 U.S.C. 504(b)(1)(B))

"Secretary" means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

(5 U.S.C. 504 (b)(1) and (c)(1))

Subpart B—Which Adversary Adjudications Are Covered?

§ 21.10 Adversary adjudications covered by the Act.

The Act covers adversary adjudications under section 554 of Title 5 of the United States Code. These include the following:

(a) Proceedings to—

(1) Limit, suspend, or terminate the participation of institutions of higher education in student assistance programs authorized by Title IV of the Higher Education Act; or

(2) Impose a civil penalty on those types of institutions. (20 U.S.C. 1094(b)(1)(D) and (2))

(b) Compliance proceedings under Title VI of the Civil Rights Act of 1964. (42 U.S.C. 2000d *et seq.*)

(c) Compliance and enforcement proceedings under the Age Discrimination Act of 1975. (42 U.S.C. 6101 *et seq.*)

(d) Compliance hearings under Title IX of the Education Amendments of 1972. (20 U.S.C. 1681 *et seq.*)

(e) Compliance proceedings under Section 504 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 794)

(f) Withholding proceedings under Section 592 of the Education Consolidation and Improvement Act of 1981. (20 U.S.C. 3872)

(g) Proceedings under—

(1) Section 5(g) of Pub. L. 81–874, as amended (Financial Assistance for Local Education Agencies in Areas

Affected by Federal Activity). (20 U.S.C. 240(g)); or

(2) Section 6(c) or 11(a) of Pub. L. 81-815, as amended (An Act relating to the construction of school facilities in areas affected by Federal activities, and for other purposes). (20 U.S.C. 636(c) or 641(a))

(h) Other adversary adjudications that fall within the coverage of the Act.

(5 U.S.C. 504(c)(1)).

§ 21.11 Effect of judicial review of adversary adjudication.

If a court reviews the underlying decision of an adversary adjudication covered under this part, an award of fees and other expenses may be made only under Section 204 of the Act (awards in certain judicial proceedings).

(5 U.S.C. 504(c)(1); 28 U.S.C. 2412(d)(3))

Subpart C—How is Eligibility Determined?

§ 21.20 Types of eligible applicants.

The following types of parties that prevail in adversary adjudications are eligible to apply under the Act for an award of fees and other expenses:

(a) An individual who has a net worth of not more than $1 million.

(b) A sole owner of an unincorporated business who has—

(1) A net worth of not more than $5 million, including both personal and business interests; and

(2) Not more than 500 employees.

(c) A charitable or other tax-exempt organization—

(1) As described in section 501(c)(3) of the Internal Revenue Code; and

(2) Having not more than 500 employees.

(d) A cooperative association—

(1) As defined in section 15(a) of the Agricultural Marketing Act; and

(2) Having not more than 500 employees.

(e) Any other partnership, corporation, association, or public or private organization that has—

(1) A net worth of not more than $5 million; and

(2) Not more than 500 employees.

(5 U.S.C. 504(b)(1)(B))

§ 21.21 Determination of net worth and number of employees.

(a) The adjudicative officer determines an applicant's net worth and number of employees as of the date the adversary adjudications was initiated.

(b) In determining eligibility, the adjudicative officer includes the net worth and number of employees of the applicant and all of the affiliates of the applicant.

(c) For the purposes of paragraph (b) of this section, the adjudicative officer considers as an affiliate—

(1) Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant;

(2) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest; and

(3) Any entity with a financial relationship to the applicant that, in the determination of the adjudicative officer, constitutes an affiliation for the purposes of paragraph (b) of this section.

(5 U.S.C. 504(c)(1))

§ 21.22 Applicants representing others.

If an applicant is a party in an adversary adjudication primarily on behalf of one or more persons or entities that are ineligible under this part, the applicant is not eligible for an award.

(5 U.S.C. 504 (b)(1)(B) and (c)(1))

Subpart D—How Does One Apply for an Award?

§ 21.30 Time for filing application.

(a) In order to be considered for an award under this part, an applicant may file its application when it prevails in an adversary adjudication—or in a significant and discrete substantive portion of an adversary adjudication—but no later than 30 days after the Department's final disposition of the adversary adjudication.

(b) In the case of a review or reconsideration of a decision in which an applicant has prevailed or believes it has prevailed, the adjudicative officer stays proceedings on the application pending final disposition of the adversary adjudication.

(c) For purposes of this part, final disposition of the adversary adjudication means the latest of—

(1) The date on which an initial decision or other recommended disposition of the merits of the proceeding by an adjudicative officer becomes administratively final;

(2) The date of an order disposing of any petitions for reconsideration of the fianl order in the adversary adjudication;

(3) If no petition for reconsideration is filed, the last date on which that type of petition could have been filed; or

(4) The date of a final order or any other final resolution of a proceeding—such as a settlement or voluntary dismissal—that is not subject to a petition for reconsideration.

(5 U.S.C. 504 (a)(2) and (c)(1))

§ 21.31 Contents of application.

(a) In its application for an award of fees and other expenses, an applicant shall include the following:

(1) Information adequate to show that the applicant is a prevailing party in an adversary adjudication or in a significant and discrete substantive portion of an adversary adjudication.

(2) A statement that the adversary adjudication is covered by the Act according to § 21.10.

(3) An allegation that the position of the Department in the adversary adjudication was not substantially justified, including a description of the specific position.

(4)(i) Information adequate to show that the applicant qualifies under the requirements of §§ 21.20 and 21.21 regarding net worth and number of employees.

(ii) If applicable, this information shall include a detailed exhibit of the net worth of the applicant—and its affiliates as described in § 21.21—as of the date the proceeding was initiated.

(iii) However, the net worth requirements do not apply to a qualified tax-exempt organization or a qualified agricultural cooperative association.

(5)(i) The total amount of fees and expenses sought in the award; and

(ii) An itemized statement of—

(A) Each expense; and

(B) Each fee, including the actual time expended for this fee and the rate at which the fee was computed.

(6) A written verification under oath or affirmation or under penalty of perjury from each attorney representing the applicant stating—

(i) The rate at which the fee submitted by the attorney was computed; and

(ii) The actual time expended for the fee.

(7) A written verification under oath or affirmation or under penalty of perjury that the information contained in the application and any accompanying material is true and complete to the best of the applicant's information and belief.

(b) The adjudicative officer may require the applicant to submit additional information.

(5 U.S.C. 504 (a)(2) and (c)(1))

§ 21.32 Confidentiality of information about net worth.

(a) In a proceeding on an application, the public record ordinarily includes the information showing the net worth of the applicant.

(b) However, if an applicant objects to public disclosure of any portion of the information and believes there are legal grounds for withholding it from

disclosure, the applicant may submit directly to the adjudicative officer—

(1) The information the applicant wishes withheld, in a sealed envelope labeled "Confidential Financial Information"; and

(2) A motion to withhold the information from public disclosure.

(c) The motion must—

(1) Describe the information the applicant is requesting be withheld; and

(2) Explain in detail—

(i) Why that information falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act;

(ii) Why public disclosure of the information would adversely affect the applicant; and

(iii) Why disclosure is not required in the public interest.

(d)(1) The applicant shall serve on counsel representing the Department a copy of the material referred to in paragraph (c) of this section.

(2) The applicant is not required to give a copy of that material to any other party to the proceeding.

(e)(1) If the adjudicative officer finds that the information should not be withheld from public disclosure, the information is placed in the public record of the proceeding.

(2) If the adjudicative officer finds that the information should be withheld from public disclosure, any request to inspect or copy the information is treated in accordance with the Department's established procedures under the Freedom of Information Act (34 CFR Part 5).

(5 U.S.C. 504(c)(1))

§ 21.33 Allowable fees and expenses.

(a) A prevailing party may apply for an award of fees and other expenses incurred by that party in connection with—

(1) An adversary adjudication; or

(2) A significant and discrete substantive portion of an adversary adjudication.

(b) If a proceeding includes issues covered by the Act and issues excluded from coverage, the applicant may apply only for an award of fees and other expenses related to covered issues.

(c) Allowable fees and expenses include the following, as applicable:

(1) An award of fees based on rates customarily charged by attorneys, agents, and expert witnesses.

(2) An award for the reasonable expenses of the attorney, agent, or expert witness as a separate item if the attorney, agent, or expert witness ordinarily charges clients separately for those expenses.

(3) The cost of any study, analysis, report, test, or project related to the preparation of the applicants case in the adversary adjudication.

(5 U.S.C. 504 (a)(1), (b)(1)(A), and (c)(1))

Subpart E—What Procedures Are Used in Considering Applications?

§ 21.40 Filing and service of documents.

Except as provided in § 21.32, an applicant shall—

(a) File with the adjudicative officer its application and any related documents; and

(b) Serve on all parties to the adversary adjudication copies of its application and any related documents.

(5 U.S.C. 504 (a)(2) and (c)(1))

§ 21.41 Answer to application.

(a)(1) Within 30 days after receiving an application for an award under this part, the Department's counsel may file an answer to the application.

(2) The Department's counsel may request an extension of time for filing the Department's answer.

(3) The adjudicative officer may grant the request for an extension if the Department's counsel shows good cause for the request.

(b)(1) The Department's answer must—

(i) Explain any objections to the award requested; and

(ii) Identify the facts relied on in support of the Department's position.

(2) If the answer is based on any alleged facts not in the record of the adversary adjudication, the Department's counsel shall include with the answer either—

(i) Supporting affidavits; or

(ii) A request for further proceedings under § 21.44.

(c)(1) If the Department's counsel and the applicant believe that the issues in the application can be settled, they may jointly file a statement of their intent to negotiate a settlement.

(2)(i) The filing of the statement extends for 30 days the time for filing an answer.

(ii) The adjudicative officer may grant further extensions if the Department's counsel and the applicant jointly request those extensions.

(5 U.S.C. 504 (a) and (c)(1))

§ 21.42 Reply.

(a) Within 15 days after receiving an answer, an applicant may file a reply.

(b) If the applicant's reply is based on any alleged facts not in the record of the adversary adjudication, the applicant shall include with the reply either—

(1) Supporting affidavits; or

(2) A request for further proceedings under § 21.44.

(5 U.S.C. 504(c)(1))

§ 21.43 Comments by other parties.

(a) Any party to a proceeding, other than an applicant or the Department's counsel, may file comments on—

(1) The application within 30 days after the applicant files the application;

(2) The answer within 30 days after the counsel files the answer; or

(3) Both, each within the times specified respectively in paragraphs (a)(1) and (2) of this section.

(b) The commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that further participation is necessary to permit full exploration of matters raised in the comments.

(5 U.S.C. 504(c)(1))

§ 21.44 Further proceedings.

(a) The adjudicative officer ordinarily makes the determination of an award on the basis of the written record.

(b)(1) However, the adjudicative officer may order further proceedings if he or she determines that those proceedings are necessary for full and fair resolution of issues arising from the application.

(2) If further proceedings are ordered the adjudicative officer determines the scope of those proceedings.

(c) If the applicant or the Department's counsel requests the adjudicative officer to order further proceedings, the request must—

(1) Specify the information sought or the disputed issues; and

(2) Explain why the additional proceedings are necessary to obtain that information or resolve those issues.

(5 U.S.C. 504 (a)(3) and (c)(1))

Subpart F—How Are Awards Determined?

§ 21.50 Standards for awards.

(a) In determining the reasonableness of the amount sought as an award of fees and expenses for an attorney, agent, or expert witness, the adjudicative officer may consider one or more of the following:

(1)(i) If the attorney, agent, or expert witness is in private practice, his or her customary fee for similar services; or

(ii) If the attorney, agent, or expert witness is an employee of the applicant, the fully allocated cost of the services.

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services.

(3) The time the attorney, agent, or expert witness actually spent on the applicant's behalf with respect to the adversary adjudication.

(4) The time the attorney, agent, or expert witness reasonably spent in light of the difficulty or complexity of the covered issues in the adversary adjudication.

(5) Any other factors that may bear on the value of the services provided by the attorney, agent, or expert witness.

(b) The adjudicative officer does not grant—

(1) An award for the fee of an attorney or agent in excess of $75.00 per hour; or

(2) An award to compensate an expert witness in excess of the highest rate at which the Department pays expert witnesses.

(c) The adjudicative officer may also determine whether—

(1) Any study, analysis, report, text, or project for which the applicant seeks an award was necessary for the preparation of the applicant's case in the adversary adjudication; and

(2) The costs claimed by the applicant for this item or items are reasonable.

(d) The adjudicative officer does not make an award to an eligible party if the adjudicative officer, or the Secretary on review, finds that—

(1) The Department's position was substantially justified; or

(2) Special circumstances make an award unjust.

(e) The adjudicative officer may reduce or deny an award to the extent that the applicant engaged in conduct that unduly or unreasonably protracted the adversary adjudication.

(5 U.S.C. 504(a))

§ 21.51 Initial decision.

(a) The adjudicative officer issues an initial decision on an application within 30 days after completion of proceedings on the application.

(b) The initial decision includes the following:

(1) Written findings, including sufficient supporting explanation, on—

(i) The applicant's status as a prevailing party;

(ii) The applicant's eligibility;

(iii) Whether the Department's position in the adversary adjudication was substantially justified;

(iv) Whether special circumstances make an award unjust;

(v) If applicable, whether the applicant engaged in conduct that unduly or unreasonably protracted the adversary adjudication; and

(vi) Other factual issues raised in the adversary adjudication.

(2)(i) A statement of the amount awarded, including an explanation—with supporting information—for any difference between the amount requested by the applicant and the amount awarded.

(ii) The explanation referred to in paragraph (b)(2)(i) of this section may include—

(A) Whether the amount requested was reasonable; and

(B) The extent to which the applicant unduly or unreasonably protracted the adversary adjudication.

(3) A statement of the applicant's right to request review by the Secretary under §21.52.

(4) A statement of the applicant's right under § 21.54 to seek judicial review of the final award determination.

(5 U.S.C. 504 (a)(3) and (c)(1))

§ 21.52 Review by the Secretary.

(a) The Secretary may decide to review the adjudicative officer's initial decision.

(b) If the applicant or the Department's counsel seeks a review, the request must be submitted to the Secretary, in writing, within 30 days after the initial decision is issued.

(c) If the Secretary decides to review the initial decision—

(1) The Secretary acts on the review within 30 days of accepting the initial decision for review;

(2) The Secretary reviews the initial decision on the basis of the written record of the proceedings on the applicaiton. This includes but is not restricted to—

(i) The written request; and

(ii) The adjudicative officer's findings as described in § 21.51(b); and

(3) The Secretary either—

(i) Issues a final decision on the application; or

(ii) Remands the application to the adjudicative officer for further proceedings.

(d) If the Secretary issues a final decision on the application, the Secretary's decision—

(1) Is in writing;

(2) States the reasons for the decision; and

(3) If the decision is adverse to the applicant, advises the applicant of its right to petition for judicial review under § 21.54.

(5 U.S.C. 557 (b) and (c))

§ 21.53 Final decision if the Secretary does not review.

If the Secretary takes no action under § 21.52, the adjudicative officer's initial decision on the application becomes the Secretary's final decision 30 days after it is issued by the adjudicative officer.

(5 U.S.C. 557(b))

§ 21.54 Judicial review.

If an applicant is dissatisfied with the award determination in the final decision under § 21.52 or 21.53, the applicant may seek judicial review of that determination under 5 U.S.C. 504(c)(2).

(5 U.S.C. 504(c)(2))

Subpart G—How Are Awards Paid?

§ 21.60 Payment of awards.

To receive payment, an applicant granted an award under the Act must submit to the Finance Office of the Department—

(a) A request for payment signed by the applicant or its duly authorized agent;

(b) A copy of the final decision granting the award; and

(c) A statement that—

(1) The applicant will not seek review of the decision in the United States courts; or

(2) The process for seeking review of the award has been completed.

(5 U.S.C. 504(c)(1))

§ 21.61 Time for payment of awards.

The Department pays the amount awarded to the applicant within 60 days unless the applicant or any other party to the proceeding is seeking judicial review of—

(a) The award; or

(b) The underlying decision in the adversary adjudication.

(5 U.S.C. 504 (c)(1))

§ 21.62 Release.

If an applicant, its agent, or its attorney accepts payment of any award or settlement in conjunction with an application under this part, that acceptance—

(a) Is final and conclusive with respect to that application; and

(b) Constitutes a complete release of any further claim against the United States with respect to that application.

(5 U.S.C. 504(c)(1))

[FR Doc. 84-6793 Filed 3-13-84; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL 2518-4]

Approval and Promulgation of State Implementation Plan; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this notice, EPA proposes to take the following actions on the Medford, Oregon, Carbon Monoxide State Implementation Plan (SIP) revision submitted to EPA on October 20, 1982: (1) To disapprove the inspection and maintenance (I/M) program and the attainment demonstration portion of the Plan; (2) to approve the SIP elements dealing with basic transportation needs, conformity and control measures other than I/M; and (3) to impose a prohibition on construction or modification or major stationary sources of cabon monoxide (CO) if the proposed action is finalized. EPA will be initiating the Federal Highway funding limitation process simultaneously with this proposal in accordance with the terms of the April 10, 1980 joint EPA/Department of Transportation (DOT) policy statement (45 FR 24692). The SIP disapproval, if finalized, may also result in limitations on Clean Air Act (CAA) and sewage treatment plant funding. However, an additional **Federal Register** notice and opportunity for comment will be provided prior to actually imposing any of these funding limitations. This notice supercedes an earlier proposal published in the **Federal Register** on February 3, 1983 (48 FR 5122).

Because the existing SIP does not contain enforceable measures to assure attainment of the CO standard, EPA has notified Medford officials and the State that a SIP revision must be submitted. This revision must contain a commitment to an I/M program and must demonstrate attainment of the CO standard by December 31, 1987.

DATE: Comments must be received on or before April 13, 1984.

ADDRESSES: Comments should be addressed to: Laurie M. Kral, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101

State of Oregon, Department of Environmental Quality, Yeon Building, 522 S.W. Fifth, Portland, Oregon 97204

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101, Telephone No. (206) 442-7369, FTS. 399-7369.

SUPPLEMENTARY INFORMATION:

I. Background

On June 24, 1980 (45 FR 42278) EPA approved the first phase of the Medford Carbon Monoxide (CO) attainment plan. At that time an extension of the attainment date for the CO standard to a date beyond December 31, 1982 but before December 31, 1987 was also approved.

The second phase of the Medford CO Attainment Plan was submitted to EPA on October 20, 1982. On February 3, 1983 (48 FR 5131) EPA proposed to approve this second phase with the understanding that EPA will not finally approve the SIP until after I/M is officially adopted and resource commitments are obtained.

As explained in the February 3, 1983 proposal, a 53 percent reduction in baseline emissions is necessary in order to attain the eight-hour carbon monoxide standard prior to December 31, 1987. The State of Oregon concluded that, in order to meet that attainment date, it would be necessary to implement an I/M program prior to January, 1984. Accordingly, the State submitted a plan based on an I/M program starting on January 1, 1984. However, implementation of an I/M program required enabling authority from the State legislature. Since the plan contained no assurance that State officials were committed to the I/M program, as EPA stated in its February 3, 1983 proposal, final approval could not be given until the necessary commitment was established.

II. Plan Review

A. Disapprovable Elements of the SIP

EPA originally proposed to approve the Medford CO attainment plan on February 3, 1983. Since that time, the Oregon State Legislature passed a bill that authorized Jackson County officials to adopt an ordinance implementing an I/M program. Funding, implementation, and enforcement of I/M were made the responsibility of Jackson County. Upon the request of the county, the State will deny registration to vehicles that do not comply with the I/M program requirements. However, Jackson County officials have determined that it is necessary to have a popular vote to determine the fate of the I/M program. A new schedule, informally submitted by Jackson County, calls for a popular vote in March 1984 and, if the vote shows adequate public support, start-up of an I/M program in September, 1984. Clearly the I/M program implementation schedule contained in the original October 20, 1982 SIP has been abandoned. Section 172(b)(10) of the Clean Air Act requires that a Part D Plan contain evidence that State and local government are committed to implement and enforce the elements of the plan. However, it is now apparent that the Medford Carbon Monoxide Attainment Plan lacks a commitment to I/M. Based on this deficiency, EPA is now proposing to disapprove the I/M and attainment demonstration portions of the plan, and to find that the State has not submitted a plan meeting requirements of Section 172.

Because the existing SIP does not contain the commitment required by Section 172(b)(10), EPA has notified Medford officials and the State that a SIP revision must be submitted. This revision must contain a commitment to an I/M program and must demonstrate attainment of the CO standard by December 31, 1987. Additional guidance on the required eliments of the SIP revision has been provided directly to the State of Oregon and to Jackson County.

Additionally, since an approvable SIP has not beeen submitted, EPA is initiating the procedures contained in the April 10, 1980 joint policy statement (45 FR 24692) regarding the application of Section 176(a) funding limits on highway projects and air grants. However, actual application of Section 176 funding limitations will not occur without a separate notice in the **Federal Register**.

As noted earlier, County officials are renewing efforts to overcome the deficiencies described above. EPA intends to defer final action on this notice as long as these efforts continue on the schedule which calls for a final decision to be reached next March and (if favorable) for the program to start in September, 1984. EPA intends to discontinue the disapproval process if the I/M program decision is favorable and an approvable revised SIP is officially submitted in a timely fashion to EPA.

B. Approvable Elements of the SIP

EPA is proposing to approve the remaining control strategies, excluding the I/M portion, which were contained in the original SIP. The following is a list of control measures that still contain

adequate commitments for implementation or continued implementation:

1. Improved public transit;
2. Parking control;
3. Traffic flow improvements;
4. Bicycle program.

The commitment to these measures ensures that the requirements for basic transportation needs are satisfied and that improved mobility will be emphasized. Therefore, EPA is proposing to approve the element dealing with basic transportation needs as well as the four elements listed above.

Conformity will be determined in accordance with the procedures set forth in the SIP. Existing State rules already ensure that federal actions will be reviewed for conformity with the SIP in a manner consistent with the criteria contained in the April 1, 1980 **Federal Register** (45 FR 21590). Procedures for specifically evaluating Department of Transportation plans, programs and projects are included in the SIP produced by Jackson County. As indicated in the CO plan, regardless of the initial conformity finding of the transportation plans and program, individual projects still must comply with all provisions and requirements of the SIP. Specifically this includes the provisions that a project must not cause new or exacerbate existing violations of the standards. Therefore, EPA is also proposing to approve the element of the plan dealing with Conformity of Federal Actions with the SIP.

III. Proposed Action

The EPA proposes: (1) To disapprove the Medford I/M program and the attainment demonstration portions of the plan; (2) to approve the SIP elements contained in the Medford CO attainment plan, which was submitted to EPA on October 20, 1982 dealing with basic transportation needs, conformity, and control measures other than I/M; and (3) to impose, as required by Section 110(a)(2)(I) of the Clean Air Act, a prohibition on construction or modification of major stationary sources of CO if the proposed finding of SIP deficiency is made final.

Because the existing SIP does not contain enforceable measures to assure attainment of the CO standard, EPA has notified Medford officials and the State that a SIP revision must be submitted. This revision must contain a commitment to an I/M program and must demonstrate attainment of the CO standard by December 31, 1987.

Disapproval if finalized, may also result in restriction of Federal funding pursuant to Sections 176(a) and 316(b) of the Clean Air Act. Under Section 176(a), EPA and the Department of Transportation must limit funds for air quality planning and transportation projects in any nonattainment area where transportation control measures are necessary for attainment and where EPA finds that a state has not submitted, or made reasonable efforts to submit, a plan meeting the requirements of Section 172. Section 316(b) states that the Administrator may restrict grants for sewage treatment works if the State does not have in effect or is not carrying out an approved SIP which accommodates the direct and indirect air quality impacts from the new sewage treatment capacity.

EPA will publish a separate notice of proposed rulemaking and provide an opportunity for comment before imposing any of these funding restrictions. For more information on the scope of the restrictions and the procedures EPA will follow, see 45 FR 24692 (April 10, 1980) (air quality planning and transportation grants) and 45 FR 53382 (August 11, 1980) (sewage treatment grants).

If an approvable SIP is submitted before EPA takes final action to disapprove the plan or to impose sanctions, then EPA will discontinue the disapproval process and propose approval of the new SIP. If, however EPA takes final action to disapprove the plan and impose the construction ban, the ban would then remain in effect until an approvable plan is submitted and approved. Removal of any funding restrictions would be carried out in accordance with the policies cited in the preceding paragraph.

Under Executive Order 12291, EPA must assess the economic impact of any proposed or final rule. Under the Regulatory Flexibility Act, 45 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities.

If EPA takes final action to disapprove this SIP, a moratorium on the construction and modification of major stationary sources of carbon monoxide will go into effect in the Medford area. Accordingly, it is clear that final disapproval would likely affect some small entities. EPA has previously tried to quantify the impacts of Clean Air Act rules on the construction and modification of sources, but has been unable to do so because it cannot obtain reliable information on future plans for business growth. Consequently, EPA is making no quantified assessment of the potential impacts of this proposed action.

Additionally, even if this action were to have some impact, the Agency could not modify its action. Under the Clean Air Act the imposition of a construction moratorium is automatic and mandatory whenever the Agency determines that a plan for a nonattainment area fails to meet the requirements of Part D of the Act. Further information including a statement on the Regulatory Flexibility Act, can be found in the General Preamble to proposed rulemakings published on February 3, 1983 (48 FR 5022).

Interested parties are invited to comment on all aspects on this proposed approval of the Oregon SIP revision. Comments should be submitted, preferably in triplicate, to the address listed in the front of this Notice. Public comments postmarked by April 30, 1984 will be considered in any final action EPA takes on this proposal.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxide, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110(a), 172, 176, and 316, Clean Air Act (42 U.S.C. 7410(a), 7502, 7506, and 7616)

Dated: December 27, 1983.

Ernesta Barnes,

Regional Administrator.

[FR Doc. 84-6522 Filed 3-13-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 65

[A-5-FRL 2536-7]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Delayed Compliance Order for Lamotite, Inc., Cleveland, Ohio

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an administrative order to Lamotite, Incorporated. The order requires the company to bring volatile organic hydrocarbon emissions from its laminating lines #800 and #860 in Cleveland, Ohio into compliance with Ohio Regulations 3745-21-09(F), part of the federally approved Ohio State Implementation Plan (SIP). Because the company is unable to comply with these regulations at this time, the proposed order would establish an expeditious schedule requiring final compliance by July 15, 1984. Source compliance with

the Order would preclude suits under the federal enforcement and citizen suit provision of the Clean Air Act for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before April 13, 1984, and requests for a public hearing must be received on or before March 29, 1984. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held twenty-one days after prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESS: Comments and requests for a public hearing should be submitted to the Office of Regional Counsel, EPA, Region V, 230 S. Dearborn, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Anne Swofford, Assistant Regional Counsel, Office of Regional Counsel, EPA, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604 at (312) 353–2094.

SUPPLEMENTARY INFORMATION: Lamotite, Incorporated operates two laminating lines, identified as #800 and #860 in Cleveland, Ohio. The proposed order addresses volatile organic hydrocarbon emissions from laminating lines #800 and #860 at this facility, which are subject to Ohio Regulations 3745–21–09(F) and 3745–21–04(C)(5) which are part of the federally approved Ohio State Implementation Plan. Regulation 3745–21–09(F) limits the emissions of volatile organic hydrocarbons from these sources. Regulation 3745–21–04(C)(5) specifies the date by which time Lamotite, Incorporated must be in compliance with Regulation 3745–21–09(F). The order requires final compliance with Regulation 3745–21–09(F) by July 15, 1984, by reformulating the coatings applied at laminating lines #800 and #860 to low solvent coatings, water-based coatings, or coatings which utilize non-photochemically reactive solvents, as defined in Ohio State Implementation Plan Regulation 3745–21–01(B)(3). If Lamotite, Incorporated fails to achieve and demonstrate compliance with Rule 3745–21–09(F) on or before July 15, 1984, the Company must install add-on pollution control equipment at laminating lines #800 and #860 sufficient to comply with Rule 3745–21–09(F). This equipment must consist of an incinerator or carbon adsorption equipment, and must be installed by March 1, 1985. Lamotite, Incorporated must achieve and demonstrate compliance at lines #800 and #860 with Rule 3745–21–09(F) on or before March 15, 1985. The source has consented to the terms of this Order. The source has agreed to meet the Order's increments during the period of this informal rulemaking.

The proposed order satisfies the applicable requirements of Section 113(d) of the Clean Air Act (the Act). If the Order is issued, source compliance with its terms would preclude further EPA enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded. However, Lamotite, Incorporated has been notified that its failure to achieve final compliance by the dates specified in the Order may result in a requirement to pay a noncompliance penalty under Section 120 of the Act.

Comments received by the date specified above will be considered in determining whether EPA should issue the order. Testimony given at any public hearing concerning the order will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: February 22, 1984.

Valdas V. Adamkus,

Regional Administrator, Region V.

PART 65—[AMENDED]

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter 1, adding an entry to the table in § 65.400, Federal Delayed Compliance Orders issued under Section 113(d) (1), (3), and (4) of the Act, to reflect approval of the following order.

§ 65.400 [Amended]

U.S. Environmental Protection Agency

Region V

In the Matter of: Lamotite, Incorporated, Cleveland, Ohio; Proceeding Pursuant to Section 113(d) of the Clean Air Act, as Amended (42 U.S.C. 7413(d)). Order No. EPA–84– ——.

This Order is issued this date pursuant to Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* (hereinafter the "Act"), and contains a schedule for compliance, interim control requirements and reporting requirements. Public notice, opportunity for public comment and thirty days notice to the State of Ohio have been provided in accordance with Section 113(d)(1) of the Act, 42 U.S.C. 7413(d)(1).

Findings

1. On September 15, 1983, the United States Environmental Protection Agency ("U.S. EPA", or "Agency") issued a Notice of Violation pursuant to Section 113(a)(1) of the Act, 42 U.S.C. 7413(a)(1) to Lamotite, Incorporated for violations of Ohio State Implementation Plan (SIP) Regulations 3745–21–09(F) and 3745–21–04(C)(5) at its laminating lines #800 and #860, at its Cleveland, Ohio facility. Rule 3745–21–09(F) prohibits any owner or operator of a paper coating line from causing, allowing or permitting the discharge into the ambient air of any volatile organic compounds after the date specified in Rule 3745–21–04(C)(5), in excess of 2.9 pounds per gallon of coating, excluding water. Rule 3745–21–04(C)(5) requires that the owner or operator of such a paper coating line must achieve compliance with Rule 3745–21–09(F) by April 1, 1982.

2. Lamotite Incorporated, owns and operates laminating lines #800 and #860, which are subject to Rules 3745–21–09(F) and 3745–21–04(C)(5).

3. Pursuant to Section 113(a)(4) of the Act, opportunity to confer with U.S. EPA representatives was extended to Lamotite, Incorporated, and a conference was held on November 3, 1983. At the conference the Company described the progress it was making towards reducing the emissions of volatile organic compounds at laminating lines #800 and #860, by reformulating certain of its coatings to low solvent coatings, by using non-photochemically reactive solvents, and by increasing its usage of water-based coatings.

4. The violations of Ohio SIP Rules 3745–21–04(C)(5) and 3745–21–09(F) have continued beyond the 30th day after the date the Notice of Violation was received by the Company.

5. It has been determined that although Lamotite, Incorporated has made significant efforts to achieve compliance with Ohio Rule 3745–21–09(F), it was not able to do so by the April 1, 1982 deadline in Rule 3745–21–

04(C)(5), and will be unable to achieve compliance prior to the dates set forth herein.

6. After a thorough investigation of all relevant facts, including the seriousness of the violations and the Company's good faith efforts to comply, and after opportunity for public comment, it has been determined that the schedule for compliance set forth in this Order is as expeditious as practicable, and that the terms of the Order comply with section 113(d) of the Act.

Therefore, it is ordered and agreed that:

Compliance Program

A. Lamotite, Incorporated shall achieve and demonstrate compliance with rule 3745-21-09(F) at the #800 and #860 laminating lines at its Cleveland, Ohio facility. Lamotite, Incorporated shall reformulate its coatings numbers 1, 3, 9, 10, 12, 13B, 13C, 14, 14B, 22F, 27, 28, 35A, 35B, 44F, 48, 61, 63, 65, 70A, 70C, and 71 and shall exclusively use coatings which comply with Rule 3745-21-09(F), and which are low solvent coatings, water based coatings, or coatings which utilize non-photochemically reactive solvents, as defined in Rule 3745-21-01(B)(3).

B. Lamotite, Incorporated shall achieve and demonstrate compliance at the #800 and #860 laminating lines in accordance with the following schedule:

(1) Complete reformulation of 5% of non-complying coatings in paragraph A above—February 1, 1984
(2) Complete reformulation of 10% of non-complying coatings in paragraph A above—March 1, 1984
(3) Complete reformulation of 15% of non-complying coatings in paragraph A above—April 1, 1984
(4) Compete reformulation of 20% non-complying coatings in paragraph A above—May 1, 1984
(5) Complete reformulation of 50% of non-complying coatings in paragraph A above—June 1, 1984
(6) Complete reformulation of 100% of non-complying coatings in paragraph A above—July 1, 1984
(7) Achieve and demonstrate compliance with Rule 3745-21-09(F)—July 15, 1984

C. On or before July 15, 1984, Lamotite, Inc. shall achieve and demonstate compliance with Rule 3745-21-09(F) at laminating lines #800 and #860, and shall submit the following information to U.S. EPA:

(1) Identification of each coating material used at each of laminating lines #800 and #860. This information shall include the suppliers' name; coating identification code; color; coating density in pounds per gallon; solids content expressed as percent by weight; solids density in pounds per gallon; chemical composition of the volatile portion expressed as percent by weight of all solvents, both exempt and non-exempt; water content expressed as percent by weight of all solvents, both exempt and non-exempt; water content expressed as percent by weight; and total batch weight of as-received coating prior to solvent an/or solids addition at laminating lines #800 and #860.

(2) Identification of each solvent and solids addition associated with each coating material used at each of laminating lines #800 and #860. This information shall include the weight of solids added in pounds; solids density in pounds per gallon; weight of all exempt and non-exempt solvents added in pounds; weight of water added in pounds; and the as-applied coating density in pounds per gallon.

D. If Lamotite, Inc. sucessful achieves and demonstates compliance as required in paragraph B of this Order, commencing on July 15, 1984, Lamotite, Inc. shall maintain, on a daily basis, the following records:

(1) Number of gallons, or total weight, in pounds, of each coating used on an as-received basis, for each of laminating lines #800 and #860.

(2) Number of gallons, or total weight, in pounds, of each solvent added to each coating prior to application on each of laminating lines #800 and #860.

Lamotite, Inc. shall maintain such records for a period of six months and shall report such data to U.S. EPA on a monthly basis. This first report shall be submitted to U.S. EPA on August 15, 1984. All data required to be recorded by this Order shall be retained for a period of one year and shall be made available for inspection by U.S. EPA or its agents upon request. Lamotite, Inc. shall permit representatives of U.S. EPA to inspect its facility and to take samples to assure compliance with the terms of this Order.

E. If Lamotite, Incorporated fails to achieve and demonstrate compliance with Rule 3745-21-09(F) on or before July-15, 1984, the Company shall install add-on pollution control equipment at laminating lines #800 and #860 sufficient to comply with Rule 3745-21-09(F). Such pollution control equipment shall consist of an incinerator or carbon adsorption equipment, and shall be installed in accordance with the following schedule:

(1) Commence preliminary engineering—August 1, 1984.
(2) Issue purchase orders and submit engineering plans to U.S. EPA—September 1, 1984
(3) Complete installation—March 1, 1984
(4) Achieve and demonstrate compliance at lines #800 and #860 with Rule 3745-21-09(F)—March 15, 1985

F. No later than 14 days after the scheduled completion date of any interim or final compliance schedule increment, Lamotite, Incorporated shall submit to the U.S. EPA a status report stating whether or not such compliance schedule milestone was achieved.

G. All submittals, notifications and reports to U.S. EPA pursuant to this Order shall be made to the Chief, Air Compliance Branch, Air Management Division, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

H. Nothing contained in these Findings or Order shall affect the responsibility of Lamotite, Inc. to comply with the State or local laws or regulations or other Federal laws or regulations.

I. Lamotite, Inc. is hereby notified that its failure to achieve final compliance by the dates specified in this Order, may result in a requirement to pay a non-compliance penalty in accordance with Section 120 of the Act, 42 U.S.C. 7420.

J. This Order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator or his delegate determines on the record, after notice and hearing, that an inability to comply with the aplicable Ohio State Implementation Plan no longer exists.

K. Lamotite, Inc. is protected by Section 113(d)(10) of the Act against Federal enforcement action and citizen suits under Section 304 of the Act, for noncompliance with the Ohio State Implementation Plan until the date for final compliance in the Order is past, where Lamotite, Inc. is in compliance with the terms of this Order.

L. Nothing herein shall be construed to be a waiver by the Administrator of any rights or remedies under the Clean Air Act, including, but not limited to, Section 303 of the Act, 42 U.S.C. 7503.

M. This Order is effective upon promulgation in the **Federal Register.**

Dated:

Administrator, United States Environmental Protection Agency.

Lamotite, Inc., by the duly authorized undersigned, hereby consents to the provisions of this Order and believes it to be a reasonable means by which its Cleveland, Ohio facility can achieve compliance with the Ohio State Implementation Plan. Lamotite, Inc.

further waives any and all rights under any provisions of law to challenge this Order.

Dated: January 16, 1984.

Lamotite, Inc.,

Robert C. Jackson.

[FR Doc. 84-6365 Filed 3-13-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300088; PH-FRL 2542-5]

Isopropylbenzene Sulfonic Acid and its Ammonium, Calcium, Magnesium, Potassium, Sodium, and Zinc Salts; Proposed Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that isopropylbenzene sulfonic acid and its ammonium, calcium, magnesium, potassium, sodium and zinc salts be exempted from the requirement of a tolerance when used as a surfactant in pesticide formulations. This proposed regulation was requested by Witco Chemical Corporation.

DATE: Written comments identified by the document control number [OPP-300088] must be received on or before April 13, 1984.

ADDRESS:

By mail, submit comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, Information Services Section, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-7700.

SUPPLEMENTARY INFORMATION: At the request of Witco Chemical Corporation, the Administrator proposes to amend 40 CFR 180.1001 by establishing an exemption from the requirement of a tolerance for isopropylbenzene sulfonic acid and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts as surfactants and related adjuvants of surfactants in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term inert is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient: Isopropylbenzene sulfonic acid and its ammonium, calcium, magnesium, potassium, sodium and zinc salts.

Name and address of requestor: Witco Chemical Corporation, Houston, TX 77405.

Bases for approval: Isopropylbenzene (cumene) is exempted under 40 CFR 180.1001 (d) and (e). The closely related xylene and toluene sulfonic acids and their alkaline salts are exempted under 40 CFR 180.1001 (d) and (e).

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number [OPP-300088]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: March 1, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(d) be amended by adding and alphabetically inserting the insert ingredient isopropylbenzene sulfonic acid and its various salts to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* *	* *	*
Isopropylbenzene sulfonic acid and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts.	.....	Surfactants and related adjuvants of surfactants.
* *	* *	*

[FR Doc. 84-6523 Filed 3-13-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3E2912/P332; PH-FRL 2543-6]

Oxamyl; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the insecticide/nematocide oxamyl in or on the raw agricultural commodity pumpkins. The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested pursuant to a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments must be received on or before April 13, 1984.

ADDRESS: By mail, submit written comments identified by the document control number (PP 3E2912/P332) to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703-557-1192).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 3E2912 to EPA on behalf of the Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Florida and Puerto Rico.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the pesticide oxamyl (methyl *N',N'*-dimethyl-*N*-[(methylcarbamoyl)-oxy[-1-thiooxamimidate) in or on the raw agricultural commodity pumpkins at 2.0 parts per million (ppm).

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include a 2-year rat feeding study with a no-observed-effect level (NOEL) of 2.5 milligrams (mg)/kilogram (kg) (50 ppm); a 2-year dog feeding study with a NOEL of 2.5 mg/kg (100 ppm; a 3-generation rat reproduction study with a NOEL of 2.5 mg/kg (50 ppm); a 2-year mouse oncogenic study showing negative oncogenic potential at all levels tested (0, 25, 50, and 75 ppm); a rat teratology study, negative at 15 mg/kg (300 ppm); a rabbit teratology study with a NOEL for teratogenic effects of 4 mg/kg/day or greater and a NOEL for fetototoxic effects of 2 mg/kg/day; and mutagenicity studies (Ames assay, Recessive assay, Host-mediated assay), all negative.

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.025 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.4639 mg/day; the current action for pumpkins will increase the TMRC by 0.00337 mg/day (0.7 percent). Published tolerances utilize 30.9 percent of the ADI; the current action will utilize an additional 0.22 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography utilizing a flame photometric detector with a sulfur filter, is available for enforcement purposes. No secondary residues in meat, milk, poultry, or eggs are expected. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.303 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3E2912/P332]. All written comments filed in response to this petition will be available in the Program Management and Support Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

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

Dated: March 6, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.303 be amended by adding and alphabetically inserting the raw agricultural commodity pumpkins, to read as follows:

§ 180.303 Oxamyl; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Pumpkins	2.0
* * * * *	

[FR Doc. 84-6780 Filed 3-13-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 83-1376; RM-4436]

Integration of Rates and Services for the Provision of Communications by Authorzied Common Carriers Between the Contiguous States, etc.; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry; extension of comment/reply comment period.

SUMMARY: The Federal Communications Commission, by its Common Carrier Bureau, has granted the motion for an extension of time filed by the State of Alaska and the Alaska Public Utilities Commission in which they requested additional time to file comments and reply comments in CC Docket No. 83–1376. That Docket is investigating the relationship between competition and rate integration for Alaska, Hawaii, Puerto Rico, and the Virgin Islands. The Bureau found that it was important to receive the jurisdictions. Since the time requested was brief, the request was granted. The Notice of Inquiry in CC Docket No. 83–1376 was published at 49 FR 1538 (Juanuary 12, 1984).

DATES: Comments are due March 14, 1984. Reply comments are due April 13, 1984.

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

FOR FURTHER INFORMATION CONTACT: Douglas Slotten, Policy and Program Planning Division, (202) 632–9342.

Order Extending Time

In the matter of integration of rates and services for the provision of communications by authorized common carriers between the contiguous states and Alaska, Hawaii, Puerto Rico and the Virgin Islands, (CC Docket No. 83–1376 RM 4436).

Adopted March 5, 1984.
Released March 6, 1984.

By the Chief, Common Carrier Bureau.

1. On March 1, 1984, the State of Alaska and the Alaska Public Utilities Commission (hereinafter jointly referred to as the State) filed a Motion for Extension of Time in which to file comments and reply comments in the above-captioned proceeding. The Motion requests that the March 7, 1984, and April 6, 1984, comment dates be extended to March 14, 1984, and April 13, 1984, for comments and reply comments, respectively. The State indicates that the additional time is necessary to permit the coordination of its comments with all parties involved in developing the State's position, thereby assisting the Commission with more throughly developed comments on a matter of extreme importance to the State.

2. This inquiry raises significant questions concerning the provision of telecommunications service to the noncontiguous points (Alaska, Hawaii, Puerto Rico and the Virgin Islands). In considering these issues, we are particularly intereseted in the views of the governmental authorities in each of these jurisdictions. The requested extension is brief. Accordingly, we conclude that granting the extension is in the public interest.

3. Accordingly, it is ordered, pursuant to sections 4 (i) and 201 of the Communications Act of 1934, as amended, 47, U.S.C. sections 4(i) and 201, That the Motion for Extension of Time filed by the State of Alaska and the Alaska Public Utilities Commission is Granted. The New Comment dates are March 14, 1984, and April 13, 1984, for comments and reply comments, respectively.

Federal Communications Commission.

Jack D. Smith,

Chief, Common Carrier Bureau.

[FR Doc. 84-6756 Filed 5-13-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

Swordfish Fishery Management Plan; Public Hearings

AGENCY: National Oceanic and Atmospheric Administration (NOAA) Commerce.

ACTION: Announcement of public hearings.

SUMMARY: The South Atlantic Fishery Management Council, Gulf of Mexico Fishery Management Council, Caribbean Fishery Management Council, New England Fishery Management Council, and Mid-Atlantic Fishery Management Council will hold public hearings to allow for input on the Swordfish Fishery Management Plan.

DATES: Written comments will be accepted until April 20, 1984. See **"SUPPLEMENTARY INFORMATION"** for dates and times of hearings scheduled in the South Atlantic and New England management areas. Dates and sites for the Caribbean, Gulf of Mexico, and Mid-Atlantic public hearings have been selected and a notice of specific locations will be published at a later time.

ADDRESS: Send comments to: David H. G. Gould, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407, or Jack T. Brawner, Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

See **"SUPPLEMENTARY INFORMATION"** for times and locations of hearings.

FOR FURTHER INFORMATION CONTACT: David H. G. Gould, 803–571–4366; or Jack T. Brawner, 813–893–3141.

SUPPLEMENTARY INFORMATION: The hearings will deal with a proposed fishery management plan (FMP) which would establish a management regime for swordfish in the fishery conservation zone from Maine through Texas, including Puerto Rico and the U.S. Virgin Islands. Plan objectives and management measures are directed toward alleviating the following problems: (1) Swordfish are currently being growth overfished; (2) Competition exists between domestic drift gill nets and other gear, and actual conflict between domestic and Japanese longlines; and (3) Japanese tuna longlines take an incidental swordfish catch.

Optimum yield is the harvest that will not exceed the maximum yield-per-recruit (YPR) for female swordfish that occurs with the predominant method of harvest (longlines). The Council proposes the following: (1) Data year of January 1 through December 31, and (2) Fishing year of June 1 through May 31.

Management Strategy and Data Collection

The 5 Councils have requested the Secretary of Commerce to start a data collection program on April 1, 1984 before completion of the FMP. This program would provide for observer coverage of boats using gill nets to collect information on species caught, fishing practices, and production rates. "Letters of intent" would be issued to retain swordfish which will supply information on the total number of commercial swordfish boats, gear types, locations, and fishing practices. Information given by fishermen will be confidential.

Under the proposed FMP, domestic landings are restricted by variable season closures for the 5 Council areas. The calculation of closed days takes into account seasonal landing patterns in each Council region. The fishery is monitored by sampling the sex, and age of swordfish taken in each Council area.

Existing requirements in the Preliminary Fishery Management Plan for Atlantic Billfishes and Sharks for foreign fishermen that have an incidental catch of swordfish are adopted and, in addition, foreign fishermen would have a cap on swordfish incidental catch.

Domestic Fishing Management Measures

1. The Variable Season Closure will cap fishing at the maximum production (landings by weight) for females by a method equitable to all fishing areas in the management unit. The closure will apply to all fishing methods other than conventional rod and reel and harpoons. The swordfish calendar is calculated on monthly landings in each area. Next changes in fishing pressure are calculated and the number of closed days and the dates to be applied to the swordfish calendar are chosen. A starting date of May 1 has been decided on by the 5 Councils.

2. All pelagic longlining will be prohibited during the variable season closure.

3. Landings in the Caribbean have been low and infrequent thus far. It is not possible to calculate a "swordfish calendar" for the Caribbean area; therefore, there will be no closures until a calendar can be calculated. When closures become necessary there will be an incidental catch limit of 1 swordfish per boat.

4. Rod and reel gear is exempt from the closure but a no-sale provision will be in effect during the closure.

Harpoon gear is exempt from the closure but vessels using this gear cannot have operational longline gear on board.

6. New gear and fishing practices will be monitored and if any fishing practice results in an undesirable incidental catch, conflicts with other gear, or changes in efficiency that would upset the variable season closure, other restrictions may be justified by amending the regulations.

7. Statistical Reporting Requirements include:

a. All fishing boats that intend to catch swordfish by methods other than conventional rod and reel must complete a "letter of intent" to swordfish and send it to the Regional Director, Southeast Region, National Marine Fisheries Service.

b. Some vessels will be selected to carry onboard technicians who will collect data. All vessels selected to be sampled are required to participate.

c. In the Mid-Atlantic region, at least 20 percent of swordfishermen will be sampled for other information.

Foreign Fishing Management Measures

1. Directed foreign fishing for swordfish is not allowed.

2. Adoption of existing requirements for observers on foreign vessels. All hooked swordfish must be released.

3. Adoption of area closures for foreign longliners.

4. Cap the foreign longline catch allotment (number swordfish hooked) at 1½ percent of previous year's domestic harvest or 1,136 fish in the Atlantic and Caribbean and 400 fish in the Gulf of Mexico, whichever is less.

5. Foreign vessels with a Governing International Fishery Agreement may not have an incidental catch of swordfish over 9/10 of 1 percent (swordfish numbers/pounds of other catch).

6. Reductions on domestic fishermen will result in an equivalent percent reduction of foreign incidential catch allotment.

Public Hearings

The scheduled public hearings in the South Atlantic and New England areas are as follows:

Date	South Atlantic
March 22	S. C. Marine Resources, Ft. Johnson Road, Charleston, S.C.
	Holiday Inn, 2600 Highway AIA, Ft. Pierce, Fla.
March 23	Cooperative Extension Service Office, 3245 College Avenue, Davie, Fla.
March 30	Key West High School, 21009 Flagler Ave., Key West, Fla. (Joint hearing with the Gulf Council)
April 3	N. C. Marine Resources Center, Manteo, N.C.

Date	New England
March 28	White's Restaurant, 66 State Road, Westport, Mass.
March 29	Holiday Inn—Downtown, 88 Spring Street, Portland, Me.

All hearings will be from 7:00–10:00 p.m. and will be tape recorded with the tapes filed as the official transcript of the hearing.

Selected dates and sites for public hearings in the Caribbean, Gulf of Mexico, and Mid-Atlantic areas are as follows:

Date	Caribbean
April 3	Virgin Islands.
April 5	Puerto Rico.

Date	Gulf of Mexico
March 27	Pt. Aransas, Tex.
March 28	Panama City, Fla.
March 29	Madeira Beach, Fla.
March 30	Key West High School, 21009 Flagler Ave., Key West, Fla. (Joint hearing with the South Atlantic Council)

Date	Mid-Atlantic—Tentative
March 23	Virginia.
March 26	New Jersey.
March 27	New York.

Dated: March 8, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-6688 Filed 3-13-84; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 649

[Docket No. 40309-26]

American Lobster Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issue a proposed rule to implement a revision to the American Lobster Fishery Management Plan (FMP) which prohibited the retention, in a portion of the Gulf of Maine, of lobsters marked with a v-notch. This revision is in response to conditional approval of one of the measures in the FMP and the respective implementing regulation. The intended effect of this rule is to improve the enforceability of the v-notch measure for female lobsters.

DATE: Comments must be received on or before April 6, 1984.

ADDRESSES: Comments on the proposed rule, the revised FMP, or supporting documents should be sent to Bruce Nicholls, Lobster Management Coordinator, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930. Clearly mark "Comments on Revision to the Lobster Plan" on the envelope. Copies of the revised FMP, revised environmental impact statement, and the revised draft regulatory impact review/initial regulatory flexibility analysis are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, Lobster Management Coordinator, 617–281–3600, ext. 324.

SUPPLEMENTARY INFORMATION: Final regulations implementing the Fishery Management Plan for the American Lobster Fishery were implemented on September 7, 1983 (48 FR 36266, August 10, 1983). Section 649.20(f), of the final rule was effective from September 7, 1983, through January 4, 1984.

The FMP provision, temporarily implemented by § 649.20(f), prohibited the retention, in the v-notch conservation area of the Gulf of Maine, of lobsters marked with a v-notch or any female lobster which is mutilated in a manner which could hide or obliterate such a mark.

The Regional Director conditionally approved the FMP because of concern that the v-notch provision set forth by the New England Fishery Management Council (Council) at § 639.20(f) would not protect v-notched lobsters effectively since it did not protect those lobsters outside of the Gulf of Maine and because it required that enforcement actions occur and be taken at sea, within the fishery conservation zone (FCZ). The Regional Director asked the Council to reconsider the v-notch measure. The Council was advised that § 649.20(f) would expire January 4, 1984, 120 days after final rule implementation, unless the Council extended the v-notch measure throughout the range of the lobster fishery, and provided for enforcement as a possession prohibition enforceable at the dock. The Council was also asked to clarify and stipulate that the measure is intended to protect only female lobsters.

The Council decided to pursue a different approach to attempt to address the concerns stated by the Regional Director. The Council has proposed that enforcement be facilitated by requiring vessels wishing to fish for American lobsters in the v-notch conservation area in the Gulf of Maine to obtain a permit endorsement for that purpose. Those vessels will then be subject to inspection of their entire catch, and will be prohibited from landing or possession of v-notched female lobsters, wherever they operate. Vessels fishing in the v-notch conservation area without an endorsement will be subject to penalties. The Council has also defined the boundaries of the v-notch conservation area to reduce the number of fishermen likely to be affected by the measure.

The v-notch measure set forth in the FMP was not explicitly restricted in application to only female lobsters marked with a v-notch. The purpose of the measure was not to require but to allow fishermen to voluntarily mark and identify female lobsters which have produced eggs so that those lobsters can remain as brood stock for the perpetuation of the fishery, and should apply only to those female lobsters. The specification of the original measure has therefore been clarified by the FMP revised text at § 510 to show that only *female* lobsters marked with a v-notch are protected.

This revision to the FMP and its implementing regulations which amend § 649.20(f) and four other appropriate sections to the final rule were prepared by the Council. A notice of availability for the revised FMP was published in the **Federal Register** on March 2, 1984 (49 FR 7838). Copies of the revised FMP are available from the Council upon request at the address given above.

Classification

Section 304(b)(3)(B)(iii) of the Magnuson Act, as amended by Pub. L. 97–453, requires the Secretary, after partial disapproval of a proposed plan or amendment, to publish regulations proposed by a Council upon receipt of a revised FMP and proposed regulations. At this time the Secretary has not determined that the revised FMP these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed measure will apply in an area which has been delineated to exclude the preponderance of lobster fishing activity by fishermen from States other than Maine. Maine fishermen are already obligated to comply with the measure under State law. The affected group and its burden is thus quite limited. The Council prepared a regulatory impact review (RIR) which concludes that this rule will have the following effects. The measure will require fishermen who wish to fish in the v-notch conservation area to obtain a permit endorsement to that effect, and to agree, by condition of the endorsement, to return any v-notch female lobster they catch to the sea. The vast majority of such fishermen would be Maine fishermen who are bound by State law to return such v-notched lobsters. The Council has proposed a revised FMP measure which should reduce the costs of monitoring and compliance; it has selected easily recognizable boundary lines demarking the v-notch conservation area, and recommended NMFS's incorporation of a special permit endorsement system allowing dockside enforcement. A copy of the RIR may be obtained from the Council at the address listed above.

The review procedures of E.O. 12291 do not apply to this proposed rule under section 8(a)(2) of that order because of deadlines imposed under the Magnuson Act, as amended by Pub. L. 97–453. The proposed rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow review procedures of the order.

A determination as to whether or not the rule has a significant economic impact on a substantial number of small entities will be made in conjunction with the publication of the final rule.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Numbers 0648–0097 and 0648–0013.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland and Delaware.

List of Subjects in 50 CFR Part 649

Fisheries, Fishing.

Dated: March 9, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

PART 649—[AMENDED]

For the reasons set out in the preamble, 50 CFR Part 649 is proposed to be amended as follows:

1. The authority citation for 50 CFR Part 649 is as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 649.2 is amended by revising the definition of "*V-notch conservation area*" to read as follows:

§ 649.2 Definitions.

* * * * *

V-notch conservation area (see Figure 1) means the area of the FCZ north and east of a line beginning at the intersection of the 43rd parallel with the outer boundary of the territorial sea, proceeding eastward along the 43rd parallel to its intersection with LORAN C bearing 13375, then southeastward along that bearing to its intersection with the 42°15′ parallel, then proceeding eastward along that parallel to the seaward limit of the FCZ.

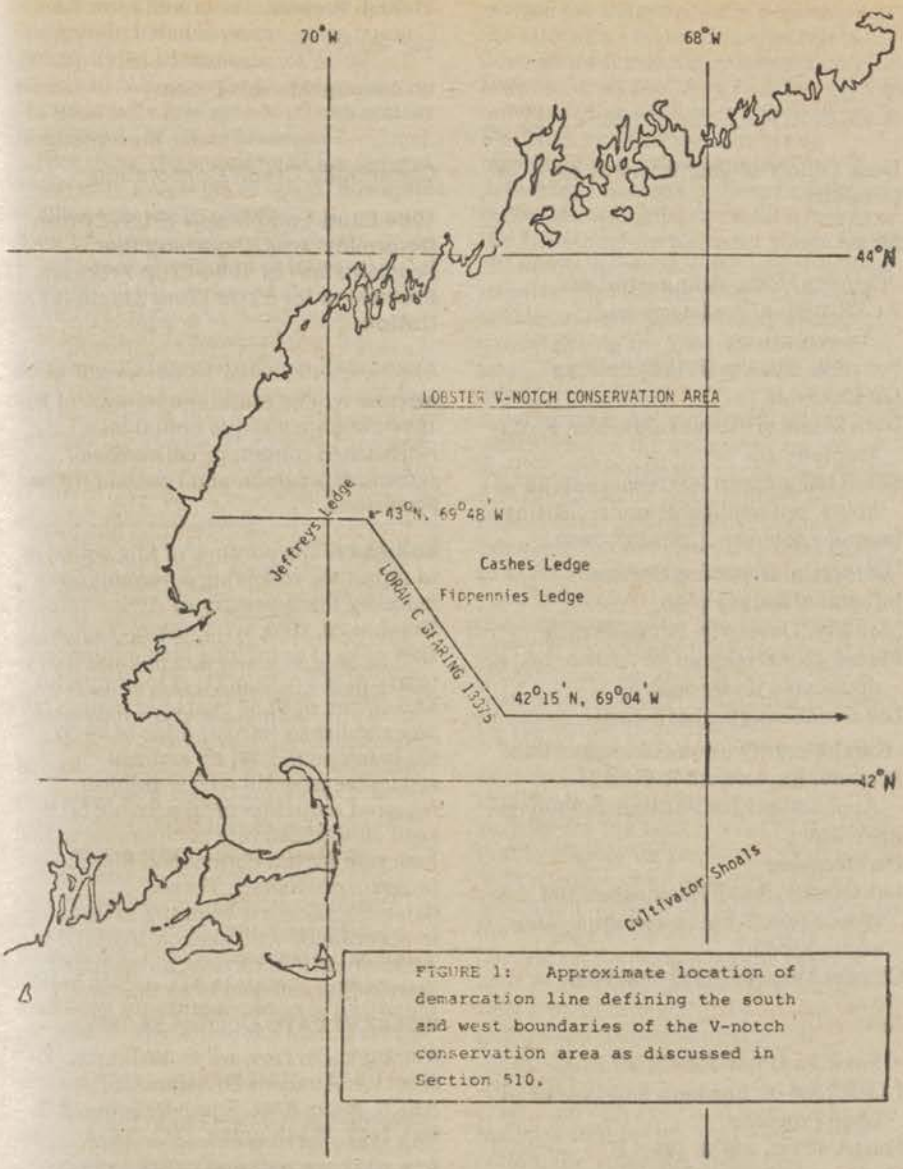

FIGURE 1: Approximate location of demarcation line defining the south and west boundaries of the V-notch conservation area as discussed in Section 510.

3. Section 649.4 is amended by revising paragraphs (a)(1) and (a)(3), and by adding a new paragraph (b)(10) to read as follows:

§ 649.4 Vessel permits.

(a) *General.* (1) Any vessel of the United States fishing for American lobster in the FCZ must have a permit required by this part on board the vessel. Any such vessel fishing for American lobster in the v-notch conservation area must have a permit endorsed for that area. The Regional Director may by agreement with State agencies recognize permits or licenses endorsed for fishing for lobster in the FCZ, providing that such permitting programs accurately identify persons who fish in the FCZ, and that the Regional Director can either individually or in concert with the State agency act to suspend the permit or license for FCZ fishing for any violation under this part.

(2) * * *

(3)(i) Vessel owners or operators who apply for a fishing vessel permit endorsed for FCZ fishing under § 649.4(a)(2) must agree, as a condition of the permit, that all the vessel's lobster fishing, catch, and gear (without regard to whether such fishing occurs in the FCZ or landward of the FCZ, and without regard to where such lobster, lobster meats, or parts, or gear are possessed, taken, or landed) will be subject to all the requirements of this part. All such fishing, catch, and gear will remain subject to any applicable State or local requirements. If a requirement of this part and a conservation measure required by a State or local law differ, any vessel owner or operator permitted to fish in the FCZ must comply with the more restrictive requirement.

(ii) Vessel owners or operators who apply for a fishing vessel permit under this section, or for a State permit endorsed for FCZ fishing under § 649.4(a)(2), which is endorsed for fishing in the v-notch conservation area, must agree, as a condition of the permit, that all the vessel's lobster catch (without regard to where such lobsters are taken or landed) will be subject to the provisions of § 649.7(a)(5).

(b) * * *

(10) The owner or operator must also indicate whether the vessel will be used to fish for American lobster in the v-notch conservation area.

4. Section 649.7 is amended by revising paragraph (a)(5) to read as follows:

§ 649.7 Prohibitions.

(a) * * *

(5) To retain on board, land or possess any female American lobster marked with a v-notch as specified in § 649.20(f), or to fish for or possess any lobsters in the v-notch conservation area without a permit endorsed for that purpose.

* * * * *

5. Section 649.20 is amended by revising paragraphs (a) and (f) to read as follows:

§ 649.20 Harvesting and landing requirements.

(a) *Condition.* By accepting a Federal permit or a State permit endorsed for FCZ fishing, or further endorsed for fishing in the v-notch conservation area, the permittee agrees that any lobster found on board or landed by a vessel with a permit issued, authorized, or required by this part will be treated as if it had been harvested in the FCZ, or in the v-notch conservation area, as appropriate, subject to these regulations.

* * * * *

(f) *Other conservation measures.* It is unlawful for any fisherman with a permit endorsed for fishing in the v-notch conservation area to retain on board, possess or land any female lobster bearing a v-shaped notch in the right flipper next to the middle flipper or any female lobster which is mutilated in a manner which could hide or obliterate such a mark. The right flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination. It is unlawful to fish for or possess American lobsters in the v-notch conservation area without a permit endorsed for that purpose.

* * * * *

[FR Doc. 84-6852 Filed 3-9-84; 4:46 pm]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 51
Wednesday, March 14, 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

Office of the Secretary

Forms Under Review by Office of Management and Budget

March 9, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in listing should should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 108-W Admin. Bldg., Washington, D.C. 20250, (202) 447-4414.

Comments on any of the listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

Farmers Home Administration
7 CFR 1951-K Predetermined Amortization Schedule System (PASS) Policies
On Occasion
Individuals or Households, Non-Profit Institutions,
Small Businesses: 300 responses; 75 hours; not applicable under 3504(h)
Jeannine Johnson, (202) 447-7860

Statistical Reporting Service
Integrated Survey plan
Monthly, Quarterly, Semiannually
Farms: 25,320 responses; 7,897 hours; not applicable under 3504(h)
Lee Sandberg, (202) 447-6820

Rural Electrification Administration
Personal Experience Record of Applications for Position as Manager
REA-328
On Occasion
Individuals, Small Businesses: 100 responses; 75 hours; not applicable under 3504(h)
Charles Weaver, (202) 382-1900

Revised

• Farmers Home Administration
7 CFR 1980-E, Business and Industrial Loan Program
FmHA 449-2, 449-4, 449-22
On Occasion—Recordkeeping
State or Local Government, Small Businesses; 27,930 responses; 127,717 hours; not applicable under 3504(h)
Dwight Carmen, (202) 475-3811

Extension (Burden Change)

• Farmers Home Administration
7 CFR 1944-E, Rural Rental Housing Loan Policies, Procedures and Authorizations
FmHA 1944-7, 1944-33, 1944-34, 1944-35
On Occasion
Non-Profit Institutions, Small Businesses; 23,800 responses; 143, 625 hours; not applicable under 3504(h)
Jeanine Johnson, (202) 477-7860

Susan B. Hess,
Acting Department Clearance Officer.

[FR Doc. 84-6781 Filed 3-13-84; 8:45 am]
BILLING CODE 3410-01-M

Commodity Credit Corporation

1984 Extra Long Staple (ELS) Cotton Determinations Regarding the Proclamation of 1984-Crop Program Provisions for Extra Long Staple (ELS) Cotton

AGENCY: Commodity Credit Corporation.

ACTION: Notice of Determinations of the 1984 extra long staple cotton loan rate, established (target) price, acreage reduction program, and related program provisions.

SUMMARY: The purpose of this notice is to affirm the following determinations made by the Secretary of Agriculture on October 28, 1983, with respect to the 1984 crop of extra long staple (referred to as "ELS") cotton: (1) A loan rate for ELS cotton of 82.50 cents per pound; (2) an established (target) price of 99.00 cents per pound; (3) an acreage reduction program with a uniform required reduction of 10 percent; (4) a seed cotton loan rate comparable to the loan rate for lint cotton; and (5) related program provisions. These determinations are required to be made in accordance with section 103(h) of the Agricultural Act of 1949, as amended (hereinafter referred to as the "Act").

EFFECTIVE DATE: October 28, 1983.

ADDRESS: Dr. Howard C. Williams, Director, Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Deputy Director, Analysis Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447-7954. The Final Regulatory Impact Analysis describing the options considered in developing this Notice of Determination is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "not major" since the program provisions are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3)

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the federal assistance programs to which this notice applies are: Cotton Production Stabilization, Number 10.052 and Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that a notice of proposed rulemaking be published in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of these determinations.

A supplemental environmental impact statement has been completed and it has been determined this action will have no significant adverse environmental impacts.

This notice sets forth determinations with respect to the following issues which are briefly described.

1. *The Loan Level.* Section 103(h)(2) of the Act provides that the loan level for 1984-crop ELS cotton must be established at not less than 50 per centum in excess of the loan level established for the 1984 crop of Strict Low Middling one-and-one-sixteenth inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States. The statutory minimum loan level for upland cotton is 55.0 cents per pound. Therefore, the loan level for ELS cotton cannot be less than 82.5 cents per pound.

2. *Established (Target) Price.* Section 103(h)(3)(B) of the Act provides that the established price for 1984-crop ELS cotton shall be 120 per centum of the 1984-crop ELS loan level. If the established (target) price is based upon a minimum ELS loan level of 82.50 cents per pound, the established (target) price would be 99.0 cents per pound.

3. *Advance Deficiency Payments.* Section 103(h)(3)(C) of the Act provides that if the Secretary establishes an acreage limitation (reduction) program for ELS cotton and determines that deficiency payments will likely be made for such crop, the Secretary may make available advance deficiency payments to producers who agree to participate in such program.

4. *The National Program Acreage (NPA).* Section 103(h)(4) of the Act provides that the Secretary shall proclaim a national program acreage (NPA) for the 1984 crop by November 1, 1983. Such NPA may, however, be revised for the purpose of determining the allocation factor if the Secretary determines it necessary based upon the latest information. Any revision shall be announced as soon as it has been made. The NPA shall be the number of harvested acres the Secretary determines necessary, based on the estimated weighted national average of the farm program payment yields for the 1984 crop, to produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the 1984–85 marketing year. The Secretary may make such adjustments in the NPA as the Secretary determines to be necessary, taking into consideration the estimated carryover supply and stocks not accounted for by official domestic consumption and export data, so as to provide for an adequate but not excessive total supply of ELS cotton for the 1984–85 marketing year. In no event shall the national program acreage be less than 60,000 acres. If an acreage reduction program is implemented for the 1984 crop of ELS cotton, the NPA determination shall not be applicable to such crop.

5. *Voluntary Reduction Percentage.* Section 103(h)(6) of the Act provides that the individual farm program acreage for the 1984 crop of ELS cotton that is eligible for payments shall not be further reduced by application of an allocation factor if the producer reduces the acreage of ELS cotton planted for harvest on the farm from the acreage base established for the farm for the 1984 crop of ELS cotton by at least the percentage recommended by the Secretary in the proclamation of the national program acreage for the 1984 crop. If an acreage reduction program is implemented for the 1984 crop of ELS cotton, the voluntary reduction percentage shall not be applicable to such crop.

6. *Acreage Reduction Program.* Section 103(h)(8)(A) of the Act provides that the Secretary may establish a limitation on the acreage planted to ELS cotton if the Secretary determines that the total supply of ELS cotton, in the absence of such limitation, will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each ELS-cotton-producing farm. Producers who knowingly produce ELS cotton in excess of the permitted acreage for the farm shall be ineligible for ELS cotton loans and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of an acreage limitation shall be the average acreage planted on the farm to ELS cotton for harvest in the three crop years immediately preceding the year prior to the year for which the determination is made. For the purpose of determining the acreage base, the acreage planted to ELS cotton for harvest shall include any acreage which producers were prevented from planting to ELS cotton or other nonconserving crops because of a drought, flood, or other natural disaster or other condition beyond the control of the producers. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines necessary to establish a fair and equitable base. In addition to the total of the farm acreage bases established for the crop under the foregoing provisions, an acreage base reserve is established equal to 5 per centum of the total of the farm acreage bases. Such reserve shall be used by the county committees, in accordance with regulations issued by the Secretary, for the purpose of making adjustments of farm acreage bases to correct inequities and prevent hardship, and for establishing bases for farms on which no ELS cotton was planted during the preceding four years. A number of acres on the farm determined by dividing (a) the product obtained by multiplying the number of acres required to be withdrawn from the production of ELS cotton times the number of acres actually planted to ELS cotton, by (b) the number areas authorized to be planted to ELS cotton in accordance with the acreage limitation established by the Secretary, shall be devoted to approved conservation uses in accordance with regulations issued by the Secretary.

7. *Land Diversion Program.* Section 103(h)(8)(B) of the Act provides that the Secretary may make land diversion payments to producers of ELS cotton, whether or not an acreage limitation (reduction) program is in effect, if the Secretary determines that such payments are necessary to assist in adjusting the total national acreage of ELS cotton to desirable goals.

8. *Payment-In-Kind (PIK) Program.* A Payment-In-Kind Program for ELS cotton is authorized by the Act and the Commodity Credit Corporation Charter Act. Section 103(h)(8)(B) of the Act authorizes the Secretary to make land diversion payments to producers of ELS cotton if the Secretary determines that the payments are necessary to assist in adjusting the total national acreage of

ELS cotton to desirable goals. The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*) gives the Corporation broad authority to support the price of agricultural commodities, stabilize agricultural commodity markets and remove and dispose of agricultural surpluses.

9. *Offsetting Compliance.* Section 103(h)(13) of the Act provides that the Secretary may issue such regulations as the Secretary determines to be necessary to carry out the ELS cotton program. In some prior crop years, the Secretary has promulgated regulations providing for offsetting compliance requirements. If offsetting compliance is required, operators and owners of farms, in order to be eligible for ELS cotton program benefits, would have to ensure either that all of the farms in which they have an interest were in compliance with ELS cotton program requirements or that the acreage of ELS cotton planted for harvest on each of such farms did not exceed the ELS cotton acreage bases which were established for such farms.

10. *Loan Level for Seed Cotton.* Section 103(h)(17) of the Act privides that, in order to assist cotton producers in the orderly ginning and marketing of their ELS cotton production, the Secretary shall make recourse loans available to such producers on seed cotton in accordance with authority vested in the Secretary under the Commodity Credit Corporation Charter Act.

Discussion of Comments

A notice that the Secretary was preparing to make determinations with respect to the 1984 crop of ELS cotton was published in the **Federal Register** on September 21, 1983. Only 3 responses were received. The loan rate, the target price, the advance deficiency payment, the acreage reduction program (ARP), the acreage base, the payment-in-kind (PIK) program and the cash land diversion program (LDP) were among the major provisions discussed by the respondents.

One comment was received which supported an 82.5 cent per pound loan level for ELS cotton. One comment was received which supported a target price of 99.0 cents per pound. One comment was received which recommended an advance deficiency payment equal to one-half of the payment rate if an ARP was in effect.

Two comments were received regarding an ARP. One of the comments favored a 5 percent ARP while the other comment recommended the implementation of a flexible ARP (announcing a minimal ARP with flexibility to adjust the reduction if necessary).

One comment was received which proposed implementing a program under which at least an ELS cotton 72,000 acreage base would be planted. Two comments were received which opposed implementing a PIK program and one comment was received which opposed implementing a LDP.

A number of the determinations with respect to the ELS cotton program are required by section 103(h) of the Act to be made not later than November 1 of the calendar year preceding the year for which the determinations are made. On October 28, 1983, the Secretary announced by press release the program provisions for the 1984 crop of ELS cotton. Since the only purpose of this notice is to affirm the program determinations previously announced, it has been determined that no further public rulemaking is required with respect to the following determinations:

Determinations

1. *Loan Level.* Based on the formula prescribed in Section 103(h)(2) of the Act, the loan rate for ELS cotton has been determined to be 82.5 cents per pound, the statutory minimum level.

The calculation for the 1984 ELS cotton loan rate is as follows:

(1) The 1984 loan rate established for Strict Low Middling one-and-one-sixteenth inch upland cotton is 55 cents per pound.

(2) Fifty percent in excess of the 1984 loan rate established for Strict Low Middling one-and-one-sixteenth inch upland cotton equals 82.5 cents per pound.

2. *Established (Target) Price.* In accordance with the provisions of section 103(h)(3)(B) of the Act, the 1984 established (target) price for ELS cotton has been determined to be 99 cents per pound.

The calculation of the established (target) price is as follows:

(1) The determined 1984 ELS cotton loan level is 82.5 cents per pound.

(2) The 1984 established (target) price which must be at 120 percent of the determined 1984 ELS cotton loan level is 99.0 cents per pound.

3. *Advance Deficiency Payments.* In accordance with the provisions of section 103(h)(3)(C) of the Act, it has been determined that there will be no advance deficiency payments for the 1984 crop of ELS cotton. Advance deficiency payments are not necessary as an incentive for participation with respect to the 1984 ELS cotton program because sufficient producer participation is anticipated without the use of such payments.

4. *National Program Acreage.* In accordance with Section 103(h)(8)(A) of the Act, it has been determined that the NPA will not be applicable to the 1984 crop of ELS cotton since an acreage reduction program has been announced.

5. *Voluntary Reduction Percentage.* In accordance with Section 103(h)(8)(A) of the Act, it has been determined that the voluntary reduction percentage will not be applicable to the 1984 crop of ELS cotton since an acreage reduction program has been announced.

6. *Acreage Reduction Program.* In accordance with the provisions of Section 103(h)(8)(A) of the Act, it has been determined that a 10 percent reduction shall be applicable to the acreage planted to ELS cotton in 1984. Producers will be required to limit their production of ELS cotton to the permitted cotton acreage for the farm in order to be eligible for price support loans and deficiency payments for the 1984 crop of ELS cotton. The Secretary has determined that the total supply of ELS cotton, in the absence of such limitation, will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. The 10 percent reduction requirement was selected because it achieves the best balance among the multiple objectives of providing an adequate supply of ELS cotton for domestic and foreign utilization, maintaining adequate carryover stocks, supporting farm income, and conserving natural resources.

Acreage designated for conservation use must be cropland that was devoted to row crops or small grains in two of the last three years, except for a summer fallow rotation. In order for acreage which is in a summer fallow rotation to be designated as conservation use acreage, such land must be acreage that was devoted to small grains or row crops in one of the last two years.

The 1984 acreage base for ELS cotton farms, other than those farms where there is an established crop rotation, shall be the average of the acreage planted to ELS cotton for harvest in 1980, 1981 and 1982. With respect to ELS cotton farms where there is an established crop rotation, the acreage base shall be the acreage planted to ELS cotton for harvest in immediately prior years that correspond to the farm's rotation.

Contracts signed by program participants for the acreage reduction program will be considered to be binding contracts and will provide for liquidated damages for failure to comply

with the terms and conditions of such contracts.

Eligible land on which permanent conservation practices were established in 1982 or a subsequent year will be eligible for designation as conservation use acreage under any acreage reduction, set-aside, or diversion program authorized by the Act as long as the practice is maintained. These conservation practices will be eligible for cost-share assistance under the Agricultural Conservation Program.

7. *Land Diversion Program.* In accordance with Section 103(h)(8)(B) of the Act, it has been determined that there will be no cash land diversion payments for the 1984 crop of ELS cotton. It has been determined that there will be sufficient producer participation in the acreage reduction program without such an incentive.

8. *Payment-In-Kind (PIK) Program.* It has been determined that no payment-in-kind program will be established for the 1984 crop of ELS cotton. A PIK program will not be needed for the 1984 crop because sufficient producer participation in the acreage reduction program is anticipated without such incentive.

9. *Offsetting Compliance.* It has been determined that offsetting compliance is not necessary to assist in adjusting the production of ELS cotton to desirable goals. Therefore, offseting compliance will not be required as a condition of eligibility for participation in the 1984 ELS cotton acreage reduction program.

10. *Loan Level for Seed Cotton.* In accordance with Section 103(h)(17) of the Act, recourse loans will be made available for the 1984 crop of ELS seed cotton. Seed cotton shall be converted to a lint basis for loan-making purposes, and the loan level with respect to such cotton will be the same as that applicable to lint cotton.

Authority: Sec. 103(h), 97 Stat. 494 (7 USC 1444(h)).

Signed at Washington, D.C., March 8, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-6834 Filed 3-13-84; 8:45 am]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Federal Grain Inspection Service Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: April 4, 1984.

Place: California Department of Food and Agriculture, 1220 N Street, Room A-373, Sacramento, CA 95814.

Time: 9:00 a.m.

Purpose: A subcommittee to review and prepare recommendations to the Federal Grain Inspection Service Advisory Committee on appeal and reinspection procedures.

The agenda includes a review of the appeal and reinspection procedures under the U.S. Grain Standards Act of 1976.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact Harold E. Hudgins, Subcommittee Chairman, Post Office Box 59, Kansas City, MO 64141, telephone (913) 661-6100.

Dated: March 8, 1984.

K. A. Gillis,

Administrator, Federal Grain Inspection Service.

[FR Doc. 84-6833 Filed 3-13-84; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Pacific Crest National Scenic Trail Advisory Council; Revised Notice of Meeting

The Pacific Crest National Scenic Trail Advisory Council will meet on April 11, 12, and 13, 1984, at the Sea Point Hotel in San Diego, California. The meeting will begin on April 11, 1984, at 8:00 p.m., followed on April 12, 1984, at 8:00 a.m. with a field trip to view the Pacific Crest Trail, trail facilities, and issues linked with the trail. The business session will continue at 8:00 a.m. on April 13 at the Sea Point Hotel.

The purpose of the meeting is to provide recommendations for the Secretary of Agriculture on broad questions of policy, programs, and procedures affecting the Pacific Crest Trail. The meeting will include a review of trail completion status, discussion for improving volunteer support organizations, review of trail relocations, Pacific Crest Trail sub-names policy, and amount of use on the trail.

The meeting will be open to the public. Persons who wish additional information should contact Dick Banjamin, Recreation Staff Director, Pacific Southwest Region, Forest Service, 630 Sansome Street, San Francisco, California 9411, phone (415) 556-6983.

Dated: March 5, 1984.

Zane G. Smith, Jr.,

Chairman.

[FR Doc. 84-6818 Filed 3-13-84; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Spring Creek Subwatershed, Central Sonoma Watershed, California; Availability of a Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Eugene Andreuccetti, responsible Federal official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of California, is hereby providing notification that a record of decision to proceed with the installation of the Spring Creek Subwatershed project in the Central Sonoma Watershed is available. Single copies of this record of decision may be obtained from Eugene Andreuccetti at the address shown below.

FOR FURTHER INFORMATION CONTACT: Eugene Andreuccetti, State Conservationist, Soil Conservation Service, 2828 Chiles Road, Davis, California 95616, telephone (916) 449-2848.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Executive Order 12372 regarding intergovernmental review of Federal and federally assisted programs and projects is applicable)

Dated: March 7, 1984.

Eugene Andreuccetti,

State Conservationist.

[FR Doc. 84-6816 Filed 3-13-84; 8:45 am]

BILLING CODE 3410-16-M

T.T.U. School of Agriculture Farms, Tennessee Critical Area Treatment and Soil and Water Management—Agriculture Related Pollutant Control

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil 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 T.T.U. School of Agriculture Farm Critical Area Treatment and Soil and Water Management-Agriculture Related Pollutant Control Measure in the Hull-York Lakeland Resource Conservation and Development (RC&D) Area, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB–USCH, 801 Broadway, Nashville, Tennessee 37203, Telephone: 615/251–5471.

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, Donald C. Bivens, State Conservationist, has determined that the preparation and review of an environment impact statement is not needed for this project.

This measure concerns a plan for critical area treatment of eroded areas and the resulting sediment (sediment pollution), and water management for agriculture related pollutant control. The planned works of improvement include erosion control practices such as diversions, grass waterways, critical area plantings, grade stabilization structures, rock rip rap lined ditches, and animal waste disposal systems.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation are on file and may be reviewed by contacting the Soil Conservation Service Field Office, Room 2, 900 Bunker Hill Road, Cookeville, Tennessee 38501. An environmental assessment has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental assessment are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: March 7,1984.

Billy K. Benson,

Deputy State Conservationist.

(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)

[FR Doc. 84–6767 Filed 3–13–84; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[Order 84–3–36]

Application of Pilgrim Aviation & Airlines, Inc. for Certificate Authority Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause.

SUMMARY: The Board is proposing to find Pilgrim Aviation & Airlines, Inc., fit, willing and able to engage in interstate and overseas scheduled air transportation of persons, property and mail and to exempt Pilgrim, Pequot Aviation and Joseph Fugere from the common control and ownership sections of the Federal Aviation Act.

DATES: Objections: All interested persons having objections to the Board taking the proposed actions shall file, and serve upon all persons listed below, no later than March 30, 1984, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the objections.

ADDRESSES: Responses shall be filed in Docket 41944, should be addressed to Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon the persons listed in Attachment B to Order 84–3–36.

FOR FURTHER INFORMATION CONTACT: Paul W. Wallig, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–3–36 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–3–36 to that address.

By the Civil Aeronautics Board: March 8, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–6847 Filed 3–13–84; 8:45 am]

BILLING CODE 6320–01–M

[Order 84–3–37; Docket 42034]

Order Instituting the Air America, Inc. Fitness Investigation

AGENCY: Civil Aeronautics Board.

ACTION: Notice.

SUMMARY: The Board is instituting an investigation to determine the continuing fitness of Air America to engage in worldwide charter air transportation of persons, property, and mail and its fitness to engage in scheduled interstate, overseas, and foreign (United States-Bahamas) air transportation of persons, property, and mail. The order also directs interested persons to show cause why Air America's request for Detroit-Cozumel/Cancun/Merida scheduled authority should not be granted. If the carrier meets the citizenship requirement of section 101(16) of the Act, is otherwise found fit, and the Board makes final its tentative findings, its charter authority will be renewed and it will receive certificates of public convenience and necessity authorizing such air transportation.

DATES: Applications, motions to consolidate, petitions for leave to intervene, and all other pleadings, including requests for additional evidence, shall be filed with the Board in Docket 42034 within 15 days of the service date of this order; reply comments shall be filed within 5 days thereafter.

ADDRESSES: All pleadings should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 in Docket 42034, *Air America, Inc. Fitness Investigation.*

In addition copies of such filings should be served on: Air America, Inc., the Attorney General of the State of Michigan, the Mayor and Airport Manager of Detroit, Michigan, Hamilton, Miller, Hudson and Fayne Travel Corporation, the United States Departments of State and Transportation, the Federal Aviation Administration, and the Ambassadors of Mexico and the Bahamas in Washington, D.C.

Service will also be required on any other persons filing petitions.

FOR FURTHER INFORMATION CONTACT: Ronald A. Brown, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. (202) 673–5203.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–3–37 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–3–37 to that address.

By the Civil Aeronautics Board, March 8, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-6848 Filed 3-13-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-3-44]

Rejection of Foreign Forwarder Registration

AGENCY: Civil Aeronautics Board.

ACTION: Rejection of Foreign Forwarder Registration.

SUMMARY: The board, having previously established in Orders 82-6-11, 82-9-21, 83-10-73 and 83-12-56 that there is unsatisfactory Taiwanese reciprocity for U.S. freight forwarders, rejected the foreign freight forwarder registration request of Air Market Express Limited (Taiwan)/Alexander Air Express Inc., which is owned by two citizens of Taiwan—Order 84-3-44, adopted March 9, 1984.

A copy of the complete order may be obtained by request from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5432. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Dean L. Johnson, (202) 673-5134, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: March 9, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-6846 Filed 3-13-84; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Virginia Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 3:30 p.m., on April 11, 1984, at the City Hall, Council's Workroom, 301 King Street, Alexandria, Virginia 22314. The purpose of the meeting is to discuss the following items: planning for followup activities on the Statewide Conference on Civil Rights Complaints and Enforcement held in Richmond on November 13 and 14, 1983; project concepts for 1984; rechartering of the Virginia Advisory Committee; and status of Advisory Committee reports.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Curtis W. Harris, at (804) 458-7404 or the Mid-Atlantic Regional Office at (202) 254-6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 8, 1984.

John I. Binkley,

Advisory Committee Management, Officer.

[FR Doc. 84-6753 Filed 3-13-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: 1982 Census of Transportation, 1983 Commodity Transportation Survey (CTS)—Evaluation Program

Form Numbers: Agency—TC-9403; OMB-N/A

Type of Request: New collection

Burden: 200 respondents; 100 reporting hours

Needs and Uses: The purpose of the evaluation program is to assess the overall reliability of the 1983 CTS survey methodology. The evaluation will provide verification of respondent reporting, universe coverage, forms design, data entry, and question content. The evaluation will be used as input to describe the "Reliability of the Data" in the published reports. Recommended improvements will be included in future programs.

Affected Public: Businesses or other for profit institutions, small businesses or organizations

Frequency: One-time

Respondent's Obligation: Voluntary

OMB Desk Officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 84-6760 Filed 3-13-84; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-301-004]

Fresh Cut Roses From Colombia; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that fresh cut roses from Colombia are being sold, or are likely to be sold, in the United States at less than fair value. Therefore, we have notified the United States Inernational Trade Commission (ITC) of our determination, and we have directed the United States Customs Service to suspend liquidation of all entries of the subject merchandise. We have directed the U.S. Customs Service to require a cash deposit of the posting or a bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We found that "critical circumstances" do not exist with respect to exports of fresh cut roses from Colombia.

If this investigation proceeds normally, we will make a final determination by May 22, 1984.

EFFECTIVE DATE: March 14, 1984.

FOR FURTHER INFORMATION CONTACT: John Brinkman or Paul Thran, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-4229 or 377-1766.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that there is a reasonable basis to believe or suspect that fresh cut roses from Colombia are being sold, or are likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act).

The estimated margins for the products investigated are given in the "Suspension of Liquidation" section of this notice. The estimated margins are

based on the best information available as provided for in section 776(b) of the Act (19 U.S.C. 1677(b)), and are explained in the section of this notice which describes our fair value comparisons. These margins could change substantially in the final determination if verifiable information is furnished in a timely fashion.

Case History

On September 30, 1983, we received a petition from counsel for Roses Incorporated, the U.S. Commercial Rose Growers' Trade Association.

In compliance with the filing requirements of sections 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Colombia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673)), and that these imports are materially injuring, or are threatening to materially injure, a United States industry. Petitioners also alleged that "critical circumstances" exist in this case.

The allegations of sales at less than fair value, which include an allegation that export sales are being made at less than the cost of production of the merchandise under investigation in Colombia, are supported by comparisons of United States price with the constructed value, as developed by the petitioners from published information.

After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping investigation on fresh cut roses. We notified the ITC of our action and initiated the investigation on October 26, 1983 (48 FR 49530). On November 7, 1983, the ITC found that there is a reasonable indication that imports of fresh cut roses from Colombia are materially injuring, or are threatening to materially injure, a United States industry.

Petitioners alleged that at least 26 Colombian companies either produce for export, or export, fresh cut roses to the United States. We identified 11 producers whose exports account for at least 60 percent of the dollar volume of exports of fresh cut roses exported to the United States from Colombia. Questionnaires were presented to counsel for Floramerica, S.A.; Flores de los Andes; Flores Monte Verde Ltda.; Las Flores Ltda.; Rosas de Colombia Ltda.; Roselindia Ltda.; Inversiones Penas Blancas; Agricola Benilda; and Ciba-Geigy on November 30, 1983, and to Rosas Colombianas and the Beall Company on December 20, 1983.

In accordance with our normal practice, we requested responses within 30 days. At respondents' request, we agreed to allow an additional 17 days for these responses. Again at respondents request, we granted a further 3-day extension.

At the conclusion of the above 50 days, on January 20, respondents submitted the responses which included confidential information. Section 353.28(a) specifically requires that all requests for confidential treatment be accompanied by either: (1) a summary that may be disclosed to the public and that is full and descriptive of the confidential information; or (2) a statement by the person submitting the information that the information is not susceptible to such a summary, accompanied by a full statement of the reasons supporting this conclusion; or (3) an agreement to permit disclosure under protective order, accompanied by a brief non-confidential statement describing the data submitted. The January 20 responses did not comply with any of these alternative requirements.

On January 20 we orally informed respondents that we would return the response unless they complied with § 353.28(a) by January 30. On January 26 we confirmed this advice in a letter.

On January 31 we advised respondents by telephone that we would not be able to use the information they had provided, unless they complied with § 353.28(a) by the close-of-business that day. Respondents submitted summaries of their confidential information, but those summaries were not "full and descriptive" as required. In many instances crucial data were omitted, such as names of producers and elements of costs, rendering the summaries meaningless. In view of their inadequacy and respondents' failure otherwise to comply with section 353.28(a), we returned the January 20 responses and are instead using the best information available, in accordance with section 776 of the Act (19 U.S.C. 1677e).

Scope of Investigation

The merchandise covered by this investigation consists of hybrid tea roses, intermediate roses, and sweetheart roses, currently provided for under item numbers 192.1810 and 192.1890 of the *Tariff Schedules of the United States, Annotated* (TSUSA).

This investigation covers the period from October 1, 1982 to September 30, 1983.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value, which was based on the constructed value of products in Colombia.

United States Price

The best information available for calculating the United States price was derived from the petition and from U.S. Department of Commerce import statistics.

The petition presents four examples of transaction prices for roses from Colombia in the U.S. market. Where appropriate, petitioners adjusted the transaction prices by deducting commissions, freight and import duties to arrive at a f.o.b. Colombia price. In analyzing these transaction prices, the Department determined that one price should not be used in this determination as it could be considered a restrictive sale. Additionally, based on the best information available to the Department, we reduced the commission rates used by the petitioners. The three remaining adjusted transaction prices were averaged to obtain a single transaction price.

We used the U.S. Department of Commerce import statistics to obtain a weighted-average f.a.s. origin price for all roses imported into the United States from Colombia for the period October 1, 1982 through September 30, 1983. We obtained the resultant United States price by taking a simple average of the single transaction price plus the weighted-average f.a.s. origin price obtained from the import statistics.

Foreign Market Value

The best information available for determining foreign market value is contained in the petition presented by Roses, Inc. The information presented indicates that the fresh cut roses sold in the Colombian home market are considered culls, waste and work flowers, which cannot be considered such or similar merchandise to the roses exported to the United States. Furthermore, the petition alleges that both the fresh cut roses sold in the home market and for export to third countries are sold at prices below the cost of production, and thus are inappropriate bases for determining foreign market value under section 773(b) of the Act (19 U.S.C. 1677b).

When sales in the home market or to third countries are determined to be inadequate bases for determining foreign market value, we are required by

section 773(b) of the Act to use the constructed value of the product to determine the foreign market value. In this instance the best information available for determining foreign market value would be from the cost of production data presented in the petition. Petitioners developed a cost of production for a hybrid tea rose, which accounts for the majority of roses exported to the United States from Colombia, from a market research report allegedly based on information gathered by petitioners on Colombian rose growers. The constructed value used to represent foreign market value was based on the actual cost of production information alleged in the petition, plus a statutorily mandated addition of 8 percent for profit.

Negative Determination of Critical Circumstances

Counsel for petitioner alleged that imports of fresh cut roses from Colombia present "critical circumstances." Under section 733(e)(1) of the Act (19 U.S.C. 1673b(e)(1)), critical circumstances exist when the Department has a reasonable basis to believe or suspect that: (1)(a) there is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value; and (2) there have been massive imports of the merchandise under investigation over a relatively short period.

In preliminarily determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: recent trends in import penetration levels; whether imports have surged recently; whether recent imports are significantly above the average calculated over the last several years (1981–1983); and whether the patterns of imports over the three-year period may be explained by seasonal swings. Based upon our analysis of the information, we preliminarily determine that imports of the products covered by this investigation do not appear massive over a relatively short period (September through December 1983).

For the reasons described above, we preliminarily determine that critical circumstances do not exist with respect to fresh cut roses from Columbia.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of cut roses from Colombia which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The weighted-average margin is as follows:

Manufacturers/producers/exporters	Weighted-average margin (percent)
All Manufacturers/Producers/Exporters	20.2

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring or threatening to materially injure a U.S. industry, before the later of 120 days after the Department made its preliminary affirmative determination or 45 days after the Department makes a final affirmative determination.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on March 30, 1984, at the United States Department of Commerce, Room 4830, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The Party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by March 23, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

This determination is being published pursuant to section 733(f) of the Act (19 U.S.C. 1673(b)).

March 8, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-6883 Filed 3-13-84; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Defense Science Board Task Force on Fire Support for Amphibious Warfare; Advisory Committee Meeting

The Defense Science Board Task Force on Fire Support for Amphibious Warfare will meet in closed session on April 2–3, 1984 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on April 2–3, 1984 the Task Force will review their findings on the basic requirements for fire support during amphibious warfare operations and discuss the preparation of their final report.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. I, (1976)), it has determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly these meetings will be closed to the public.

Dated: March 9, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-6805 Filed 3-13-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Intent To Grant a Limited Exclusive Patent License to APS-Materials, Inc.

Pursuant to the provisions of the General Services Administration's licensing regulations, the Department of the Army announces its intention to grant APS-Materials, Inc., a corporation of the State of Ohio, a limited exclusive license under U.S. Patent Application Serial Number 407,189 filed on August 11, 1982 entitled "Ceramic Anodes for Corrosion Protection" invented by A. Kumar et al.

This license will be granted unless compelling reasons for not granting such a license are received by the Chief, Patents, Copyrights and Trademarks Division, Office of The Advocate General, Department of the Army, Washington, D.C. 20310 within 60 days of this notice.

For further information concerning this notice, contact: Eugene E. Stevens III, HQDA (DAJA–IP) Pentagon—Room 2D 444, Washington, D.C. 20310, Telephone No. (Area Code 202) 695–9356.

John O. Roach II,

Army Liaison Officer With the Federal Register.

[FR Doc. 84-6769 Filed 3-13-84; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act.

DATES: Interested persons are invited to submit comments on or before April 13, 1984.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 4070, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The requirement for public consultation may be amended or waived by OMB to the extent that the public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform the statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information requests prior to the submission of these requests to the Office of Management and Budget. Public comment is invited from the OMB at the address specified above. Copies of the requests may be obtained from Margaret Webster at the address specified above.

Dated: March 9, 1984.

Charles L. Heatherly,

Deputy Under Secretary for Management.

Office for Civil Rights

New

Fall 1984 Vocational Education Civil Rights Survey
ED 203
Quadrennially
State or Local Governments
Reporting Burden Responses: 4,970, Burden Hours: 34,790
Recordkeeping Burden Recordkeepers: 4,970, Burden Hours: 249

Abstract: The data collected in this survey will be used by the Office for Civil Rights to assist in making determinations of possible non-compliance by schools or school districts of civil rights laws.

Fall 1984 Elementary and Secondary School Civil Rights Survey
ED 101; ED 102
Biennially
State or Local Governments
Reporting Burden Responses: 24,500, Burden Hours: 171,500
Recordkeeping Burden Recordkeepers: 24,500, Burden Hours: 1,225

Abstract: The data collected in this survey will be used by the Office for Civil Rights to assist in making determinations of possible non-compliance with civil rights laws by schools and school districts.

Office of Educational Research and Improvement

New

A study of the Minnesota Income Tax Deduction for Public and Private School Expenses
ED 2485
Non-Recurring
Individuals or Households; Non-Profit Institutions
Reporting Burden Response: 1,132, Burden Hours: 405

Abstract: The survey of public and non-public school households and heads of private schools is part of a research study on the Minnesota income tax deduction for dependent's educational expenses.

Public Response to Efforts to Improve Academic Standards in Secondary Schools
Non-Recurring
Individauls or Households
Reporting Burden Responses: 1,300, Burden Hours: 487.5

Abstract: This survey of 1,300 households nationwide will examine perceptions of secondary schools and the depth of public support for efforts to raise academic standards. The results will assist policy makers at all levels who seek to improve secondary schools and who need practical information about the public's opinions on these matters.

May 1984 Survey of Adult Education
CPS–1; CPS–680
Triennially
Individuals or Households
Reporting Burden Responses: 58,000, Burden Hours: 4,040

Abstract: This survey will provide data on the number of participants in adult education activities, the nature of such activities, and the characteristics of the participants. The data will aid in analysis of adult education programs by supporting agencies, administrators, advisors, and educators.

Fast Response Survey System: Survey of Remedial Studies in Postsecondary Institutions
ED 2379–19
Non-Recurring
State or Local Governments; Businesses or Other For-Profit; Non-Profit Institutions
Reporting Burden Responses: 500, Burden Hours: 250

Abstract: This survey seeks to obtain nationally representative information concerning the nature and extent of remedial programs in second and fourth year postsecondary institutions.

Fast Response Survey System: Survey of Inservice and Preservice Teacher Preparation in Computer Education
ED 2379–20
Non-Recurring
State or Local Governments; Businesses or Other For-Profit; Non-Profit Institutions
Reporting Burden Responses: 424, Burden Hours: 212

Abstract: This survey seeks to obtain nationally representative information from Schools of Education concerning the extent of inservice and preservice training in computer education and barriers to improve teacher preparation in this area. This survey will provide information to be used in discussions of possible Federal initiatives and policies.

Reinstatement

Statistics of Public School Libraries, 1984
ED 2349–2
Quadrennial
State or Local Governments

Abstract: The survey will update the 1978 public school library survey. The information is needed to respond to information requests from Congress, the National Commission on Libraries, Center for Libraries and Educational Improvement, United Nations Educational Scienific and Cultural Organization, library associations, State governments, school systems, educators, and library officials. Also, the information will be assessed for relevance to the Department's priority on Excellence in Education.

Survey of Library Networks, 1984
ED 2396–2
Quadrennial
State of Local Governments; Non-Profit Institutions
Reporting Burden Responses: 1,500, Burden Hours: 750

Abstract: Library networks and cooperative organizations enable all libraries, i.e., college, school, public, and special, to furnish better services and cope with rising costs, thereby affecting the formal and informal education of everyone. This study will assess innovations and impact of library networking.

Office of Elementary and Secondary Education

Extension

Report of Contract Awarded and State Education Agency Report of Requirements for Construction of Minimum School Facilities in Areas Affected by Federal Activity
ED 4038; ED 4038–1
Annually
State or Local Governments
Reporting Burden Responses: 266, Burden Hours: 133

This is a report on contracts for new school buildings; the data is needed to determine per-pupli construction costs in each State as the basis for payments under Section 5 of Pub. L. 81–815.

Application for Chapter 1, Education Consolidation and Improvement Act 1981, Migrant Education Interstate/ Intrastate Coordination Program
ED 362–2
Annually
State or Local Governments
Reporting Burden Responses: 40, Burden Hours: 1,600

Abstract: State educational agencies apply individually or cooperatively for grants to plan and implement special projects designed to improve the interstate and intrastate coordination of migrant education activities. Information on the projects will be distributed to all States serving migrant children, the District of Columbia, and Puerto Rico.

Financial Status and Grant Performance Report—Indian Education Programs
ED 354; ED 354–1
Annually
State and Local Educational Agencies; Indian Tribes; Indian Organizations; Indian Institutions; Elementary or Secondary Schools for Indian Children Supported by the Department of the Interior; Institutions of Higher Education
Reporting Burden Responses: 1,200, Burden Hours: 3,600

Abstract: These forms are required from each grantee annually. The grantees report on the amount of funds spent, the amount remaining, the number of students who participated in the project, and the extent to which the project achieved objectives described in the application.

Existing

Financial Status Report for the Women's Educational Equity Act
ED 436–2
Annually
State or Local Governments; Non-Profit Institutions; Individuals or Households; Public Agencies; Private and Non Profit agencies, organizations, and institutions
Reporting Burden Responses: 67, Burden Hours: 67

Abstract: Regulations require all grantees to report on the expenditure of funds.

Office of Management

Existing

Recordkeeping Requirement Under the Family Educational Rights and Privacy Act
State or Local Governments; Businesses or Other For-Profit; Non-Profit Institutions
Recordkeeping Burden Recordkeepers: 23,750, Burden Hours: 4,037

Abstract: The Family Educational Rights and Privacy Act requires each educational agency and institution to maintain a record of parties who have requested or obtained access to student's education records.

Office of Postsecondary Education

New

Institutional Payment Summary
Quarterly; More frequently at the option of the institute
Businesses or Other For-Profit; Non-ProfitInstitutions
Reporting Burden Responses: 31,200, Burden Hours: 57,200
Recordkeeping Burden Recordkeepers: 5,200 Burden Hours: 832

Abstract: The Institutional Payment Summary along with the Student Aid Report Part 3 is replacing the functions of the Progress Report, ED 255–3 and the Student Validation Roster, ED 255–4. The Institutional Payment Summary is the vehicle through which the Higher Education community reports cumulative payment data for the students, at their institution, eligible to receive a Pell Grant. Adjustments on an institution's Pell Grant funding level will be made based on the information contained on this form and the Student Aid Reports that accompany the Institutional Payment Summary.

Title IV Quality Control Project
On Occasion; Non-Recurring
Individuals or Households; State or Local Governments; Businesses or Other For-Profit; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden Responses: 2,920, Burden Hours: 1,590

Abstract: Recipients of aid from the Campus-Based and Guaranteed Student Loan programs under Title IV of the Higher Education Act, and their parents, will be asked to verify personal financial information submitted to receive financial aid. Institutions administering these programs will be interviewed about current practices. The data will be used to assess compliance with program requirements and effeciency of use of public funds.

Revision

Lender's Request for Interest and Special Allowance for Loans Made from Tax-Exempt Funds and Related Form
ED 799–A
On Occasion; Quarterly
State or Local Governments; Non-Profit Institutions
Reporting Burden Responses: 2,500, Burden Hours: 2,650
Recordkeeping Burden Recordkeepers: 50, Burden Hours: 150

Abstract: The information collection requirements are necessary for the Department of Education to carry out administrative functions for the Guaranteed Student Loan and Parent Loan programs for undergraduate students and to comply with the requirements of Pub. L. 98–79 Student Loans Consolidation and Technical Amendments Act of 1983.

Lender Annual Report on the Guaranteed Student Loan and Parent Loan for Undergraduate Students
ED 799–1
Annually
Businesses or Other For-Profit; Small Businesses or Organizations

Abstract: This form is used by the lender and provides the Guaranteed Student Loan program officials updated information on the lender's portfolio on loans under the Guaranteed Student Loan program. It is also used to determine the amount that the lender can bill for interest and special allowance in the next quarter.

Alternate Disbursement System Report—Request for Additional Payment
ED 304–1
On Occasion; Semi-Annually; Annually
Individuals or Households; Businesses or Other For-Profit; Non-Profit Institutions
Reporting Burden Responses: 99,682, Burden Hours: 33,673
Recordkeeping Burden Recordkeepers: 900, Burden Hours: 3,960

Abstract: This form is used by students attending institutions that participate in the Pell Grant Program under the Alternate Disbursement System to request additional payments and to request the financial aid administrator to verify information previously submitted regarding a payment.

Request for Payment of 1984–85 Pell Grant Award and Notice of Termination/Leave of Absence
ED 304; ED 304–2
On Occasion; Annually
Individuals or Households; Businesses or Other For-Profit; Non-Profit Institutions
Reporting Burden Responses: 82,100, Burden Hours: 27,750
Recordkeeping Burden Recordkeepers: 900, Burden Hours: 3,096

Abstract: These forms are the means by which students attending institutions that participate under the Alternate Disbursement System submit information regarding the students enrollment to the Secretay to be used in determining their Pell Grant award. The Notice of Termination/Leave of Absence is used to recalculate a student's award if (s)he leaves before the payment ending date.

Extension

Guarantee Agency Request for Reimbursement: For Claims Paid; Under Agreement for Federal Reinsurance; and On Death and Disability
ED 1189; ED 1189–1; ED 1189–3
Monthly
State or Local Governments
Reporting Burden Responses: 1,800, Burden Hours: 3,150
Recordkeeping Burden Recordkeepers: 50, Burden Hours: 144

Abstract: The Guarantee Agency uses the ED 1189 to request reimbursement on claims paid. This form always accompanies ED 1189–1 and 1189–3. The ED 1189–1 is used for reimbursement on death and disability claims prior to December 15, 1968, and for all bankruptcy claims. The ED 1189–3 is used for claims on or after December 15, 1968.

National Direct Student Loan Program Assignment Form
ED 553
On Occasion
Individuals or Households; Non-Profit Institutions
Reporting Burden Responses: 120,000, Burden Hours: 60,000
Recordkeeping Burden Recordkeepers: 120,000, Burden Hours: 6,000

Abstract: This form is used to collect pertinent information from institutions participating under the National Direct Student Loan program on defaulted student loan borrowers. The form serves as the transmittal document for the assignment of defaulted accounts to the Department of Education for collection.

Guarantee Agency Report of Recoveries on Claims Paid Under Federal Reinsurance
ED 1198–2
On Occasion
State or Local Governments
Reporting Burden Responses: 500, Burden Hours: 1,000
Recordkeeping Burden Recordkeepers: 50, Burden Hours: 40

Abstract: The Guarantee Agency completes this form indicating recoveries on claims paid and forwards the report with a check to the Claims and Collections Section, Guaranteed Student Loan Branch.

State Student Incentive Grant Performance Report and Financial Status Report
ED 1288–1; –2
Annually
State and Local Government
Reporting Burden Responses: 57, Burden Hours: 171
Recordkeeping Burden Recordkeepers: 57, Burden Hours: 57

Abstract: This report fulfills the statutory requirement of Section 415C (b)(8), Higher Education Act. The collected data is used to determine the nature of program accomplishments and provide fiscal information about use of allotments. The analyzed data is used for program evaluation, various budget/policy decisions, and to assist States in program development.

Existing

National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs
Businesses or Other For-Profit; Non-Profit Institutions
Recordkeeping Burden Recordkeepers: 3,807, Burden Hours: 422,577

Abstract: The three campus/based programs provide financial assistance to students that need money to pay for their educational costs. Institutions of higher education are responsible for awarding the funds to eligible students and for collecting from National Direct Student Loan borrowers.

Student Assistance General Provisions
Businesses or Other For-Profit; Non-Profit Institutions
Recordkeeping Burden Recordkeepers: 8,400, Burden Hours: 487,200

Abstract: Postsecondary institutions participating in the Title IV, Higher Education Act, student financial assistance programs are required to maintain certain records and submit biennial audits to ensure proper administration of program funds.

Pell Grant Program Administration and Technical Recordkeeping
Businesses or Other For-Profit; Non-Profit Institutions
Recordkeeping Burden Recordkeepers: 22,050, Burden Hours: 28,047,600

Abstract: The Guaranteed Student Loan and Parent Loan for Undergraduate Students programs make loans available for postsecondary

education purposes by guaranteeing or reinsuring loans made by private lenders. The regulations establish proper administrative standards and practices that protect the Federal interest, and stipulate audit and recordkeeping requirements for guarantee agencies, lenders, and schools.

Federal Insured Student Loan Application
ED 1154
Individuals or Households; Businesses or Other For-Profit; Non-Profit Institutions
Reporting Burden Responses: 7,500, Burden Hours: 1,042
Recordkeeping Burden Recordkeepers: 900, Burden Hours: 119

Abstract: The Department will use the application to verify the identity of the applicant, to determine program eligibility and benefits and to collect on delinquent or defaulted loans. Data will be given upon request to Federal, State or Local agencies, education institutions, and credit and collection agencies. Respondents include eligible student borrowers, lenders, and institutions.

[FR Doc. 84-6804 Filed 3-13-84; 8:45 am]
BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Dockets PP-68EA and PP-79EA]

Amendment of Electricity Export Authorization and Issuance of Electricity Export Authorization; San Diego Gas & Electric Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Issuance of an order amending an existing authorization to export electricity (Docket PP-68A) and authorizing new exports of electricity (Docket PP-79EA) to Mexico by San Diego Gas & Electric Company.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has issued an order amending an existing export authorization, thereby increasing the amount of electrical power that may be exported by the San Diego Gas & Electric Company (SDG&E) to Mexico over the Miguel-Tijuana 230 kilovolt (kV) transmission line to 400 megawatts (MW). The order also authorizes SDG&E to export up to 400 MW of electrical power to Mexico over SDG&E's proposed Imperial Valley-La Rosita 2230 kV transmission line.

While allowing up to 400 MW to be exported over either line, the order limits to 400 MW the total amount of electrical power that may be exported by SDG&E to Mexico at any one time over both the lines.

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Forrestal Building, Room GA-033, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-5935

Lise Courtney M. Howe, Office of Assistant General Counsel for International Trade and Emergency Preparedness, Department of Energy, Forrestal Building, Mail Stop 6A-141, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2900

SUPPLEMENTARY INFORMATION:

Order Amending Existing Export Authorization and Authorizing New Exports of Electricity to Mexico

On June 22, 1983, the San Diego Gas & Electric Company filed an application with the Economic Regulatory Administration in Docket PP-68EA to amend the existing export authorization in Docket PP-68A in order to increase the upper limit on the amount of power that may be exported to Mexico over the existing Miguel-Tijuana 230 kV transmission line. SDG&E filed a second application on June 2, 1983, in Docket PP-79EA, pursuant to section 202(e) of the Federal Power Act, to transmit electric energy from the United States to Mexico over SDG&E's proposed Imperial Valley-La Rosita 230 kV transmission line.

Under the amendment request in Docket PP-68EA, SDG&E seeks to increase the amount of electrical power that may be exported to the Comision Federal de Electricidad (CFE) in Mexico over the existing Miguel-Tijuana 230 kV transmission line from 125 MW to 400 MW.

The Miguel-Tijuana transmission line and the electrical interconnection at the U.S.-Mexican border are authorized by and subject to a Presidential permit issued by the Administrator of the ERA on January 17, 1981, in ERA Docket PP-68. The existing authorization to export electric energy over this line is contained in the export authorization in Docket PP-68A which was issued by the Administrator of ERA on July 22, 1981.

Under the application filed in Docket PP-79EA, SDG&E requests authorization to export up to 400 MW of electrical power to the CFE over the proposed Imperial Valley-La Rosita 230 kV transmission line. Electricity exchanges will be made in accordance with the terms and at the rates set forth in the Interconnection and Exchange Agreement (the Agreement) between SDG&E and the CFE, dated June 22, 1983, a copy of which was filed as Exhibit A of the application. The Agreement provides for emergency assistance, economy energy, economy capacity, and short term firm capacity transactions. Under the terms of the Agreement, SDG&E has full discretion to sell surplus non-emergency capacity and energy to CFE. Similarly, SDG&E is obligated to sell emergency power to CFE only when SDG&E has determined that the sufficiency of electric supply and the reliability of the SDG&E system are not endangered by such sales. These electricity sales are intended to benefit SDG&E and the CFE mutually.

The Imperial Valley-La Rosita transmission line and the electrical interconnection at the U.S.-Mexican border are authorized by and subject to a Presidential permit issued by the Administrator of the ERA on December 20, 1983, in ERA Docket PP-79.

SDG&E is requesting authorization to export up to 400 MW of electrical power to the CFE over either the Imperial Valley-La Rosita or the Miguel-Tijuana 230 kV lines. The total amount of power exported to Mexico over both of these lines will not exceed 400 MW.

Notice of these applications was given on July 19, 1983 (48 FR 32851), stating that any person desiring to be heard or to make any protest with reference to these applications should on or before August 18, 1983, file with the ERA petitions to intervene or protests in accordance with the Rules of Practice and Procedure (18 CFR 1.8 and 1.10). No petition or protest or request to be heard in opposition to the granting of the requests made in these applications was received.

ERA Administrator Finds

(1) The proposed transmission of electric energy from the United States to Mexico as limited herein and as hereinafter authorized will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Department of Energy. The staff analysis and recommendations in support of this finding have been made a part of the Docket and are available upon request.

(2) The period of public notice given in each of these matters was reasonable.

ERA Administrator Orders

(1) SDG&E hereby is authorized to transmit electric energy from the United States to Mexico in accordance with the terms and conditions set forth in the applications and Interconnection and Exchange Agreement filed with the ERA on June 22, 1983, subject to the provisions of this Order.

(2) The electric energy which SDG&E hereby is authorized to transmit from the United States to Mexico shall be transmitted over facilities specified in the Presidential permits in ERA Dockets PP–68 and PP–79, issued by the Administrator on January 17, 1981, and December 20, 1983, respectively.

(3) The authorization herein granted may be modified from time to time or terminated by further order of the ERA Administrator, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential permits referred to in Paragraph (2) above.

(4) SDG&E shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders adopted or issued by the Department of Energy.

(5) SDG&E shall provide for the installation and maintenance of adequate metering equipment to measure the flow of all electric energy transmitted over these interconnections with CFE, and shall make and preserve full and complete records with respect to the movement of such electricity. SDG&E shall furnish a report to the ERA annually, on or before February 15, showing the gross amount of electricity delivered or received, the maximum hourly rate or power flow in each direction, and the consideration received or paid therefor during each month of the preceding calendar year.

(6) The following conditions apply to the export of electricity by SDG&E utilizing the facilities authorized by Presidential Permits PP–68 and PP–79:

(a) The maximum rate of power transfer to Mexico over the facilities authorized in Presidential Permits PP–68 and PP–79 shall not exceed 400 MW on either set of facilities, nor shall the total amount of power exported to Mexico over both facilities exceed 400 MW.

(b) The export of power from SDG&E to CFE shall not cause the spinning reserves on the SDG&E system to fall below the California Power Pool's (CPP) spinning reserve criteria that are applicable at the time of the export.

(c) If all or part of SDG&E's spinning reserve is being provided by other CPP members, sufficient transmission tie line capability must be maintained so that SDG&E may avail itself of those reserves if needed.

(d) SDG&E annually will submit to the ERA a copy of its resource plan filed in response to the California Public Utility Commission's General Order 131–B.

(e) Upon a determination by SDG&E that an emergency exists in the CFE electric system, electricity may be exported for a period of up to 24 hours at a rate in excess of that set forth in subparagraph (a) above provided that in so doing, the reliability of electric supply in the United States is not jeopardized. I such an emergency situation occurs in the CFE system, SDG&E shall submit to the ERA a detailed description of the event which initiated the emergency not later than thirty (30) days after such an occurrence. Further extensions beyond the 24-hour period may be granted by ERA upon request by SDG&E.

Issued in Washington, D.C., March 8, 1984.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 84–6810 Filed 3–13–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP82–119–007, CP82–446–003, CP84–146–001]

Algonquin Gas Transmission Co., et. al.; Intent To Prepare an Environmental Assessment For the Phase 1A Pipeline Project and Request For Comments on Environmental Issues

March 9, 1984.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) will prepare an environmental assessment on the facilities proposed in the above-referenced dockets. The applicants are seeking certificates of public convenience and necessity under section 7(c) of the Natural Gas Act to construct and operate the facilities shown in table 1. Known as the Phase 1A Pipeline Project, most of these facilities were originally to be constructed as part of the Canadian Import Project (CIP) and were subsequently planned to be evaluated in the CIP environmental impact statement. (See *Notice of Intent to Prepare an Environmental Impact Statement for the Canadian Import Project, Request for Comments on Environmental Issues and Cancellation of a Prior Environmental Impact Statement Notice.* August 22, 1983 (48 FR 38535)). Instead, these facilities are now proposed to be constucted and used for the transportation of domestic gas in the Phase 1A Pipeline Project.

Although the Phase 1A Pipeline Project would be constructed in the same region of the United States as the CIP facilities, the staff believes it is necessary to evaluate these projects separately. The Phase 1A Pipeline Project is a discrete project which is independent from CIP. It is proposed to be constructed in 1984, 1985, and 1986. CIP, orginally proposed to be constructed in 1984, would not be constructed until at least 1986 or later, if at all. This delay arose in part from the Department of Energy's (DOE) February 17, 1984, decision to require that imported natural gas be supplied on a competitive basis with other sources of energy. (See *New Policy Guidelines and Delegation Orders on the Regulation of Imported Natural Gas,* United States Department of Energy, February 17, 1984 (49 FR 6684)). Sellers and buyers of imported gas will now have to reexamine their contracts and make the changes necessary to conform to DOE's decision. Furthermore, some of the applications for the CIP proposal are incomplete and the project cannot be processed in its current form. In addition, other parties have announced their intention to file competing applications in the near future that would provide alternative transportation arrangements. Under these circumstances the CIP is still evolving, and an evaluation of the environmental impact resulting from this project cannot be prepared at this time. Conversely, applications for the Phase 1A Pipeline Project are complete and the staff can proceed with its environmental analysis.

A copy of this notice has been distributed to Federal, state, and local environmental agencies, parties to the proceeding, and the public. In addition, a map showing the general location of the facilities identified in table 1 has been provided to those on the distribution list. Any comments should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

D.C. 20426. Written comments should be submitted by April 13, 1984, and reference Docket No. CP84-146-001. Additional information about the proposals, including more detailed maps of the individual facility locations, is avaiable from Mr. Kenneth Frye, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, telephone (202) 357-9039.

Kenneth F. Plumb,
Secretary.

TABLE 1.—PROPOSED PHASE 1A FACILITIES

Company	Proposed facilities	Pipe diameter (inches)	Length (miles)	Construction year	Location	
					State	Counties
Transcontinental Gas Pipe Line Corporation	Pipeline loop	30	15.51	1984	PA	Clinton, Lycoming.
	Pipeline loop	36	4.95	1984	PA	Lycoming.
	Algonquin-Centerville Meter Station			1984	NJ	Somerset.
	Morgan Meter Station			1984	NJ	Middlesex.
	Four pipeline loops	30	0.75 each	1984	PA	Perry, Dauphin, Lebanon, Berks.
	Four pipeline loops	30	1.0 each	1986	PA	Perry, Dauphin, Lebanon, Berks.
Texas Eastern Transmission Corporation	Pipeline loop	24	6.75	1986	PA	Clinton.
	4,000 horsepower addition at Lambertville Compressor Station.			1986	NJ	Hunterdon.
	Algonquin-Centerville Meter Station interconnection			1984	NJ	Somerset.
	Pipeline	10	10.3	1985	CT	New Haven, Hartford.
Algonquin Gas Transmission Company	Hanover Compressor Station (7,660 horsepower)			1985	NJ	Morris.
	3,830 horsepower addition at the Stony Point Compressor Station.			1985	NY	Rockland.
	3,830 horsepower addition at the Cromwell Compressor Station.			1986	CT	Middlesex.

[FR Doc. 84-6851 Filed 3-13-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CS79-387-001, et al.]

C and E Operators, Inc., Arc-En-Ciel, Inc. and Pot D'Or, Inc., et al.; Applications for "Small Producer" Certificates [1]

March 9, 1984.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before March 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No.	Dated filed	Applicant
CS79-387-001	[1] 5/2/83	C and E Operators, Inc., Arc-En-Ciel, Inc., Pot D'Or, Inc., Suite 1100 Two Energy Square, 4849 Greenville Avenue, Dallas, Tex. 75206.
CS84-40-000	2/21/84	Jerry B. Keen, 1201 First National Center, Oklahoma City, Okla. 73102.
CS84-41-000	2/21/84	Petro Engineering, Inc., 1201 First National Center, Oklahoma City, Okla. 73102.
CS84-42-000	2/21/84	Michael W. Blevins, P.O. Box 249, Sayre, Okla. 73662.
CS84-43-000	2/21/84	Jack P. Speed, P.O. Box 386, Erick, Okla. 73645.
CS84-44-000	2/21/84	Citadel Energy, Inc., 1300 Main Street, Houston, Tex. 77002.

[1] Ltr. rec'd dated April 29, 1983 requesting that its small producer certificate in Docket No. CS79-387 be redesignate under the name of C and E Operators, Inc., Arc-En-Ciel, Inc. and Pot D'Or, Inc.

[FR Doc. 84-6850 Filed 3-13-84; 8:45 am]
BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket Nos. RP82-80-000, et al.]

ANR Pipeline Co. (Formerly Michigan Wisconsin Pipe Line Co); Withdrawal of Rate Change Filing

March 8, 1984.

Take notice that on February 27, 1984, ANR Pipeline Company (ANR) tendered for filing a notice of withdrawal of its rate change filing in the above-referenced dockets. ANR states that its withdrawal is pursuant to Article XI of the Stiplation and Agreement approved in the above-referenced dockets by the Commission's letter order of January 19, 1984.

ANR certifies that all participants listed on the official service list in the above-referenced dockets wil be served with a copy of its finding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 19, 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. 84-6835 Filed 3-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-300-000]

Cleveland Electric Illuminating Co.; Filing

March 8, 1984.

The filing Company submits the following:

Take notice that on February 28, 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.

CIE requests an effective date of February 8, 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 petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 22, 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. 84-6836 Filed 3-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-301-000]

Cleveland Electric Illuminating Co.; Filing

March 8, 1984.

The filing Company submits the following:

Take notice that on February 28, 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 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 February 15, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 22, 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. 84-6837 Filed 3-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-299-000]

Otter Tail Power Co.; Filing

March 8, 1984.

The filing Company submits the following:

Take notice that on February 27, 1984, Otter Tail Power Company (Otter Tail) tendered for filing rate schedules covering scheduling and dispatching service provided to Cooperative Power Association (Association) and Central Power Electric Cooperative (Central). An effective date of April 1, 1984 is requested for the increase, estimated at approximately $5,818 per year, in rates to be charged the Association per Supplement No. 3 to Otter Tail's Rate Schedule FERC No. 154. An Effective date of March 20, 1984 is requested for the increase estimated at approximately $5,976 per year, in rates to be charged Central per Supplement No. 3 to Otter Tail's Rate Schedule FERC No. 171.

Otter Tail requests waiver of the Commission's notice requirements to allow these two schedules to become effective on April 1, 1984 and March 20, 1984, respectively.

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 March 22, 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. 84-6838 Filed 3-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-53-000]

Ozark Gas Transmission System; Filing

March 8, 1984.

Take Notice that Ozark Gas Transmission system on March 1, 1984, tendered for filing a cost and revenue study as required by Commission Opinion No. 125. Ozark does not propose any changes in its rates, but proposes to continue its existing rates. Opinion No. 125 required such a filing within two years after Ozark began service. Ozark commenced service on March 1, 1982.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with FERC, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules. All such petitions or protests must be filed on or before March 16, 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. 84-6839 Filed 3-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-38-000]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

March 8, 1984.

Take notice that on March 1, 1984, Ringwood Gathering Company (Ringwood) tendered for filing the following revisions to its FERC Gas Tariff: Include Thirty-Second Revised Sheet PGA-1.

This tariff sheet is to be deemed in compliance with the terms of an exemption from Section 282 of the Commission's Rules and Regulations, which was granted to Ringwood in Docket No. SA80-137.

Ringwood states that copies of its filing are being posted and mailed to Northwest Central Pipeline Corporation and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 16, 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. 84-6840 Filed 3-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-18-005]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 8, 1984.

Take notice that on March 1, 1984, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following proposed revisions to its FERC Gas Tariff, Third Revised Volume No. 1: Revised Forty-Fifth Revised Sheet No. 7.

Texas Gas request an effective date of February 1, 1984, and all necessary waivers.

Texas Gas states that its filing is pursuant to Ordering Paragraph (B) and (D) of the Commission's January 31, 1984 order in Docket No. TA84-1-18.

Texas Gas also states that copies of its filing have been sent to all of its jurisdictional sales customers, interested state commissions, and all parties of records in this proceeding.

Any person desiring to be head or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 19, 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. 84-6841 Filed 3-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-298-000]

York Haven Power Co.; Filing

March 8, 1984

The filing Company submits the following:

Take notice that on February 27, 1984, York Haven Power Company, Reading, Pennsylvania, tendered for filing a proposed change in its rate schedule for the sale of power to its parent, Metropolitan Edison Company, from FPC licensed Project No. 1888. This change in rates is proposed to be effective for deliveries of power and energy on or after May 1, 1984. The proposed changes would decrease revenues from jurisdictional sales and service by $8,138 based on the 12-month period ending April 30, 1984.

York Haven States that under the affected rate schedule, all of the power and energy from Project No. 1888 is sold to Metropolitan Edison on a rate based upon York Haven's cost and expenses in generating and transmitting such power and energy. Under its agreement with Metropolitan Edison, York Haven is entitled to the same return on net investment as was most recently allowed Metropolitan Edison by the Pennsylvania Public Utility Commission. That Commission on October 19, 1983 allowed a rate of return to Metropolitan Edison of 10.97 percent. This filing is submitted to reflect that rate of return. York Haven indicates that its current rate of return is 11.17 percent under its rate schedule.

York Haven requests an effective date of May 1, 1984.

Copies of this filing have been mailed to Metropolitan Edison and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 22, 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. 84-6842 Filed 3-13-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of February 10 Through February 17, 1984

During the Week of February 10 through February 17, 1984, the appeals and applications for 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: March 5, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 10 through Feb. 17, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 11, 1984	Crown Central Petroleum, Corp., Baltimore, Md.	HRZ-0190	Interlocutory. If granted: the September 28, 1983, Proposed Remedial Order issued to Crown Central Petroleum Corporation (Case No. HRO-0198) would be dismissed regarding the firm's first sales of domestically produced crude oil.
Feb. 10, 1984	Getty Oil Co., Washington, D.C.	HRX-0099	Supplemental order. If granted: The revised discovery request submitted by Getty Oil Company pursuant to the February 8, 1984, Decision and Order (Case No. HRO-0175) would be adopted.
Feb. 14, 1984	Associated Press, Seattle, Wash.	HFA-0209	Appeal of an information request denial. If granted: The January 25, 1984 Freedom of Information Request Denial issued by the Office of General Counsel of the Bonneville Power Administration, would be rescinded, and the Associated Press would receive access to all correspondence between Jerry Katzin and Ray Loleen for the period 1974 through 1976.
Feb. 15, 1984	Consolidated Materials, Inc.	HRR-0083	Request for modification/rescission. If granted: The August 12, 1983, Decision and Order (Case No. HRD-0149) issued to Consolidated Materials, Inc. would be modified regarding its discovery request for information from Signal Oil & Gas Company.
Feb. 15, 1984	Knoxville News, Washington, D.C.	HFA-0210	Appeal of an information request denial. If granted: The January 23, 1984, Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded and Knoxville News would receive access to certain evaluation board scores and contract proposals.
Feb. 17, 1984	Economic Regulatory Administration, Washington, D.C.	HRD-0201	Motion for discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted by Gulf Oil Corporation in response to the November 1, 1983, Proposed Remedial Order (Case No. HRO-0158).

REFUND APPLICATIONS RECEIVED

[Week of Feb. 10 to Feb. 17, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No.
2/14/84	Amoco/H. P. Kidd Oil Company, Inc.	RF21-12273.
2/14/84	Amoco/Knutsen Oil Company, *et al*	RF21-12274 thru RF21-12277.
2/15/84	Amoco/Minnesota	RQ21-61.
2/16/84	Amoco/Tsourapas & Karras	RF21-12278.
2/17/84	Amoco/Mike's Service Station	RF21-12279.
2/17/84	Amoco/Ronald W. Naylor	RF21-12280.
2/17/84	Amoco/The Corner Store	RF21-12281.
2/16/84	Amoco/Bystol Oil Company, Inc.	RF21-12282.
2/16/84	Conoco/Site Oil Company	RF34-1.
2/16/84	Conoco/Flash Oil Company	RF34-2.

[FR Doc. 84-6875 Filed 3-13-84; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-42059; PH-FRL 2542-6]

Colorado; Intent To Give Contingency Approval to State Plan for the Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Give Contingency Approval to State Plan.

SUMMARY: The Governor of Colorado has submitted to EPA a plan for the certification of commercial applicators of restricted use of pesticides for approval on a contingency basis. Notice is hereby given of the intention of the Regional Administrator, EPA, Region VIII, to give contingency approval to this plan. A summary of the plan appears below. Interested persons are invited to comment.

DATE: Comments should be submitted on or before April 13, 1984.

ADDRESSES: Address comments, identified by the control number OPP-42059, to: David Combs, Air and Waste Management Division (8AW-TS), Region VIII, Environmental Protection Agency, 1860 Lincoln St., Denver, CO 80295.

See **SUPPLEMENTARY INFORMATION** for addresses where the plan and comments are available for public inspection.

FOR FURTHER INFORMATION CONTACT: David Combs (303-837-3926).

SUPPLEMENTARY INFORMATION: In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136b) and 40 CFR Part 171, the Governor of Colorado has submitted a State plan for the certification of commercial applicators of restricted use pesticides to EPA for approval on a contingency basis. Contingency approval is being requested pending development and implementation of the administrative procedures necessary for: (a) The State to receive transfer of the program from EPA, Region VIII and (b) conducting the program.

Summary of Plan

The Colorado Department of Agriculture has been designated the State lead agency for the administration of the pesticide applicator certification program, with the Division of Plant Industry being responsible for the program's implementation and coordination. The Department of Agriculture will also be responsible for coordinating all pesticide applicator certification training for commercial applicators.

Legal authority for the certification program is contained in Article 10 of Colorado's "Commercial Pesticide Applicators' Act" and regulations promulgated under Article 10. Copies of these legal authorities are attached to the plan.

The plan lists the personnel available in the Department of Agriculture to carry out the certification program. The plan also includes assurances that sufficient funding will be provided for the pesticide program. This will include commercial applicator fees and EPA grant funding.

The Colorado Department of Agriculture will submit an annual report

to EPA on or before August 1 of each year and other reasonable reports requested by the Administrator of EPA. The annual report will cover the period from July 1 through June 30.

It is estimated that approximately 1,500 commercial applicators will need to be certified. This estimate includes applicators presently certified by EPA, Region VIII under the Colorado Federal pesticide applicator certification program and applicators currently licensed by the Colorado Department of Agriculture. All eligible applicators will be issued certification credentials indicating their category(ies) or limitations.

The commercial applicator categories listed in the plan are basically the same as those listed in 40 CFR 171.3. Colorado's categories are:

1. Agricultural Pest Control: (a) Insects, (b) Plant Diseases, (c) Weeds, (d) Seed Treatment, and (e) Livestock Pests.
2. Industrial and Right-of-Way Weed Control.
3. Aquatic Pest Control.
4. Forest Pest Control.
5. Rangeland Pest Control.
6. Public Health Pest Control.
7. Research and Demonstration Pest Control.
8. Turf Pest Control: (a) Insects, (b) Plant Diseases, and (c) Weeds.
9. Ornamental Pest Control: (a) Insects and (b) Plant Diseases.
10. Structural Pest Control: (a) Wood-destroying Organisms, (B) Outdoor Vertebrates, (c) Household Pests, (d) Fumigation, and (e) Grain Storage Treatment.

The general standards of competency will be the same as those listed in 40 CFR 171.4(b) and 171.6. The specific standards of competency for each different category are comparable to the standards listed in 40 CFR 171.4(c).

All commercial applicators must pass a written examination prior to being certified. This examination covers the general standards in 40 CFR 171.4(b) and 171.6 and standards for the particular category or subcategory in which the applicator wishes to be certified. The Colorado Department of Agriculture will accept as certified under the Colorado State Plan all of the commercial applicators presently certified by EPA under the Colorado Federal pesticide applicator certification program. After EPA grants final state plan approval to Colorado, EPA will accept as certified all commercial applicators who have passed the written examinations administered by the Colorado Department of Agriculture prior to approval of this program and who are currently licensed by the Department of Agriculture. Any applicator who was "grandfathered" in under Article 11 of the State's previous Structural Pest Control Act and who is not presently certified with EPA, must pass the State's or EPA's current written examinations prior to being accepted as certified.

All commercial applicators shall renew their certification by either passing a written examination or by attending an approved training course every three years. Certifications issued by EPA will be valid until the expiration date on their current certificate.

The Colorado Department of Agriculture and EPA, Region VIII are now in the process of developing a plan for the transfer of the commercial applicator portion of the Federal pesticide applicator certification program to Colorado. This plan will provide for the smooth transfer of the program and help ensure that all qualified applicators are included under the new Colorado certification plan. The Colorado Department of Agriculture will not require performance testing as a requirement for certification.

The Colorado Department of Agriculture will accept the Federal pesticide applicator certification plans approved by EPA for the U.S. Departments of Defense, Agriculture, and Interior. These plans will be accepted for use of restricted use pesticides on Federal land only.

The Colorado Department of Agriculture has not entered into any agreements with Indian reservations. The plan provides that any cooperative agreements entered into will be forwarded to EPA within 30 days. The Colorado Department of Agriculture is prohibited by State law from issuing reciprocal certifications. EPA, Region VIII will continue to conduct the pesticide certification and enforcement program on the Ute Mountain and Southern Ute Indian Reservations in Colorado until the Colorado Department of Agriculture and the Indian reservations enter into an agreement for a State-administered program. Colorado will provide available information on integrated pest management (IPM) to applicators upon their request.

Other Colorado pesticide regulatory activities and authorities include pesticide product registration and sampling. A regular program of inspection, product sampling, and follow-up investigations of accidents and complaints will be conducted by Colorado Department of Agriculture personnel.

The Toxic Substances Branch, Air and Waste Management Division, EPA, Region VIII, will continue to administer the private applicator certification and enforcement program in Colorado. EPA will be responsible for dealer and producer establishment inspections within Colorado. EPA will also continue to administer the commercial applicator cetification and enforcement program until such time as the Colorado Department of Agriculture has in place the administrative procedures needed to: (a) Accept transfer of the program from EPA and (b) administer the program effectively. EPA will issue a notice in the **Federal Register** announcing final transfer of the program to the State of Colorado. It is also anticipated that the Colorado Department of Agriculture and EPA will enter into a cooperative enforcement agreement for the enforcement of the commercial applicator program.

Public Comments

Copies of the plan, the appropriate legislation and regulations necessary for conducting the program, and all written comments are available for review at the following locations at normal business hours:

1. State Services Building, 1525 Sherman St., Denver, CO 80203, (303–866–2638).
2. Toxic Substances Branch, Air and Waste Management Division, Region VIII, Environmental Protection Agency, Rm. 927, 1860 Lincoln St., Denver, CO 80295 (303–837–3926).
3. Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (202–557–3262).

Interested persons are invited to submit written comments on the proposed State plan.

Dated: February 15, 1984.

Irwin L. Dickstein,

Acting Regional Administrator, Region VIII.

[FR Doc. 84-6534 Filed 3-13-84; 8:45 am]

BILLING CODE 6560-50-M

[Docket No. ECAO-HA-81-3; FRL 2543-3]

Health Assessment Document for Chloroform

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces the availability of an external review draft of the Health Assessment Document for Chloroform. Those persons interested in commenting on the scientific merit of this document will be able to obtain a copy as follows:

(1) The document will be available in single copy quantity from EPA at the following address: ORD Publications—CERI—FRN, U.S. Environmental Protection Agency, 26 W. St. Clair, Cincinnati, Ohio 45268 (513) 684–7562.

Requesters should be sure to cite the EPA number assigned to the document, EPA 600/8–84–004A. To receive the document, requesters should send their names and addresses to CERI at this time.

(2) The document will also be available for public inspection and copying at the EPA Library at Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

Commenters must submit comments in writing, addressed to: Project Officer for Chloroform, Environmental Criteria and Assessment Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711.

DATES: The Agency will make this document available for public comment on or about March 21, 1984. Comments must be received by close of business on May 21, 1984, or postmarked by the date.

SUPPLEMENTARY INFORMATION: The objective of the Health Assessment Document for Chloroform is to provide EPA with a sound scientific basis for the purpose of determining whether chloroform should be regulated under the Clean Air Act.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Chappell, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD–52, Research Triangle Park, N.C 27711 (919) 541–3637.

Dated: March 5, 1984.

Bernard D. Goldstein,

Assistant Administrator for Research and Development.

[FR Doc. 84–6675 Filed 3–13–84; 8:45 am]

BILLING CODE 6560–50–M

[WH–FRL 2544–2]

Draft General NPDES Permits for Oil and Gas Operations on the Outer Continental Shelf (OCS) and in State Waters of Alaska: Bering Sea and Beaufort/Chukchi Seas

AGENCY: Environmental Protection Agency.

ACTION: Notice of draft general NPDES permits.

SUMMARY: The Regional Administrator, Region 10, is proposing two draft general National Pollutant Discharge Elimination System (NPDES) permits for oil and gas stratigraphic test and exploration wells on the Alaskan Outer Continental Shelf and in offshore waters of the State of Alaska. When issued, the proposed general permits will establish effluent limitations, standards, prohibitions, and other conditions on discharges from these facilities. The proposed Bering Sea general permit would authorize discharges in all areas offered for lease by the U.S. Department of the Interior's Minerals Management Service (MMS) during Federal Lease Sales 70 (St. George Basin) and 83 (Navarin Basin). The proposed general permit for the Beaufort/Chukchi Seas will authorize discharges in all areas offered for lease by: (1) MMS during Federal Lease Sales 71 and 87, (2) the State of Alaska in State Lease Sales 39, 43 and 43A, and (3) MMS or the State of Alaska in Federal/State Lease Sale BF and contiguous inshore State lease sales, except for the area generally known as the Stefansson Sound Boulder Patch. A general NPDES permit (48 FR 54881), now in effect for the area described under (3), expires June 30, 1984. Facilities operating under the expiring general permit will be authorized to discharge under the new general permit for the same area.

DATES: *Request for Coverage*—Written request for authorization to discharge under a general permit shall be provided, as described in Part I.A. of the draft permits, to the Regional Administrator at least sixty (60) days prior to initiation of discharges. The 60-day notification requirement may be waived for those permittees who notify EPA during the public comment period for these draft permits. Authorization to discharge under a general permit requires written notification from EPA that coverage has been granted. The permits also require notification of the commencement of operations at a new site.

Comment Period—Interested persons may submit comments on the draft general permits and administrative records to the Regional Administrator, Region 10, at the address below. Comments must be received in the regional office by April 18, 1984.

Public Hearings—Public hearings on these proposed general permits will be held at the Federal Building, Room C105, 710 "C" Street, Anchorage, Alaska on April 16, 1984, at 9:00 a.m. Hearings will continue until all persons have been heard. At these hearings interested persons may submit oral or written statements concerning the draft general permits and administrative records.

ADDRESS: Public comments should be sent to: Regional Administrator, Environmental Protection Agency, Region 10, Attn: Ocean Programs Section M/S 430, 1200 Sixth Avenue M/S 601, Seattle, Washington 98101.

Administrative Record

The administrative records for these draft permits are available for public review at: (1) EPA, Region 10, Room 10B, at the address listed above, and (2) Environmental Protection Agency, Alaska Operations Offices: Room E 556, Federal Building, Anchorage, Alaska 99573 and 3200 Hospital Drive, Suite 101, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: Duane Karna, Region 10, at the address listed above or telephone (206) 442–1216. Copies of the draft general permits, the fact sheet, and summaries of the Ocean Discharge Criteria Evaluations will be provided upon request.

Fact Sheet and Supplementary Information

I. General Permits and Requests for Individual NPDES Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with the terms of an NPDES permit. Under EPA's regulations (40 CFR Part 122.28), EPA may issue a single general permit to a category of point sources located within the same geographic area if the regulated point sources: (1) Involve the same or substantially similar types of operations, (2) Discharge the same types of wastes, (3) Require the same effluent limitations or operating conditions, (4) Require similar monitoring requirements, and (5) In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits.

The Regional Administrator or Region 10 has determined that oil and gas facilities operating in the areas described in the proposed general NPDES permits are more appropriately controlled by a general permit that by individual permits. The decision of the Regional Administrator is based on an evaluation of the 403(c) Ocean Discharge Criteria (45 FR 65942), and the Agency's recent permit decisions in other OCS areas.

Any owner and/or operator authorized to discharge under a general permit may request to be excluded from coverage under these general permits by applying for an individual permit as provided by 40 CFR Part 122.28(b). The operator shall submit an application together with the reasons supporting the request to the Regional Administrator. A source located within a general permit area, excluded from coverage under the

permit solely because it already has an individual permit, may request that its individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply. Procedures for modification, revocation, termination, and processing of general permits are provided by 40 CFR Parts 122.62—122.64. As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the Act that is enforceable under section 309 of the Act.

II. Nature of Discharge and Covered Facilities

The general permits proposed today will authorize the discharge of drilling muds and cuttings and associated operational wastewaters from exploratory operations only. Exploratory operations are defined as those operations involving drilling to determine the nature of potential hydrocarbon reserves and do not include drilling of wells once a hydrocarbon reserve has been defined. Under these permit proposals they are further limited to a maximum of five wells at a single site. Exploration facilities are included in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435). Development and production operations are not covered by these general permits. The proposed permits will not authorize discharges into any wetlands adjacent to the territorial waters of the State of Alaska or from facilities in the Onshore and Coastal Subcategories as defined in 40 CFR Part 435.

The general permit will authorize the following discharges: drilling muds; drill cuttings and washwater; deck drainage; sanitary wastes; domestic wastes; desalinization unit discharge; blowout preventer fluid; bioler blowdown; fire control system test water; non-contact cooling water; uncontaminated ballast water; uncontaminated bilge water; excess cement slurry; test fluids; and mud, cuttings, and cement at the seafloor. Drilling muds and cuttings are the major pollutant source discharged from exploratory drilling operations.

III. Ocean Discharge Criteria

Section 403 of the Act requires that an NPDES permit for a discharge into ocean waters be issued in compliance with EPA's guidelines for determining the degradation of marine waters. The final 403(c) Ocean Discharge Criteria guidelines published on October 3, 1980, set forth specific criteria for a determination of unreasonable degradation that must be addressed prior to the issuance of an NPDES permit. The application of these criteria for the discharges covered by the proposed general permits is referred to as an Ocean Disharge Criteria Evaluation (ODCE). The ODCEs contain extensive listings of supporting references used to develop the proposed effluent limitations, operating conditions, and monitoring programs in the draft permits. Except for State Lease Sale 43A, each lease sale area has been evaluated in an ODCE, which is part of the administrative record for each draft permit. Although the area included in State Lease Sale 43A was not directly covered by an ODCE document, the immediately adjacent Lease Sales 39 (offshore and to the east) and 43 (to the west) were evaluated using these criteria. After considering information in the State of Alaska, Department of Natural Resources' "Preliminary Analysis of the Director Regarding Oil and Gas Lease Sale 43 (Beaufort Sea) and Oil and Gas Lease Sale 43A (Colville River Delta/Prudhoe Bay Uplands)", EPA has determined that the conditions and limitations in the proposed general permit are appropriate for State Sale 43A.

The Regional Administrator has concluded that oil and gas facilities operating under the effluent limitations and conditions in the Bering Sea and the Beaufort/Chukchi Seas general permit areas will not cause unreasonable degradation of the marine environment pursuant to the Ocean Discharge Criteria guidelines. Four areas included in the Beaufort/Chukchi Seas general permit region are of particular concern. These involve discharges to stable ice between the shoreline and the 2-m isobath, to shallow water (from 2 to 5 m isobath), to within a 1000 m of a unique biological community or habitat, and under ice. The Regional Administrator has determined that controlled discharges to these areas, in accordance with 40 CFR Part 125.123(a) and the limitations and conditions in the general permit, will not cause unreasonable degradation of the marine environment. Monitoring is required to verify that the discharge of effluents to these areas will not produce conditions in the future that would lead to unreasonable degradation (see Part IV.C.).

Principal concerns center around the environmental fate and effects of drilling muds in the marine environment. The Agency has prepared an extensive analysis (available in the administrative records) of the available information on the environmental fate and effects of drilling muds and cuttings discharged from oil and gas facilities. In general, drilling muds exhibit low toxicity. Available data indicate that EPA-approved muds, after dilution and disperson beyond the mixing zone, will not have a significant adverse effect on marine organisms. Furthermore, discharges from exploratory drilling operations will be intermittent and limited to a relatively small number of sites.

IV. Conditions in the Draft General NPDES Permit

A. Technology-Based Effluent Limitations

1. *BPT Effluent Limitations:* The Clear Water Act requires particular classes of industrial dischargers to meet effluent limitations established by EPA, based on proven treatment technology. EPA promulgated effluent limitations requiring Best Practicable Control Technology Currently Available (BPT) for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435) on April 13, 1979 (44 FR 22069).

BPT guidelines require a "no discharge of free oil" limitation for discharges associated with exploratory driling operations. This limitation requires that a discharge shall not cause a film or sheen upon or a discoloration on the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (40 CFR Part 435). The BPT limitation for sanitary waste requires that the concentration of chlorine be maintained as close to 1 mg/l as possible in sanitary waste discharges from oil and gas facilities housing ten or more persons. BPT limitations on oil and grease in produced water allow a daily maximum of 72 mg/l and a monthly average of 48 mg/l.

The above limitations relating to the control of conventional pollutants have been re-evaluated in developing the Best Professional Judgement (BPJ) determination of Best Conventional Pollutant Control Technology (BCT) required by section 301(b)(2) of the Act (see Parts IV.A.2. and 3., below).

2. *BPJ/BAT Effluent Limitations:* By July 1, 1984, all permits are required by section 301(b)(2) of the Act to contain effluent limitations which control toxic pollutants (40 CFR Part 401.15) by means of Best Available Technology Economically Achievable (BAT) for all categories and classes of point sources. BAT guidelines are currently under development and have not been proposed for the Offshore Subcategory

of the Oil and Gas Extraction Point Source Category (40 CFR Part 435).

In the absence of effluent guidelines, permit conditions may be established using Best Professional Judgment (BPJ) procedures (40 CFR Part 122.44). Region 10 has, therefore, used BPJ procedures to derive discharge limitations which reflect a BAT treatment level for the purposes of controlling toxic pollutants. The proposed conditions and limitations are based principally on information provided by EPA's Effluent Guidelines Division (EGD), including discussions on alternative approaches and the results of recent EGD studies and various contractor reports. The following is a discussion of BPJ/BAT effluent limitations incorporated in the proposed permits. Region 10 invites comments on these proposed conditions and limitations.

a. *Toxicity of drilling muds.* EPA has achieved a reduction in the discharge of toxic substances in drilling fluids by restricting discharges to an approved drilling muds list, for which acceptable bioassay data are available. The list of approved drilling muds for Region 10 contains eight general drilling mud types (the "generic muds") that encompass nearly all water-based drilling mud compositions (exclusive of specialty additives) used in offshore drilling operations. As discussed below, these permits proposed to prohibit the discharge of any drilling mud, including the combination of basic mud components and subsequent additives, which is more toxic than the most toxic of EPA's eight generic muds (Mud No. 1 in Table 1 of the draft permits). The lower 95% confidence limit of the LC_{50} for this drilling mud is 0.305% (3050 ppm) by volume with a suspended particulate phase test.

The draft permits require the permittee to certify that drilling muds proposed for discharge will comply with the above toxicity ceiling. The permittee is, therefore, required to submit to EPA the following information no later than 60 days prior to the initiation of drilling mud and all the specialty additives which may be used, (2) the projected range of concentrations for each component and additive in the drilling mud, and (3) a certification signed by the permittee that the drilling mud, including additives, will comply with the toxicity ceiling. The certification shall include a written justification for the conclusions and bioassay data, calculations, and evaluations.

Region 10 expects that the certification of compliance can be justified in a number of ways:

(1) The permittee may elect to use a generic drilling mud with no additives.

(2) The permittee may elect to test the proposed drilling mud formulation, including all additives, by the following standard bioassay methodology modified for drilling muds in: "Proposed Methodology: Drilling Fluids Toxicity Test for the Offshore Subcategory, Oil and Gas Extraction Industry" (Petrazzuolo, 1983). Compliance with the toxicity ceiling can then be determined by either: (a) determining whether the proposed drilling mud complies with a numeric limit on the lower 95% confidence limit of the 96-hour LC_{50} 0.305% (3050 ppm) by volume of the whole mud (using a suspended particulate phase bioassay test), or (b) comparing the relative toxicities of the most toxic generic mud and the proposed drilling mud with side-by-side comparative standard bioassay tests.

The toxicity ceiling on the 96-hour LC_{50} is based on recent bioassays conducted by EPA using the modified bioassay methodology. Application of the numeric ceiling can be used to reduce the total number of required bioassay tests, since a side-by-side comparative test with the most toxic generic mud is not required. However, comparative bioassays serve to correct for interlaboratory variability and may be preferred by the permittee to ensure compliance with the toxicity ceiling.

(3) The permittee may elect to base the certification on previously collected data on the generic drilling muds and on individual drilling mud additives using a standard bioassay test on *Mysidopsis bahia* or *M. almyra.* This approach results in only an approximation of the toxicity of the new drilling mud since it relies on various simplifying assumptions. In applying this approach it might be assumed that toxicities of the individual components acted in an additive or less than additive fashion and not synergistically. Based on the limited information available at this time, this assumption appears to be valid for many drilling mud components. If the permittee chooses this approach, EPA would expect the permittee to make the estimation by applying a quantitative methodology. For example, the total toxicity may be estimated by adding together the toxicities theoretically contributed by each component. For an example of the application of this methodology see Sprague and Logan (1979).

(4) For certain components, the certification may be based upon the composition of the material either with or without other types of bioassay data. These components would include relatively inert materials such as mica flakes, ground nut hulls, etc.

Region 10's intention in allowing the permittee to use previously collected bioassay data is to reduce unnecessary bioassay testing where a new drilling mud system can be reasonably expected to comply with the toxicity ceiling. In all cases Region 10 retains the option to require submission of a standard bioassay test of a proposed drilling mud system, including specialty additivies, prior to discharge. EPA may prohibit the discharge of any proposed drilling mud system up to 30 days prior to the commencement of the discharge if: (1) it has not been tested by the standard bioassay methodology, and (2) the permittee's certification is not reasonably justified by the evaluation, data, and calculations which must accompany the certification.

Region 10 does not expect this requirement to cause undue operational restrictions or costs to the industry since similar requirements have been in place under BPT permits for exploratory drilling. However, under previous BPT permits, Region 10 evaluated and either approved or prohibited the anticipated discharge of non-approved drilling mud additives. By requiring submission of a signed certification, this permit more appropriately shifts the burden of demonstrating compliance with the toxicity limitation to the permittee.

b. *Mercury and cadmium content of barite in drilling muds.* The discharge of mercury and cadmium in drilling muds is of concern in the marine environment since both mercury and cadmium have been shown to bioaccumulate. These two heavy metals may be present as impurities in drilling mud components, especially barite. Region 10 proposes to control the discharge of these pollutants by placing restrictions on the mercury and cadmium levels in the barite used in discharged drilling muds. Sixty days prior to discharge the permittee is required to submit to EPA the results of an analysis of the barite with other information on drilling mud components (see Part IV.A.2.a., above). The permittee is also required to submit the results of an analysis of the metal content of drilling muds sampled at the end of the well in order to provide information for the comparison of mercury and cadmium content of barite with the levels of metals in discharged drilling muds. The permit condition is based on available barite analyses and on levels of mercury and cadmium established for the generic muds and for a number of Alaskan muds (which showed low levels of mercury and cadmium). EPA's intent in imposing these limitations is to ensure that permittees substitutes sources of

relatively uncontaminated barite for any highly contaminated sources (e.g. from vein deposits). The following restrictions on the content of mercury and cadmium in barite are proposed: 1 mg/kg, dry weight, for mercury and 2 mg/kg, dry weight, for cadmium.

EPA's Effluent Guidelines Division is evaluating the economic impact of these limitations, should they be applied on a nationwide basis. Due to the opportunity for product substitution and the limited number of offshore Alaskan operations involved in these permits, Region 10 does not believe that these limitations will place undue economic restrictions on dischargers or barite suppliers.

c. *Prohibition in the discharge of diesel oil.* Diesel oil is highly toxic to marine organisms. Recent EPA research indicates that the toxicity of drilling fluids may be directly correlated with diesel oil content. Since alternatives to the use of diesel oil as an additive exist, Region 10 proposes to prohibit the discharge of drilling mud systems containing diesel oil. Diesel oil may be substituted with mineral oil, as long as the drilling mud system containing mineral oil complies with the toxicity ceiling for drilling muds (Part IV.A.2.a., above) and discharge of free oil (Part IV.A.3.a., below).

3. *BPJ/BCT Effluent Limitations*: By July 1, 1984, all permits are required by section 301(b)(2) of the Act to contain effluent limitations representing Best Conventional Pollutant Control Technology (BCT) for all categories and classes of point sources. BCT effluent limits apply to conventional pollutants (pH, BOD, oil and grease, suspended solids, and fecal coliforms). Any BCT treatment improvement must be shown to be economically "reasonable" as defined in Section 304(b)(4)(B) of the Act. BCT guidelines are currently under development and have not been proposed for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435). Therefore, the proposed permit incorporates BCT effluent limitations based on Best Professional Judgment.

a. *No discharge of free oil.* In previous permits Region 10 has applied BPT limitations on the discharge of free oil in drilling muds and cuttings by using the static (laboratory) sheen test. This test, which is conducted onboard the drilling facility, is appropriate for the adverse weather conditions encountered in Alaska. As a condition of this BPJ/BCT permit, Region 10 proposes to continue the requirement for a daily static sheen test in order to detect free oil. If a sheen is detected with this test, the drilling mud or cuttings cannot be discharged. Since the proposed requirement is zero discharge, there is no option more stringent to consider as a candidate BCT technology. There are no additional costs to industry from this requirement since it is already in effect in Region 10's BPT permits under the effluent guidelines.

b. *Oil-contaminated cuttings.* These general permits propose to restrict the discharge of oil-contaminated cuttings by prohibiting the discharge of free oil (see Part IV.A.3.a., above) and by limiting the maximum mineral oil content of cuttings. The limitation on oil content is based on the efficiency of the best available cuttings washers in removing mineral oil from drill cuttings. Based on a preliminary evaluation, a limitation of 5%, by weight, is proposed.

Region 10 expects that high performance cuttings washers will be required only for drilling operations which use mineral oil-based drilling muds and not for all drilling operations. Thus, the permit proposes that the analyses would not be required if the permittee certifies that oil was not used in any drilling mud during that monitoring period.

The draft permits require an analysis of cuttings both weekly (during any week in which discharge has occurred) and immediately on any sample that has failed the static sheen test. The final permits will specify an analytical method for the oil content of drill cuttings. Two methods under consideration are: (1) the soxhlet extraction procedure for oil and grease (as specified in 40 CFR Part 136), and (2) the American Petroleum Institute retort distillation procedure for oil.

EPA Effluent Guidelines Division is evaluating the nationwide BCT cost for this requirement for exploratory drilling. Preliminary information indicates that the costs of the technology are "reasonable" as defined by Section 304(b)(4)(B) of the Act. EPA believes that the limitation will not place a significant burden on the Alaskan offshore oil and gas industry since, due to the rare usage of mineral oil drilling muds, very few, if any, Alaskan facilities will require the installation of cuttings washers.

c. *Sanitary waste discharges.* The general permit provides that the concentration of chlorine be maintained as close to 1 mg/l as possible in sanitary waste discharges from oil and gas facilities housing ten or more persons. Any exploratory drilling vessel using an approved marine sanitation device that complies with section 312 of the Act shall be in compliance with the final permit (40 CFR Part 140(2)). Since the BCT requirement is the same as BPT for sanitary waste discharges, there will not be additional costs from this requirement.

d. *Oil and grease in produced waters.* During exploratory drilling operations, the discharge of produced waters is not expected unless they are encountered during testing of the well. Region 10 is proposing to prohibit the discharge of produced waters under permits for exploratory drilling. Since the proposed requirement is zero discharge, there is no option more stringent to consider as a candidate BCT technology. Due to the limited volumes involved and the technological feasibility of reinjection, EPA does not expect this limitation to place a large economic burden on the industry. Should industry demonstrate that this is not the case under certain conditions, EPA will consider permitting treated discharges of produced waters withdrawn during testing of an exploratory well in areas where dilution and dispersion is adequate to protect marine waters.

B. Other Discharge Limitations

In addition to the BAT and BCT effluent limitations, the proposed permits include other conditions which may regulate or prohibit the discharge of drilling muds and cuttings, require predilution of discharged muds and cuttings, and limit the discharge of toxic substances. These requirements are designed to provide adequate dilution and dispersion of the wastes and/or to protect water quality and aquatic resources. The proposed general permits do not allow the discharge of any constituent of drilling mud systems in concentrations which exceed applicable marine water quality criteria (45 FR 79318) after allowance for initial mixing (40 CFR 227.29).

1. *Bering Sea General Permit.* The Agency has not identified a need for reduced flow rates or predilution of discharged drilling muds and cuttings in the St. George and Navarin Basins. Existing field and computer modeling studies for oceanographic conditions similar to those occurring in the permit areas are adequate for evaluating dilution and dispersion of discharged drilling muds and cuttings.

2. *Beaufort/Chukchi Seas General Permit.* EPA proposes to regulate the discharge of drilling muds and cuttings depending on water depth, aquatic resources potentially impacted, and ice conditions at the discharge location.

Prohibited Discharges in Shallow Waters: Discharges of muds and cuttings are prohibited in the shallow water area from the ordinary low tide mark out to the 2 m isobath during the open water season. EPA is confronted

with a lack of data on discharges of drilling muds to shallow water areas (0 to 2 m depths). Mathematical dispersion models are also limited at these depths. Available data indicate that dilution and dispersion would generally be limited due to the small amount of tidal action and would depend mostly on periodic strong winds and storms. Thus, there is a significant potential for accumulation of drilling fluids in these areas. The shoreline waters of the Beaufort Sea 0 to 2 m deep provide important feeding and migratory habitat for a large number of species. Therefore, EPA cannot conclude that the discharge of muds and cuttings to these shallow receiving waters would not cause irreparable harm to the environment.

Prohibited discharge in River Mouths and Deltas: Discharges of muds and cuttings within 1000 m or river mouths or deltas is also prohibited. Discharges are allowed in deeper water beyond the 2-m isobath, but a 9:1 predilution (seawater: muds and/or cuttings) will be required out to a water depth of 20 m. The Region is presently evaluating this predilution requirement using the OOC (Offshore Operators Committee) Mud Discharge Model. The model is being used to evaluate how different receiving water conditions (e.g., depth, current, and statification) and discharge options (e.g., predilution vs. a reduced discharge rate) affect water column concentrations of suspended solids and bottom accumulations of drilling muds and cuttings.

Prohibited Discharges in Stefansson Sound Boulder Patch: The proposed permit does not authorize discharges within 1000 m of the Stefansson Sound Boulder Patch as shown by Dunton et al. (1982). The Boulder Patch is specifically defined as an area that has more than 10% of a one-hundred-square-meter area covered by boulders to which kelp is attached. Permit coverage also does not include the area between individual units of the patch where the separation between units is greater than 2000 m but less than 5000 m, as, for example, found between Narwhal and Duck Islands. Facility owners and/or operators wanting to locate in this area are required to apply for and obtain an individual NPDES permit. Due to the uniqueness of the Boulder Patch, EPA will need the 180-day application period of the individual permit to ensure that an acceptable monitoring program is developed and initiated prior to any discharges to this area.

C. Monitoring and Enforcement

The proposed general permits require operators to monitor the discharge flow rate of muds and cuttings, the daily results of the static sheen test on drilling muds and cuttings, the pH of test fluids when discharged, and the chlorine residual in sanitary discharges. In addition, the draft permits require monitoring of the drilling muds and cuttings for free oil, the presence of diesel oil, and heavy metals. Drill cuttings to be discharged must also be monitored for oil content if the drilling mud system contained mineral oil and/or if the static sheen test is positive. Monthly flow rate estimates are required for deck drainage and sanitary and domestic wastes. The permittee must maintain a chemical inventory of all constituents added downhole and their volume. Other reports are required for the certification of compliance of discharged drilling muds with toxicity limitations. The draft permits propose monthly reporting of ongoing monitoring activities so that EPA will have an early opportunity to review the effectiveness of the new BAT limitations. This information would also be valuable for developing general permits in other OCS areas.

Several environmental monitoring requirements have been identified as a result of the ODCEs for Federal Lease Sales 71 and 87, the joint Federal/State Lease Sale BF, and State Lease Sales 39 and 43. No environmental monitoring programs have been identified for Federal Lease Sales 70 and 83. As provided by 40 CFR Part 125.123(a), the monitoring requirements are intended to provide information on the fate and, in some cases, the effects of discharged drilling muds. These requirements primarily involve field monitoring of drilling muds discharged on-ice from 0–2 m, to open water from 2–5 m, below-ice (any depth), and within 1,000 m of a unique biological community or habitat.

It is not EPA's intention to have operators monitor in a particular area. Ideally, the monitoring sites and the specifics of each monitoring program will be developed well in advance of any discharges from exploration activities. The Agency is requesting the assistance of the Alaska Oil and Gas Association in working with the operators and EPA to develop monitoring plans so that all operators share any financial and operational burdens. Without such coordination, the monitoring requirements of the permits will be assigned on a case-by-case basis to the initial operator in an area requiring monitoring. Except for areas of biological concern (e.g., and overwintering habitat for fish under ice), subsequent discharges may be allowed without monitoring. In areas of biological concern, subsequent discharges would be prohibited until the results of the initial monitoring study have been received and evaluated by EPA.

Existing field studies in the Beaufort Sea are of limited value because only relatively small volume discharges were studied, and the water column and sediment sampling programs were not comprehensive enough to obtain definitive results. Computer models are also of limited use because they have not been field verified in shallow water, and the models may not be appropriately designed for discharges in water less than approximately 5 m in depth.

The above monitoring requirements were recently part of a general NPDES permit (48 FR 54881) for oil and gas exploration in the joint Federal/State Lease Sale BF and contiguous State lease sales.

Monitoring: New Test Procedures. These permits propose to use new test procedures (i.e. the static sheen test, a proposed standard bioassay methodology, and analyses for oil content of drill cuttings and the presence of diesel oil in drilling muds) in Part II.A. of the draft permits. The Regional Administrator has the authority under the NPDES regulations 122.41(j)(4) and under 40 CFR Parts 136.3 to propose new procedures in a permit. These procedures are available for public review and comment in the administrative record of these permits.

V. Other Legal Requirements

Oil Spill Requirements: Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by the permit are excluded from the provisions of section 311. However, these permits do not preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties for other unauthorized discharges of toxic pollutants which are covered by section 311 of the Act.

Endangered Species Act: Based on information provided by the Federal Environmental Impact Statements prepared for each of the Federal lease sale areas, EPA has concluded that the discharges authorized by these general permits will neither jeopardize the continued existence of any endangered or threatened species nor adversely affect its critical habitat. EPA is requesting comments from the National Marine Fisheries Service and the U.S. Fish and Wildlife Service and will consider comments received in making the final permit decision. EPA will

initiate consultation should new information reveal impacts not previously considered, should the activities be modified in a manner beyond the scope of the original opinion, or should the activities affect a newly listed species.

Coastal Zone Management Act: EPA has determined that the activities allowed by these general permits are consistent with the Alaska Coastal Management Plan. The proposed permits and consistency certifications will be submitted to the State of Alaska for State interagency review at the time of public notice. The requirements for State Coastal Zone Management review and approval must be satisfied before a general permit may be issued.

Marine Protection, Research, and Sanctuaries Act: No Marine sanctuaries exist in the vicinity of the permit areas.

State Certification and State Water Quality Criteria: Since State waters are involved in the proposed Beaufort/Chukchi Seas general permit, the provisions of section 401 of the Act will apply. No State waters, however, are included in the Bering Sea permit. The portion of the Beaufort Sea receiving waters located within the territorial seas of the State of Alaska are classified by the State Water Quality Standards as Class II A(i)(ii)(iii), B(i)(ii), C, and D for use in aquaculture; seafood processing and industrial water supply; water contact and secondary recreation; growth and propagation of fish, shellfish, aquatic life and wildlife; and harvesting for consumption of raw mollusks or other raw aquatic life.

Executive Order 12291: The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

Paperwork Reduction Act: EPA has reviewed the requirements imposed on regulated facilities in these draft general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.* Most of the information collection requirements of these permits have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act. In addition, the environmental monitoring requirements pursuant to section 403(c) of the Clean Water Act in the Beaufort/Chukchi permit in Part II.B. are the same monitoring requirements that were approved by OMB for the recently issued (48 FR 54881) Beaufort Sea general NPDES permit. The final general permits will explain how the information collection requirements respond to any OMB or public comments.

References

Dunton, K., E. Reimnitz, and S. Schonberg. 1982. An arctic kelp community in the Alaskan Beaufort Sea. Arctic——(4), 465.

Sprague, J. B., and W. J. Logan. 1979. Separate and joint toxicity to rainbow trout of substances used in drilling fluids for oil exploration. Environ. Pollut.——, 269.

Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provisions of 5 U.S.C. 605(b), that these general NPDES permits will not have a significant impact on a substantial number of small entities. Moreover, the permits reduce a significant administrative burden on regulated sources.

Dated: March 9, 1984.

Ernesta B. Barnes,

Regional Administrator, Region 10.

[FR Doc. 84-6889 Filed 3-13-84; 8:45 am]

BILLING CODE 6560-50-M

[FRL 2544-1]

Issuance of a PSD Permit; California Power and Light Co.

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to California Power and Light Company to be located near Firebaugh, Fresno County, California, EPA project number SJ 83-08.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on January 31, 1984 the Environmental Protection Agency issued a PSD permit to the applicant named above for approval to construct 2 biomass fired boilers n Fresno County. Total plant capacity is approximately 49 MW and 80,350 #/hr of biomass fuel.

This permit has been issued under EPA's PSD (40 CFR 52.21) regulations and is subject to certain conditions including allowable emission rates as follows: No_x at 140 #/hr/boiler (ppm limit to be set after operation has commenced); SO_2 at 37 #/hr/boiler (40 ppm @ 3% O_2); CO at 309 #/hr/boiler.

Best Available Control Technology (BACT) requirements include: (1) The allowable emission rate: (2) Combustion controls; (3) Dry scrubber/baghouse. Air Quality Impact modeling was required for No_x, SO_2, and CO. Continuous monitoring is required and the source is subject to New Source Performance Standards.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request, address request to: Sandra Berger, U.S. Environmental Protection Agency, Region 9, 215 Fremont St., San Francisco, CA 94105.

Dated: February 24, 1984.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 84-6892 Filed 3-13-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180639; PH-FRL 2544-3]

Montana Department of Agriculture; Receipt of Application for Specific Exemption to use Sodium Monofluoroacetate; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Montana Department of Agriculture (hereafter referred to as the "Applicant") for a specific exemption to use the active ingredient sodium monofluoroacetate (Compound 1080) to control Columbian ground squirrels (*Spermophilus columbianus*) on 23,622 acres of cropland and 21,153 acres of improved pastureland in 16 counties of Montana. EPA is soliciting comment before making the decision whether or not to grant the specific exemption.

DATE: Comments must be received on or before March 29, 1984.

ADDRESS: Submit written comments by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferon Davis Highway, Arlington, VA

FOR FURTHER INFORMATION CONTACT: By mail:

Donald Stubbs, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM#2, 1921 Jefferson Davis

Highway, Arlington, VA. (703–557–1192)

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of sodium monofluoroacetate grain bait to control Columbian ground squirrels in 16 counties (Beaverhead, Broadwater, Deer Lodge, Flathead, Granite, Jefferson, Lake, Lewis & Clark, Lincoln, Madison, Mineral, Missoula, Powell, Ravalli, Sanders, and Silver Bow) in Montana. Information in accordance with 40 CFR Part 166 was submitted as part of this request. Compound 1080 was previously used under specific exemptions during 1979, 1981, 1982 and 1983 with 90 percent control.

The Applicant claims that Columbian ground squirrels have a dietary fondness for grains, grasses and cultivated legumes that make them very damaging to western Montana's staple crops, small grains and hay. Damage studies show that moderate to high numbers of squirrels can remove about one-fourth of a small grain crop and damage 15 percent and 8 percent of first and second cuttings of alfalfa plus additional damage caused by mounds of earth and rock next to rodent burrows. The Applicant estimates that potential damages could amount to $503,000 in cropland and to $285,000 in pastureland, a total of approximately $788,000 in damages. Baiting costs at $2.50 per acre will result in a cost benefit amounting to approximately $667,000 from use of this pesticide. A damage study conducted in 1979 indicated that the specific exemption prevented a total of $1,417,000 in damages by the pest. A 1981 damage study showed an average of $13.51 herbage loss per acre to the Columbian ground squirrels.

Three pesticides are currently registered in Montana for controlling Columbian ground squirrels: Strychnine, zinc phosphide, and gas cartridges. The Applicant indicates that control with strychnine and zinc phosphide is usually 70 percent or less. Many farmers feel that using strychnine is a waste of time and money because of poor control. Gas cartridges are effective in the spring when soil moisture is high enough to prevent gas leakage. However, the cost and time required to use gas cartridges on dense squirrel populations is prohibitive.

The Applicant proposes to use technical grade sodium monofluoroacetate with hulled, rolled oats as the carrier. Up to 17,910 pounds or 0.05 percent grain bait (requiring 159 ounces of technical grade sodium monofluoroacetate, 90 percent pure) would be used. The bait compound is to be scattered at a rate of 0.16 ounce of bait along each active burrow entrance using a calibrated dipper. Any land treated with bait would not be grazed for a period of 14 days, with the exception of cattle which may be grazed after a period of 7 days. Application would be under the supervision of a licensed pesticide applicator or pest control consultant. Each applicator would be trained in:

1. The biology and ecology of the Columbian ground squirrel.
2. Safe handling of the toxic grain bait.
3. Proper placement of the bait.
4. Consideration of environmental conditions before baiting is begun.
5. Necessary record keeping.
6. Other competency standards.

Treatments would be made particularly during the breeding season and early gestation period in the spring and after the young have emerged and begun to forage independently, limited by the time period of from March 1, 1984, through August 31, 1984.

A notice of Rebuttable Presumption Against Registration (RPAR) with respect to all pesticide products containing Compound 1080 was published in the **Federal Register** of December 1, 1976 (41 FR 52792). RPAR criteria determined to have been met or exceeded for Compound 1080 were:

1. Acute toxicity to mammals and birds.
2. Significant reduction in populations of nontarget organisms and fatalities to members of endangered species.
3. Lack of emergency treatment.

The Agency issued Position Document No. 2/3, which was published in the **Federal Register** of November 4, 1983 (48 FR 50935), which outlined the Agency's findings and recommendations concerning the use of Compound 1080. Position Document No. 4 which will present the Agency's final determination with respect to use of Compound 1080, is expected in the near future.

This notice does not constitute a decision by EPA on the application itself. Use of the chemical sodium monofluoroacetate, better known as "1080," has been determined to be of national interest and therefore, the Agency has decided that public notice and opportunity for public comment pursuant to 40 CFR 166.10 is called for as part of the informal adjudication for specific exemptions. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before March 29, 1984, and should bear the identifying notation "OPP–180632." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2 at the address given above, from 8:00 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by Montana.

Dated: March 7, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84-6891 Filed 3-13-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Basin Broadcasters, Inc.; and Charles L. Scofield; Hearing Designation Order

In re application of Basin Broadcasters, Inc., Williston, North Dakota, Req: 660 kHz, 5 kW, DA–2, U (MM Docket No. 84–189, File No. BP–811120AE) and Charles L. Scofield, KEYZ, Williston, North Dakota, Has: 1360 kHz, 5 kW, DA–N, U req: 660 kHz, 5 kW, DA–2, U (MM Docket No. 84–190, File No. BP–821130AD), For Construction Permit.

Adopted: February 27, 1984.

Released: March 7, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Basin Broadcasters, Inc. (Basin) and Charles L. Scofield (Scofield).

2. *Critical array issue.* A petition to deny was filed by National Broadcasting Company, Inc. (NBC), license of AM Station WNSC, New York, New York, alleging that Basin's proposed nighttime antenna system is inherently unstable in the direction of WNBC's protected secondary service area. For this reason, it is alleged that the proposed operation is likely to cause objectionable interference to the protected skywave service of class I-A station WNBC.

3. It is our policy to consider as being generally stable directional arrays which do not exceed their radiation limits with 1.0 percent current ratio and 1.0 degree phase deviation. We consider those arrays which exceed their radiation limits with parameter

variations of 0.1 percent and 0.1 degree highly unstable. Where arrays exceed their radiation lilmits within these parameter variations, we will condition a grant accordingly.[1] Our computerized studies here indicate that the Basin operation would exceed specified standard radiation values with variations of 0.5 percent current ratio deviation and 0.5 degree phase deviation. Thus, the proposal falls into the category where stability condiltions are called for.

4. *Environmental impact statement issues.* Since the Basin and Scofield proposals constitute major environmental actions as defined by § 1.1305(a) of the Commission's Rules, the applicants are required to submit the environmental impact information described in § 1.1311 of our Rules. Basin's application failed to state information concerning access roads to the site and power lines to be used. Scofield's application failed to include information on whether construction of the facilities has been a source of local controversy in its community.

5. Consequently, Basin and Scofield will be required to file within 30 days of the release of this Order amdnded evironmental impact statements with the presiding Administrative Law Judge. In addition, copies shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

6. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. [2] However, since the proposals are mutually exclusinve, they must be designated for hearing in a consolidated proceeding.

7. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the application are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Basin Broadcasters, Inc. or Charles L. Scofield which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposals are consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1.1319 of the Commission's Rules, and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicants are qualified to construct and operate as proposed.

2. To determine, which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within 30 days of the release of this Order, Basin Broadcasters, Inc. and Charles L. Scofield shall submit the amended environmental impact statement required by § 1.1311 of the Rules, to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

9. It is further ordered, that in the event that the Basin Broadcasters, Inc. application is granted, the construction permit shall contain the following condition:

An antenna monitor of sufficient accuracy and repeatability, and having a minimum resolution of 0.1 degrees phase and 0.1 percent sample current ratio deviation shall be installed and continuously available to indicate the relative phase and magnitude of the sample currents of each element in the array to insure maintenance of the radiated fields within the standard pattern values of radiation. Upon receipt of operating specifications and before issuance of a license, the permittee shall submit the results of observations made daily of the base currents and their ratios, relative phases, sample currents and their ratios and sample current ratio deviations for each element of the array along with the final amplifier plate voltage and current, the common point current, and the field strengths at each monitoring point for both the nondirectional and directional nighttime operations for a period of at least thirty days, to demonstrate that the array can be maintained within the specified tolerances.

10. It is further ordered, that the petition to deny filed by the National Broadcasting Company, Inc. (NBC), license of AM station WNBC, New York, New York is granted to the extent indicated herein and is denied in all other respects.

11. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-6759 Filed 3-13-84; 8:45 am]

BILLING CODE 6712-01-M

[1] Where other factors, internal and/or external to the array warrant it, a hearing issue may be specified. Such circumstances, however, have not been established here.

[2] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection

Certified Statement—Semiannual Assessment Due the FDIC (OMB No. 3064–0057).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF–83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389-4351.

SUMMARY: The FDIC is requesting OMB to approve revisions to the forms which banks submit to the FDIC semiannually as certified statements containing the computation for their remittance of deposit insurance assessments. The revisions basically involve changing a few items on the certified statement forms to agree with the corresponding items on the current Report of Condition. The Report of Condition is the source of the data entered in the certified statement and used by banks for computing their semiannual remittances. The change to the forms are as follows:

(a) Forms FDIC 6420/07 and 6420/11—delete items 1b and 2b (Deposits of IBF), add items 4g and 5g (Deposits of Branches).

(b) Forms FDCI 6420/10—delete item 1b (Deposits of IBF), add item 2g (Deposits of Branches).

(c) All forms—all references to Report of Condition "Schedule I" should be changed to "Schedule RC–O."

These changes will not affect the current reporting burden.

Dated: March 9, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-6824 Filed 3-13-84; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

The Bank of New York Company, Inc.; Formation, Acquisition, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The Company listed in this notice has applied under § 225.14 of the Board's Regulation Y (49 FR 794) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competiton, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 5, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.*, New York, New York, and B.N.Y. Holdings (Delaware) Corporation, Wilmington, Delaware; to acquire 95.3 percent of the voting shares of Northeast Bancorp, Inc., New Haven, Connecticut, and thereby indirectly acquire Union Trust Company, Stamford, Connecticut, and Security Bank & Trust, Bloomfield, Connecticut. Applicants have also applied to acquire NBI Mortgage Investment Corporation, New Haven, Connecticut, and thereby engage in the activity of placing and arranging for long-term mortgage loans on large income producing properties such as apartment buildings and office buildings, in the state of Connecticut.

Board of Governors of the Federal Reserve System, March 8, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-6776 Filed 3-13-84; 8:45 am]

BILLING CODE 6210-01-M

CBT Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under section 225.23 (a)(2) or (f) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 29, 1984.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *CBT Corporation*, Paducah, Kentucky; to acquire Fidelity Credit Corporation, Paducah, Kentucky, the company is engaged in, and will

continue to be engaged in the business of making consumer loans to individuals in the amount of $15,000 or less, which have a term of between six months and one hundred twenty months, such loans being on both a secured and unsecured basis and, the sale of credit life, accident, and health insurance. These activities will be conducted in the states of Illinois, Kentucky, and Tennessee.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to acquire all of the authorized, issued and outstanding stock of KMS Corporate Brokers, Inc., New York, New York, and thereby engage in providing corporate securities brokerage services, provided that such services will be restricted to buying and selling securities solely as agent for the account of customers and will not include securities underwiting, dealing or investment advice or research services.

Board of Governors of the Federal Reserve System, March 8, 1984.

James McAffe,

Associate Secretary of the Board.

[FR Doc. 84-6777 Filed 3-13-84; 8:45 am]

BILLING CODE 6210-01-M

Dominion Bankshares Corp.; Application To Engage De Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or though a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia; to engage *de novo* through it subsidiary, Dominion Trust Company, Roanoke, Virginia; in performing or carrying on any one or more of the functions or activities that may be peformed or carried on by a trust company. The service area for these activities is the Martinsville-Ranally Metropolitan Area.

Board of Governors of the Federal Reserve System, March 8, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-6778 Filed 3-13-84; 8:45 am]

BILLING CODE 6210-01-M

First American Bancshares, Inc., et al.; Formations, Acquisitions, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requires a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later April 4, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First American Bancshares, Inc.*, Pelham, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of First American Bank of Pelham, Pelham, Alabama.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Rural Financial Services, Inc.*, Dousman, Wisconsin; to become a bank holding company by acquiring 87 percent of the voting shares of Dousman State Bank, Dousman, Wisconsin, and 92 percent of the voting shares of Mansfield State Bank, Johnson Creek, Wisconsin.

2. *Churubusco Bancorp*, Churubusco, Indian; to become a bank holding company by acquiring 100 percent of the voting shares of Churubusco State Bank, Churubusco, Indiana.

3. *RBDC Corporation*, Chicago, Illinois; to become a bank holding company by requiring 100 percent of the voting shares of Republic Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire Republic Bank of Chicago, Chicago, Illinois.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *NBC Capital Corporation*, Starkville, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Commerce of Mississippi, Starkville, Mississippi.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Harbor National Bancorp*, Larkspur, California; to become a bank holding company by acquiring 100 percent of the voting shares of Harbor National Bank (In Organization), Larkspur, California.

Board of Governors of the Federal Reserve System, March 8, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-6779 Filed 3-13-84; 8:45 am]

BILLING CODE 6210-01-M

Monroe Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The following notice, originally published at page 7291 of the issue for Tuesday, February 28, 1984, is being reprinted because errors occurred in the printing of the text. In order to allow sufficient time for comments to be received, the comment period has been extended to March 27, 1984.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 27, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 203 South LaSalle Street, Chicago, Illinois 60690:

1. *Monroe Bancorp*, Bloomington, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Monroe County State Bank; Bloomington, Indiana.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bourbon County Bancshares, Inc.*, Fort Scott, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Citizens National Bank of Fort Scott, Fort Scott, Kansas.

2. *First Colorado Bankshares, Inc.*, Englewood, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Arapahoe, Englewood, Colorado.

Board of Governors of the Federal Reserve System, March 9, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-6773 Filed 3-13-84; 8:45 am]

BILLING CODE 6210-01-M

Formation of a Bank Holding Company; NLM Corp.

The company listed in this notice has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *NLM Corp.*, Oklahoma City, Oklahoma; to become a bank holding company by acquiring 97 percent of the voting shares or assets of First Continental Bank and Trust Company, Del City, Oklahoma. Comments on this application must be received not later than March 23, 1984.

Board of Governors of the Federal Reserve System, March 12, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-6932 Filed 3-13-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Fertility and Material Health Drugs Advisory Committee

Date, time, and place. April 26 and 27, 9 a.m., Conference Rm. 6, Bldg. 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open committee discussion, April 26, 9 a.m. to 5 p.m.; open public hearing, April 27, 9 a.m. to 10 a.m.; open committee discussion, April 27, 10 a.m. to 5 p.m.; A. T. Gregoire, National Center for Drugs and Biologics (HFN-130), Food and Drug Administation, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1869.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drug products for use in obstetrics, gynecology, and contraception.

Agenda—Open public hearing. Interested persons who wish to present data, information, or views, orally or in writing, on issues pending before the committee should notify the contact person.

Open committee discussion. On April 26, invited speakers will comment upon and discuss current literature on the clinical and morphological effects of postmenopausal steroid therapy. On April 27, the committee will review the current estrogen product labeling.

Medical Radiation Advisory Committee

Date, time, and place. April 30 and May 1, 9 a.m., Holiday In Crowne Plaza, 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, April 30, 9 a.m. to 10 a.m.; open committee disucssion, April 30, 10 a.m. to 5 p.m.; May 1, 9 a.m. to 5 p.m.; Robert J. Morton, National Center for Devices and Radiological Health (HFZ-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4600.

General function of the committee. The committee advises the Commissioner of Food and Drugs in the formulation of policy and development of a coordinated program relating to medical application of radiation directed at obtaining the maximum diagnostic information and therapeutic

benefits per unit of radiation exposure through optimum utilization of professional and technical resources and radiation-related equipment.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 15, and submit a brief statement on the general nature of the comments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. General areas for consideration will include hyperthermia for cancer treatement, diagnostic imaging, and other topics affecting the safe and effective use of medical radiation. A complete agenda will be available on request after April 2.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Dated: March 8, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–7688 Filed 3–13–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84P–0060]

Food for Human Consumption; Enriched Bread Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Maier's Bakery to market test a bread enriched to the nutrient levels recommended by the National Academy of Sciences, Food and Nutrition Board (FNB), in 1974 (with the exception that iron will remain at the level required by the standard of identity for enriched bread). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than June 12, 1984.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is given notice that a temporary permit has been issued to Maier's Bakery, Reading, PA 19611.

The permit covers limited interstate marketing tests of enriched special formula bread. The test product deviates from the standard of identity for enriched bread, 21 CFR 136.115, in that it will contain in each 2-slice (approximately 2 ounces) serving: (1) 6 percent of the U.S. Recommended Daily Allowance (RDA) of vitamin A, (2) 8 percent of the U.S. RDA of vitamin B–6, (3) 8 percent of the U.S. RDA of folic acid, (4) 6 percent of the U.S. RDA of magnesium, and (5) 6 percent of the U.S. RDA of zinc. The test product meets all requirements of § 136.115 with the exception of these deviations.

The permit provides for the temporary marketing of 62,500 pounds per week of the product. The test product will be distributed in the States of Delaware, New Jersey, New York, and Pennsylvania. The test product is to be manufactured at the Maier's Bakery, Reading, PA 19611.

The principal display panel of the label states the product name as "enriched special formula bread", and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. A side-by-side Comparison of the percentage of U.S. RDA's for nutrients in the test product and in regular enriched bread is shown on the label for the applicable nutrients. This permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than June 12, 1984.

Dated: March 7, 1984.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 84–6787 Filed 3–13–84; 8:45 am]

BILLING CODE 4160–01–M

Keflodin™ Injectable, Keflex® Capsules, Keflex® for Oral Suspension; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three new animal drug

applications (NADA's) sponsored by Elanco Products Co. providing for use of Keflodin™ (cephaloridine) Injectable, Keflex® (cephalexin monohydrate) Capsules, and Keflex® (cephalexin monohydrate) for Oral Suspension for treating bacterial infections in dogs and cats. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: March 26, 1984.

FOR FURTHER INFORMATION CONTACT: Leonard D. Krinsky, Bureau of Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a Division of Eli Lilly & Co., 740 South Alabama St., Indianapolis, IN 46285, is sponsor of the following NADA's: NADA 46–417, Keflodin™ (cephaloridine) Injectable, originally approved January 26, 1972, for treating bacterial infections of dogs and cats; NADA 101–146, Keflex® (cephalexin monohydrate) Capsules, originally approved March 11, 1977, for treating bacterial infections of dogs and cats; and NADA 101–147, Keflex® (cephalexin monohydrate) for Oral Suspension, originally approved March 11, 1977, for treating bacterial infections of dogs.

By letter of June 20, 1983, the sponsor requested withdrawal of approval of the NADA's because the drugs are no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514–115), notice is given that approval of NADA 46–417 for Keflodin™ (cephaloridine) Injectable, NADA 101–146 for Keflex® (cephalexin monohydrate) Capsules, and NADA 101–147 for Keflex® (cephalexin monohydrate) for Oral Suspension is hereby withdrawn, effective March 24, 1984.

In a final rule published elsewhere in this issue of the **Federal Register**, the regulations reflecting these approvals are removed.

Dated: March 6, 1984.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 84–6785 Filed 3–13–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Sisseton and Wahpeton Sioux; Plan for the Use and Distribution of Sisseton and Wahpeton Sioux Judgment Funds in Docket 363 Before the United States Court of Claims

March 7, 1984.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on March 2, 1981, March 15, 1982 and January 18, 1983, in satisfaction of the awards granted to the Sisseton and Wahpeton Sioux in United States Court of Claims Docket 363. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated September 12, 1983, and was received (as recorded in the Congressional Record) by the House of Representatives on September 15, 1983, and by the Senate on September 19, 1983. The plan became effective on February 1, 1984, as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted.

The plan reads as follows:

"The funds appropriated March 15, 1982, January 18, 1983, and one-half of the funds appropriated March 2, 1981, all in Docket 363 before the United States Court of Claims, in satisfaction of judgments granted to the Sisseton-Wahpeton Sioux, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be divided by the Secretary of the Interior (hereinafter 'Secretary') in terms of 73.79 percent to the Sisseton Wahpeton Sioux Tribe of South Dakota and 26.21 percent to the Devils Lake Sioux Tribe of North Dakota. The funds so divided shall be used as follows.

Sisseton Wahpeton Sioux Tribe

The share of the Sisseton Wahpeton Sioux Tribe shall be invested by the Secretary and shall be available, on an annual budgetary basis subject to the approval of the Secretary, in terms of 50 percent for community development projects for the seven districts of Lake Traverse Reservation and for the Upper Sioux Community; and 50 percent for reservation-wide projects, including the Upper Sioux Community, designed to enhance the recreational, cultural and economic situation of tribal youth.

Devils Lake Sioux Tribe

The share of the Devils Lake Sioux Tribe shall be invested by the Secretary and shall be utilized for tribal government purposes, particularly for the retirement of tribal debts, subject to the approval of the Secretary.

None of the funds utilized under this plan shall be subject to Federal or State income taxes or be considered as income or resources in determining either eligibility for or the amount of assistance under the Social Security Act."

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 84–6771 Filed 3–13–84; 8:45 am]

BILLING CODE 4310–02–M

Standing Rock Sioux Tribe; Plan for the Use and Distribution of the Standing Rock Sioux Tribe Judgment Funds in Docket 119 Before the United States Court of Claims

March 7, 1984.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on January 26, 1982, in satisfaction of the award granted to the Standing Rock Sioux Tribe in United States Court of Claims Docket 119. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated September 12, 1983, and was received (as recorded in the Congressional Record) by the Senate on September 19, 1983, and by the House of Representatives on September 20, 1983. The plan became effective on February 2, 1984, as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted.

The plan reads as follows:

"The funds appropriated January 26, 1982, in satisfaction of the judgment granted in Docket 119 to the Standing Rock Sioux Tribe before the United States Court of Claims, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be invested by the

Secretary of the Interior and used as follows:

Eighty (80) percent of the funds shall be utilized for land purchase as governed by the Land Management Program of the Standing Rock Sioux Tribe; and twenty (20) percent of the funds shall be available, on an annual budgetary basis subject to the approval of the Secretary of the Interior, for tribal administration purposes and for social and economic development programs within the local districts of the Standing Rock Reservation.

None of the funds utilized under this plan shall be subject to Federal or State income taxes or be considered as income or resources in determining either eligibility for or the amount of assistance under the Social Security Act."

Kenneth Smith,

Assistant Secretary, Indian Affairs.

[FR Doc. 84-6772 Filed 3-13-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Grand Junction District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Grand Junction District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 that a meeting of the Grand Junction District Advisory Council will be held on Monday, April 16, 1984. The meeting will take place at the District office, third floor conference room, 764 Horizon Drive, Grand Junction, Colorado, and will begin at 9:30 a.m.

The agenda will include:

Grand Junction Resource Area

1. Discussion of Resource Management Plan formulation of resources alternatives
2. Potential competing land use conflicts related to coal leases
3. Oil and gas development issues in the Little Bookcliffs Wild Horse Area and Wilderness Study Area

Glenwood Springs Resource Area

1. Public lands disposals
2. Loss of habitat mitigation due to public lands leasing
3. Applications for reservoirs on public lands
4. Update on RMP implementation

The meeting is open to the public. Interested persons may make oral statements to the Council between 3-4 p.m., or may submit written statements for the Council's consideration. Send written statements to the attention of the District Manager, 764 Horizon Drive, Grand Junction, Colorado 81501, by April 10, 1984.

SUPPLEMENTARY INFORMATION: Summary minutes of the meeting will be available for public inspection and reproduction during regular business hours at the District office 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Cindy McKee, Public Affairs Specialist, (303) 243-6552.

Wright C. Sheldon,

District Manager.

[FR Doc. 84-6770 Filed 3-13-84; 8:45 am]

BILLING CODE 4310-JB-M

[ES 17038]

Louisiana; Proposed Reinstatement of a Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed reinstatement of a terminated oil and gas lease.

SUMMARY: 1. Federal oil and gas lease ES 17038 terminated automatically by operation of Law on May 1, 1983. (30 U.S.C. 188).

2. A petition for reinstatement of ES 17038 was filed by Conoco, Incorporated (Lessee) under section 31 D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

3. The Lessee has met all the following requirements of reinstatement:

(a) $500—Reimbursement of Department Administrative Cost

(b) $2,485—Back Rental Payments

(c) $136—Estimated Publication Costs

4. The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5.00 per acre per year, and royalty increased to 16⅔ percent beginning May 1, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. James P. Horan, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria Virginia 22304, (703) 235-2851.

G. Curtis Jones, Jr.,

Eastern States Director.

[FR Doc. 84-6812 Filed 3-13-84; 8:45 am]

BILLING CODE 4310-GJ-M

[OR-34957A]

Oregon; Conveyance

Notice is hereby given that, pursuant to Section 203 of the Act of October 21, 1976 (90 Stat. 2743, 2750; 43 U.S.C. 1701, 1713), the following described public land in Lake County, was purchased by competitive sale and conveyed to the party shown:

Mr. & Mrs. Lee Chism, 2590 Elliot Road, Dallas, Oregon 97338.

Willamette Meridian, Oregon

T. 27 S., R. 17 E.,
Sec. 22, SE¼ NE¼

The purpose of this Notice is to inform the public and interested State and local governmental officials of the issuance of the conveyance document to Mr. & Mrs. Chism.

Dated: March 5, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-6813 Filed 3-13-84; 8:45 am]

BILLING CODE 4310-33-M

[ES 24679]

Virginia; Proposed Reinstatement of a Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed reinstatement of a terminated oil and gas lease.

SUMMARY: 1. Federal oil and gas lease ES 24679 terminated automatically by operation of Law on July 1, 1983. (30 U.S.C. 188).

2. A petition for reinstatement of ES 24679 was filed by Houston, Oil and Minerals Corp. (Lessee) under Section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982, (96 Stat. 2447).

3. The Lessee has met all the following requirements of reinstatement:

(a) $500—Reimbursement of Department Administrative Cost

(b) $10,450—Back Rental Payments

(c) $136—Estimated Publication Cost

4. The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5.00 per acre per year, and royalty increased to 16⅔ percent beginning July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara Coalgate, Bureau of Land Management, Eastern States Office, 350

South Pickett Street, Alexandria, Virginia 22304, (703) 235–2851.

G. Curtis Jones, Jr.,

Eastern States Director.

[FR Doc. 84–6815 Filed 3–13–84; 8:45 am]

BILLING CODE 4310–GJ–M

[ES 24887]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Houston Oil and Minerals Corp.

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed reinstatement of a terminated oil and gas lease.

SUMMARY:

1. Federal oil and gas lease ES 24887 terminated automatically by operation of Law on July 1, 1983 (30 U.S.C. 188).

2. A petition for reinstatement of ES 24887 was filed by Houston, Oil and Minerals Corp. (Lessee) under section 31 D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

3. The Lessee has met all the following requirements of reinstatement:

(a) $500—Reimbursement of Department Administrative Cost
(b) $2,365—Back Rental Payments
(c) $136—Estimated Publication Cost

4. The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5.00 per acre per year, and royalty increased to 16⅔ percent beginning July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara Coalgate, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 235–2851.

G. Curtis Jones, Jr.,

Eastern States Director.

[FR Doc. 84–6819 Filed 3–13–84; 8:45 am]

BILLING CODE 4310–GJ–M

[W–86114 through W–86122 Inclusive, W–86124 through W–86126 Inclusive]

Postponement of Realty Actions for Public Lands Sales in Blaine County, Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Postponement of sale date for realty actions in Blaine County, Nebraska.

SUMMARY: The sale of March 15, 1984 for Realty Actions (W–86114 through W–86122 inclusive, W–86124 through W–86126 inclusive, Parcels 1–12 inclusive) in Blaine County, Nebraska published in the **Federal Register** on Friday, January 20, 1984 (49 FR 2541–2546 inclusive) is hereby postponed until further notice pending an analysis and final decision by the State Director of a protest issued against these sales.

Any sale bids will be returned immediately to the party of issuance.

When the protest is resolved, the sale date will be rescheduled and all affected and interested parties contacted.

Dated: March 6, 1984.

James W. Monroe,

Casper District Manager.

[FR Doc. 84–6820 Filed 3–13–84; 8:45 am]

BILLING CODE 4310–22–M

Amoco Production Company's Cave Creek Sour Gas Gathering System Project Final Environmental Assessment (FEA), Rich and Summit Counties, Utah and Uinta County, Wyoming; Availability of Final Environmental Assessment (FEA) and Draft Decision Record

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Final Environmental Assessment.

SUMMARY: Pursuant to section 102(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior, has prepared a final environmental assessment on the Cave Creek Sour Gas Gathering System Project in Rich and Summit Counties, Utah and Uinta County, Wyoming, and has made copies of the document available for public review and comment.

The FEA addresses comments concerning the draft environmental assessment and includes additional ayslysis. Also contained in the document is a draft decision record.

DATES: Written comments on the final environmental assessment and draft decision record will be accepted up to and including April 27, 1984.

ADDRESSES: Written comments on the proposal and draft decision in the document are to be addressed to: Bureau of Land Management, Kemmerer Resource Area Manager, P.O. Box 632, Kemmerer, Wyoming 82101, (307) 877–3933.

A limited number of single copies of the FEA may be obtained from the above address. Copies are also Available at the following locations:

Bureau of Land Management, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, (307) 382–5350.

Bureau of Land Management, Bear River Resource Area, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 524–5348.

Donald Sweep,

Rock Springs District Manager.

[FR Doc. 84–6821 Filed 3–13–84; 8:45 am]

BILLING CODE 4310–22–M

Bureau of Reclamation

American Canal Extension, Rio Grande Project, El Paso, Texas; Environmental Scoping Meetings

The Department of the Interior will hold public environmental scoping meetings for the American Canal Extension, Rio Grande Project, El Paso, Texas. An environmental assessment (EA) for the canal extension will be completed by December 1984. A determination of need for either a Finding of No Significant Impact or an environmental statement will than be made.

The purpose of the American Canal Extension is to save water that would otherwise be lost in the unlined channels of the Rio Grande and Franklin Canal, eliminate public safety and health hazards associated with a portion of the Franklin Canal through urban El Paso, and ensure compliance with the 1906 Convention between the United States and Mexico.

The American Canal Extension includes the construction of a 12-mile concrete-lined extension of the present canal and the reconstruction of a 1.4-mile section of the present canal. Because of the extension and reconstruction, 5.25 miles of the Franklin Canal within the city of El Paso will not be required in its present form but will be filled and made available for other uses.

Once the canal entension and reconstruction are completed, the American Canal will deliver irrigation water diverted at the American Dam above downtown El Paso to the remaining portion of the Franklin Canal near Little Flower Road and to the Riverside Canal below Americas Avenue. The Franklin Canal will receive water from the canal extension after the present Ascarate Wasteway, which parallels Ascarate Park, is reconstructed as the Ascarate Laterai.

The threefold purpose of these public environmental scoping meetings is to determine the scope of issues to be addressed in the EA, identifying the environmental issues related to the

proposed action, and provide information on the effect of the proposed action on flood plains (Executive Order 11988) and wetlands (Executive Order 11990).

The Bureau of Reclamation plans to hold two meetings in the El Paso Room of the El Paso Civic Center (One Civic Center Plaza) on April 4, 1984. The first meeting will be held at 2 p.m., and the second meeting will be held at 7 p.m. On April 5, 1984, a third meeting will be held at 7 p.m. at Piedras-Alameda (St. Anne's) Neighborhood Community Center, 600 South Piedras, El Paso, Texas.

Interested public entities and individuals may obtain information on the proposed action and provide information for preparation of the EA by contacting Roger K. Patterson, Project Superintendent, Rio Grande Project, Bureau of Reclamation, Post Office Drawer "P", El Paso, Texas 79952, telephone (915) 541–7740.

Dated: March 8, 1984.

B. H. Spillers,

Acting Commissioner.

[FR Doc. 84–6752 Filed 3–13–84; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Arizona Zoological Society, Phoenix AZ, APP# 152418

The applicant requests a permit to purchase in interstate commerce one captive-born female ocelot (*Felis pardalis*), from the Woodland Park Zoological Gardens, Seattle, Washington, for enhancement of propagation.

Applicant: Gibbon & Gallinaceous Bird Center, Saugus, CA APP# 152469

The applicant requests a permit to import one female siamang (*Hylobates syndactylus*) from the Tardin Zoologique de Quebec, Canada, for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the data of this publication by submitting written date, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: March 9, 1984.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84–6844 Filed 3–13–84; 8:45 am]

BILLING CODE 4310–07–M

Marine Mammals; Receipt of Application for Permit

Notice is hereby given that an applicant has applied in due form for a permit to take Alaskan sea otters 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 18).

1. Applicant: Dr. Donald B. Siniff, University of Minnesota, Minneapolis, MN 55455.

2. Type of Permit: Take.

3. Name and number of animals: *Enhydra lutra*—150.

4. Type of Activity: All otters captured will be drugged, and tagged, receive transmitters (surgical or temple) and undergo blood and premolar extraction.

5. Location of Activity: Prince William Sound, Alaska.

6. Period of Activity: April 1, 1984, through Nov. 1987.

The purpose of this application is to obtain a permit that would allow the applicant to clarify the long-term effects of implanted transmitters and further develop radio-tracking instrumentation. Another objective is to obtain population parameter estimates, particularly reproductive rates and survival.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned application #146866. Written data or views, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203, 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 Director.

All statements contained in this notice are summaries of those of the applicant and do not necessarily reflect the views of the United States Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review during normal business hours in Room 605, 1000 North Glebe Road, Arlington, Virginia.

Dated: March 9, 1984.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84–6843 Filed 3–12–84; 8:45 am]

BILLING CODE 4310–07–M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that The Superior Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0797, Block 105, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 5, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Joseph, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plants Unit; Phone (504) 838–0867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals

Management Service makes information contained in DOCDs available to affected states, executives of affected local govenments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 5, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-6822 Filed 3-13-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Texaco U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0310, Blocks 229 and 236, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Louisa and Morgan City, Louisana.

DATE: The subject DOCD was deemed submitted on March 5, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Emile Simoneaux, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipleline Section, Exploration/Development plans Unit; Phone (504) 838-0872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Rivised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interest parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 5, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-6823 Filed 3-13-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-205 through 207 (Final)]

Certain Carbon Steel Products From Brazil

AGENCY: International Trade Commission.

ACTION: Institution of final countervailing duty investigations and scheduling of a hearing to be held in connection with the investigations.

EFFECTIVE DATE: February 10, 1984.

SUMMARY: As a result of affirmative preliminary determinations by the U.S. Department of Commerce that there is a reasonable basis to believe or suspect that imports of certain carbon steel products from Brazil are being subsidized by the Government of Brazil within the meaning of section 701 of the Tariff Act of 1930 (19 U.S.C. 1671), the United States International Trade Commission hereby gives notice of the institution of investigations Nos. 701-TA-205 through 207 (Final) under section 705(b) of the act (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of the following merchandise:

Hot-rolled, carbon steel plate in coils, provided for in item 607.66 of the Tariff Schedules of the United States (TSUS) (investigation No. 701-TA-205 (Final));

Hot-rolled carbon steel sheet, provided for in TSUS items 607.67 and 607.83 (investigation No. 701-TA-206 (Final)); and

Cold-rolled carbon steel sheet, provided for in TSUS item 607.83 (investigation No. 701-TA-207 (Final)).

The Department of Commerce will make its final subsidy determinations in these cases on or before April 20, 1984, and the Commission will make its final injury determinations by June 8, 1984 (19 CFR 207.25).

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202-523-0286), Office of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1983, the Commission determined, on the basis of the information developed during the course of its preliminary investigations, that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason by imports of the subject carbon steel products from Brazil. The preliminary investigations were instituted in response to a petition filed on November 10, 1983, by United States Steel Corp., Pittsburgh, Pa.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than 21 days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations, pursuant to § 201.11(d) of the Commission's rules (19 CFR 202.11(d)). Each document filed by a party to the investigations must be served on all

other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c)).

Staff Report

A public version of the staff report containing preliminary findings of fact in the investigations will be placed in the public record on April 13, 1984, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a public hearing in connection with these investigations beginning at 10:00 a.m. on April 27, 1984, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 9, 1984. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on April 16, 1984, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 23, 1984.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 4, 1984.

Written Submissions

As mentioned, parties to these investigations may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before May 4, 1984. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission rules (19 CFR 201.6).

For further information concerning the conduct of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: March 5, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-6878 Filed 3-13-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-187]

Certain Glass Construction Blocks; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 2, 1984, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Pittsburgh Corning Corp., 800 Presque Isle Drive, Pittsburgh, Pennsylvania 15239. Amendments to the complaint were filed on February 21 and 23, 1984. The complaint as amended alleges unfair methods of competition and unfair acts in the importation of certain glass construction blocks into the United States, or in their sale, by reason of alleged (1) infringement of complainant's common law trademarks; (2) infringement of complainant's registered trademarks Reg. Nos. 1,206,191 and 1,173,258; (3) passing off; and (4) false advertising. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order and a permanent cease and desist order.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on March 1, 1984, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain glass construction blocks into the United States, or in their sale, by reason of alleged (1) infringement of complainant's common law trademarks; (2) infringement of complainant's registered trademarks Reg. Nos. 1,206,191 and 1,173,258; (3) passing off; and (4) false advertising, the effect or tendency of which is to destroy or substantially injury an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Pittsburgh Corning Corp., 800 Presque Isle Drive; Pittsburgh, Pennsylvania 15239.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

St. Gobain Industries, 62 Boulevard Victor Hugo, P.O. Box 124, 92209 Neuilly-Sur-Seine, France

Glas Und Spiegel Manufactur, A.G. Schalke, 4650 Gelsenkirchen, Uechtingstrasse 19, Postfach 809, Federal Republic of Germany

Cristaleria Espanola S.A., Division of Vidrio Plano, Madrid 1, Spain

Euroglas Glass Rep Corp., 227 East 45th Street, New York, New York 10017

Weck J. GMBH & Co., 7867 Wehr-Oeflingen, Federal Republic of Germany

Weck America, Inc., P.O. Box 66099, Chicago A.M.F., Illinois 60666

Glashaus, Inc., 2730 Greenleaf, Elk Grove Village, Illinois 60007

Westerwald AG, Postfach 1120, D-5432, Federal Republic of Germany

Glass Masonry, Inc., P.O. Box 8325, Pembroke Pines, Florida 33024

Sholton Associates, P.O. Box 74, Miami, Florida 33133
Fred Beyer Manufacturing Co., 7810 S. Claremont Ave., Chicago, Illinois 60620
Hardy Glass Block Panels, Inc., 717 W. 103rd Street, Chicago, Illinois 60628
Imperial Glass Block Co., 7412 Milwaukee Avenue, Niles, Illinois 60648
Cleveland Glass Block Co., 2501 W. Third Street, Cleveland, Ohio 44113.

(c) Deborah S. Strauss, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 126, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: Deborah S. Strauss, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–1233.

By order of the Commission.

Issued: March 5, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-6882 Filed 3-13-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-164]

Certain Modular Structural Systems; Commission Decision Not To Review Initial Determination Amending Complaint and Notice of Investigation

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (ID) to amend the complaint and notice of investigation to add prevention of establishment of an industry in the United States to the scope of the investigation.

Authority: 19 U.S.C. 1337, 47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983 (partially codified at 19 CFR 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: On February 2, 1984, the administrative law judge issued an ID granting an unopposed motion to amend the complaint and notice of investigation to add prevention of establishment of an industry in the United States to the scope of the investigation. No petitions for review of this ID have been filed, nor have any Government agency comments been received.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0480.

By order of the Commission.

Issued: March 5, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-6883 Filed 3-13-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-152]

Certain Plastic Food Storage Containers; Commission Determination Not To Review Initial Determination of Default Against Certain Respondents and Imposing Sanctions

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (ID) to default certain respondents and to impose remedies.

Authority: 19 U.S.C. 1337; 19 CFR 210.53 (c) and (h).

SUPPLEMENTARY INFORMATION: On December 9, 1983, complainant Dart Industries, Inc., filed a motion (Motion No. 152–14) for default and remedies for Respondents' failure to make discovery. Respondents did not respond. The investigative attorney (IA) opposed complainant's requested remedy that matters within the knowledge of respondents or inquired into during discovery and avoided by respondents to taken as established adversely to respondents. On January 13, 1984, Complainant supplemented its motion to include the parties most recently joined as respondents to the investigation. No responses were filed to the supplement. On February 6, 1984, the presiding officer (ALJ) issued an ID (Order No. 21) granting the motion in part. The ALJ found certain respondents in default (Jui Feng Plastic Mfg., Co., Ltd.; Famous Associates, Inc.; Lamarle Hong Kong Ltd.; David Y. Lei, Morris A. Lauterman, Peter Marcar d/b/a Lamarle, The Gift Center; Lamarle, Inc.; and Griffith Bros. Ltd.) The ALJ did not grant the remedy that had been opposed by the IA, on the ground that it included conclusions of law and contained matters on which the complainant had submitted secondary evidence at the evidentiary hearing before the ALJ.

The Commission has received neither a petition for review of the ID nor comments from other Government agencies.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, 202–523–0493.

By order of the Commission.

Issued: March 6, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-6879 Filed 3-13-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No 337-TA-158

Certain Plastic Light Duty Screw Anchors; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Hilti, Inc., (HUS), and Hilti Aktiengesellschaft (HAG).

SUMMARY: This investigation is being conducted pursuant to section 337 of the

Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on March 7, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: March 6, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–6877 Filed 3–13–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–185]

Certain Rotary Wheel Printing Systems; Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge John J. Mathias as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: March 5, 1984.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 84–6880 Filed 3–13–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–186]

Certain Tennis Rackets; Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: March 5, 1984.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 84–6881 Filed 3–13–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–165 (Preliminary)]

Certain Valves, Nozzles, and Connectors of Brass From Italy for Use in Fire Protection Systems

Determination

On the basis of the record [1] developed in investigation No. 731–TA–165 (Preliminary), the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that industries in the United States are being materially injured by reason of imports from Italy of fire hose couplings, fog/straight stream nozzles, angle-type hose valves, wedge disc hose gate valves, single and double clapper siamese fire department connections, and pressure restricting valves, all of the foregoing of brass and for use in fire protection systems, provided for in items 657.35, 680.14, or 680.27 of the Tariff Schedules of the United States (TSUS), which are allegedly being sold in the United States at less than fair value (LTFV). The Commission further determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Italy of pressure regulating valves of brass, provided for in item 680.27 of the TSUS, which are alleged to be sold in the United States at LTFV.[2]

[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (47 FR 6190, Feb. 10, 1982).

[2] Commissioner Stern finds no reasonable indication of material injury or threat thereof by reason of LTFV imports of pressure regulating valves from Italy.

Background

On January 23, 1984, a petition was filed with the United States International Trade Commission and the U.S. Department of Commerce by counsel on behalf of Badger-Powhatan, a division of Figgie International, Inc., Charlottesville, Va., alleging that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports from Italy of brass interior fire protection products, which are allegedly being sold at LTFV prices. Accordingly, the Commission instituted a preliminary investigation under section 733(a) of the Tariff Act of 1930, to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the importation of certain valves, nozzles, and connectors of brass from Italy for use in fire protection systems, provided for in items 657.35, 680.14, or 680.27 of the TSUS.

Notice of the institution of the Commission investigation and the conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on February 1, 1984 (49 FR 4046). The conference was held in Washington, D.C. on February 14, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission voted on these cases in public session on March 1, 1984.

The Commission transmitted its report on this investigation to the Secretary of Commerce on March 8, 1984. A public version of the Commission's report, *Certain Valves, Nozzles, and Connectors of Brass from Italy for Use in Fire Protection Systems* (investigation No. 731–TA–165 (Preliminary), USITC Publication 1500, 1984), contains the views of the Commission and information developed during the investigation.

By Order of the Commission.

Issued: March 8, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–6876 Filed 3–13–84; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-43 (Sub-103)]

Rail Carriers; Illinois Central Gulf Railroad Company; Abandonment; Issaquena, Sharkey and Warren Counties, MS; Findings

The Commission has issued a certificate authorizing the Illinois Central Gulf Railroad Company to abandon a portion of railroad extending between milepost 175.93 near Rolling Fork (including Rolling Fork) and milepost 209.25 at Redwood Junction (excluding Redwood Junction), a distance of 33.32 miles in Issaquena, Sharkey, and Warren Counties, MS. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in boldface on the lower lefthand corner of the envelope containing the offer "Rail Section, AB-OFA." Any offer previously made must be renamed within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-6808 Filed 3-13-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-96)]

Rail Carriers; Seaboard System Railroad Company; Abandonment; Baldwin County, AL; Findings

The Commission has issued a certificate authorizing the Seaboard System Railroad, Inc., to abandon its 33.5-mile rail line between milepost FC-645.0 near Bay Minnette, AL, and the end of the line at milepost FC-678.5 near Foley, AL in Baldwin County, AL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer "Rail Section, AB-OFA." Any offer previously made must be renamed within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-6809 Filed 3-13-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. National Bank and Trust Company of Norwich; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given persuant to the Antitrust Procedures and penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement, as set forth below, have been filed with the United States District Court for the Northern District of New York, in *United States* v. *National Bank and Trust Company of Norwich, et al.*, Civil Action No. 83-CV-537.

The complaint filed by the Department of Justice in this case alleged that the merger of the National Bank and Trust Company of Norwich ("NBT") and the National Bank of Oxford ("Oxford Bank"), both of which are located in Chenango County, New York, would violate Section 7 of the Clayton Act because it could substantially lessen competition in consumer banking and business banking in Chenango County.

The proposed Final Judgment would require NBT to sell two of its offices, located just outside the City of Norwich, to a depository institution that does not presently operate a branch in the northern three-fourths of Chenango County, which was the relevant geographic market the Department alleged at trial. In addition, NBT would be required to take the steps necessary to remove home office protection from the City of Norwich, thus opening Norwich to entry by new competitors. The Final Judgment would permit NBT to go ahead with its acquisition of the Oxford Bank after NBT enters into binding contracts to sell its two offices. Under other provisions of the Final Judgment, the business obtained from Oxford Bank will be held separate from NBT after the acquisition, until NBT has completed both the divestiture of the two other offices and the removal of home office protection. The divestitures and the removal of home office protection must be completed within six months unless the Court finds there is a good reason for an extension, which can be no longer than an additional six months. Under the Final Judgment, unless both offices have been sold and home office protection has been removed before the expiration of that time, a "selling agent" appointed by the Court will sell the Oxford Bank.

Comments to the Department regarding the proposed decree are invited from the public. The comment period under the Tunney Act runs for a period of sixty days from the date of this publication in the **Federal Register.** Comments concerning the proposed Final Judgment should be sent to Stanley M. Gorinson, Chief, Special Regulated Industries Section, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

U.S. District Court for the Northern District of New York

United States of America, Plaintiff, v. *National Bank and Trust Company of Norwich and National Bank of Oxford*, Defendants, and *C. T. Conover, Comptroller of the Currency*, Intervenor.

Civil Action No. 83-CV-537, Hon. Roger J. Miner.

Filed: March 7, 1984.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding. Further, in the event that the proposed Final Judgment is not

entered pursuant to this Stipulation, the trial of this action shall resume, and the record of the trial to date shall be the record on the same basis as would have been the case had this Stipulation never been signed.

3. From December 13, 1983, until the proposed Final Judgment is entered, defendants have taken and shall take no actions that would violate any provisions of the proposed Final Judgment had it been in effect at all times from December 13, 1983.

Dated:

For the Plaintiff: United States of America: J. Paul McGrath, *Assistant Attorney General;* Douglas H Ginsburg, Joseph H. Widmar, Stanley M. Gorinson, Jeffrey Blumenfeld, *Attorneys, Antitrust Division U.S. Department of Justice:* John V. Thomas, Bruce P. White, David Schertler, *Trial Attoneys, Antitrust Division,* P.O. Box 50125, Washington, D.C. 20004, Telephone: (202) 724–6693, Counsel for Plaintiff.

For the Defendants: National Bank and Trust Company of Norwich and National Bank of Oxford: Eugene J. Metzger, Michael E. Friedlander, Metzger, Shadyac & Schwarz, 1275 K Street, N.W., Suite 1000, Washington, D.C. 20005, Telephone (202) 289–4520, Counsel for Defendants.

For Intervenor: C. T. Conover, Comptroller of the Currency: Charles H. McEnerney, Eugene Katz, *Office of the Comptroller of the Currency,* 490 L'Enfant Plaza East, Washington, D.C. 20219, Telephone: (202) 447–1888, Counsel for Intervenor.

So Ordered:

Dated: ————.

United States District Judge.

U.S. District Court for the Northern District of New York

United States of America, Plaintiff, v. *National Bank and Trust Company of Norwich and National Bank of Oxford,* Defendants.

Civil Action No. 83–CV–537, Hon. Roger J. Miner.

Filed: March 7, 1984.

Final Judgment

Plaintiff, United States of America, having filed its Complaint on May 6, 1983, defendants and intervenor having filed their respective answers thereto, trial having commenced, but the Court having entered no substantive findings of fact or conclusions of law; and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment, and without this Final Judgment constituting an admission by any party with respect to any issue of law or fact herein, it is hereby

Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

(A) "NBT" shall mean defendant National Bank and Trust Company of Norwich.

(B) "Oxford Bank" shall mean defendant National Bank of Oxford or, where the context so requires, that office of NBT which operates the business previously conducted by National Bank of Oxford while it operated as a separate legal entity.

(C) "Person" shall mean any individual, partnership, firm, corporation, association or any other business or legal entity.

(D) The "North Plaza Office" shall mean that branch of NBT currently situated adjacent to the North Plaza shopping center in the town of Norwich, Chenango County, New York.

(E) The "South Plaze Office" shall mean that branch of NBT currently situated in the South Plaza shopping center in the town of Norwich, Chenango County, New York.

(F) "Depository insitution" shall mean any commercial bank, savings bank or savings and loan association.

III

The provisions of this Final Judgment shall apply to defendants NBT and Oxford Bank and to their directors, officers, employees, agents, affiliates, successors, assigns, and to all persons in active concert or participation with them, who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

A. Upon entry of this Final Judgment, the statutory stay, imposed under 12 U.S.C. 1828(c)(7)(A), that currently enjoins the merger of Oxford Bank into NBT, shall terminate. However, defendants are enjoined from consummating this merger until fifteen (15) days after defendants file with the Court, with a copy hand-delivered to the Chief, Special Regulated Industries Section, Antitrust Division, an affidavit stating that NBT has entered into binding contracts consistent with the terms of Section V below to sell the North Plaza and South Plaza Offices, together with a copy of said contract(s). Defendants also shall cooperate in providing to plaintiff such additional information about the purchaser as is in their possession. If within said fifteen day period, plaintiff files an objection with the Court, the Court shall determine whether to continue this injunction based solely upon whether defendants have entered into contracts consistent with the terms of Section V. It is further provided that plaintiff may, in its sole discretion, shorten the fifteen day period by agreeing in writing that it has no objection.

B. In the event Oxford Bank is merged into NBT before completion of all of the divestitures and the lifting of home office protection required by Section V below, the assets and liabilities of Oxford Bank shall be held separate from the other assets and liabilities of NBT. This hold separate obligation shall require that: (1) All deposit and loan accounts of Oxford Bank acquired by NBT through the merger, or subsequently generated at the NBT office in Oxford, shall be accounted for separately by NBT; (2) NBT shall take no action designed or intended to cause any existing or prospective customer of Oxford Bank to transfer accounts from the banking office in Oxford to any other office of NBT; (3) all other assets and liabilities of Oxford Bank acquired by NBT through the merger, or subsequently generated at the NBT office in Oxford, shall not be comingled with the other assets and liabilities of NBT in a way which would prevent such assets and liabilities from being readily identifiable as of the close of any business day; (4) NBT shall not transfer managerial employees of Oxford Bank to any other NBT office; and (5) no action shall be taken or omitted that would impair the viability of the NBT office in Oxford as a bank. In the event that it becomes necessary to divest the Oxford office pursuant to the provisions of Section VI of the Final Judgment, these separately accounted for assets and liabilities which are part of or derived from the Oxford Bank office shall all be divested, together with such personnel as wish to stay with the divested office. Except as set forth above, nothing herein shall preclude NBT, following the merger, from operating or managing the NBT office in Oxford in any manner it deems appropriate.

C. The restrictions imposed by paragraph B of this Section IV automatically shall terminate fifteen (15) calendar days after defendants file with the Court, with a copy hand-delivered to the Chief, Special Regulated Industries Section, Antitrust Division, an affidavit that the acts required by Section V have been completed; *Provided, however,* That these restrictions shall not be lifted at the completion of the fifteen day period if during that period plaintiff files its objections with the Court. If such an objection is filed, the Court shall determine whether to lift the conditions imposed by paragraph B of this Section IV based upon whether defendants have complied with Section V. It is further provided that plaintiff may, in its sole discretion, shorten the fifteen day period by agreeing in writing that compliance is complete.

V

A. NBT shall divest all direct and indirect ownership interest in and control over the North Plaza Office and the South Plaza Office. These two offices may be sold either separately or to a single purchaser, at the option of NBT. The purchaser(s) shall be independent of NBT, and shall be subject to approval by plaintiff; however, plaintiff may not unreasonably withhold its approval. The purchaser must be a depository institution, or a holding company for a depository institution, other than a depository institution that currently has a deposit taking office in Chenango County (other than in the towns of Greene, Coventry, Afton and Bainbridge). Any such purchaser must state in writing its present intention to make a good faith effort to operate each office it purchases within the city or town of Norwich, although such statement will not create any contractual right enforceable by any party hereto. Nothing herein shall preclude a purchaser from being acceptable solely on the grounds that the purchaser plans to relocate a

purchased office to some other place within the city or town of Norwich.

B. NBT shall not transfer any mangement personnel out of these offices nor take any steps designed or intended to cause the diminution or destruction of the North Plaza or South Plaza Offices as viable branch offices, or designed or intended to cause any person to transfer any account attributable to such office to any other office of NBT; provided, however, that nothing herein shall preclude NBT from engaging in general advertising or from creating or expanding other banking offices or facilities.

C. NBT shall take all such steps as are necessary to end so-called "home office protection" as to it for the City of Norwich under N.Y. Banking Law § 105. NBT may accomplish this result through any appropriate means, provided that NBT may not end home office protection for the City of Norwich in a manner that results in NBT enjoying "home office protection" in the Village of Oxford.

D. The divestitures and termination of home office protection specified in paragraphs A through C of this Section V are to be accomplished no later than August 22, 1984. If all such acts will not be accomplished before August 22, 1984, NBT may make a single application to the Court, in advance of August 22, 1984, for an extension of not more than six months within which to accomplish these acts. Upon such an application, and a showing of good cause, the Court shall grant an extension of time for accomplishing the required divestitures and lifting of home office protection, which extension shall be not more than six (6) months, or until February 22, 1985.

E. Under no circumstances will the acts required by Section V be completed later than February 22, 1985. The provisions of Section VI of this order will become automatically and irrevocably effective on August 22, 1984, unless that date is extended by the Court, and, if that date is extended under the terms of this Final Judgment, Section VI shall be automatically and irrevocably effective upon the expiration of that extension and in no event later than February 22, 1985.

VI

A. If all acts of the divestitures of both the North Plaza and South Plaza Offices, as well as lifting home office protection for the City of Norwich, as required by Section V of this Final Judgment, are not acomplished by the expiration of defendants' time under Section V to complete those acts, an independent sales agent shall be appointed by the Court, on notice to plaintiff and NBT. Such agent shall be appointed thirty (30) days prior to the expiration of defendants' time under Section V, including any extensions. The sales agent shall immediately begin preparations for the possible sale of the Oxford Bank branch office, and if Section V has not been fully complied with prior to February 22, 1985, the sales agent shall on that date immediately act to sell that branch. This sale shall be required without regard to any partial performance by NBT. However, if in good faith NBT has been unable to complete compliance, but does complete compliance with the requirements of Section V after the expiration of the above referenced deadline, but prior to a sales contract being obtained by the sales agent, then such sale will not be required and NBT shall be deemed in full compliance. NBT shall fully cooperate with the selling agent to accomplish this sale. The sale of the Oxford Bank branch shall be conducted in a commerically reasonable manner; however, the sale shall be made at whatever price the selling agent is able to obtain at that time, and without regard to whether NBT believes the sale price is fair or reasonable. The sales agent shall notify the parties of the purchaser thirty (30) days prior to the sale. The sale of the Oxford Bank branch shall be to a purchaser reasonably satisfactory to plaintiff. The selling agent's reasonable fees and expenses shall be paid by NBT.

B. NBT may , if it so desires, elect to sell the Oxford Bank branch. NBT shall notify plaintiff of the purchaser thirty (30) days prior to the sale. The purchaser shall be reasonably satisfactory to plaintiff, but plaintiff may not unreasonably withhold its approval. If such sale is completed prior to August 22, 1984, or any Court extension of that date, then NBT will be relieved of its obligations under Sections V and VI.A. of this Final Judgment, and Section VI.A. shall no longer apply.

VII

At any time during the period of ten (10) years from the date of entry of this Final Judgment, and absent prior written approval of the plaintiff, NBT is enjoined and restrained from (a) acquiring directly or indirectly any branch office divested pursuant to the terms of this Final Judgment; or (b) taking any action to reestablish home office protection for the City of Norwich or the Village of Oxford.

VIII

Sixty (60) days after the date of entry of this Final Judgment and every sixty days thereafter until NBT has complied with Section V hereof, NBT shall submit written reports to the plaintiff, addressed to the Chief, Special Regulated Industries Section, Antitrust Division, describing the steps which have been taken to comply with this Final Judgment. Each report from NBT shall include the name and address of each person, if any, who, since the last report (or in the case of the first report, each person who has to that date), made an offer, expressed an interest, or entered into negotiations to acquire either office to be divested.

IX

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to NBT to Oxford Bank made to their principal offices, be permitted:

(i) Access during regular office hours of NBT or Oxford Bank to inspect and copy all non-privileged relevant books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of NBT or Oxford Bank and without restraint or interference from NBT or Oxford Bank, which may have counsel present; and

(ii) Subject to the reasonable convenience of NBT or Oxford Bank and without restraint or interference from them, to interview, under oath and on the record if requested by plaintiff, officers, employees, and agents of NBT or Oxford Bank, who may have counsel present.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to NBT's or Oxford Bank's principal offices, they shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with the Final Judgment or as otherwise required by law.

X

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof and for the enforcement of compliance therewith and the punishment of any violation hereof; provided, however, that there shall be no modification of the February 22, 1985 deadline absent a showing that defendants were unable to meet this deadline as a result of plaintiff's unreasonable conduct.

XI

If at any time before the consummation of the proposed merger of NBT and Oxford Bank the defendants definitely abandon the proposed merger, or if subsequent to the merger, the Oxford Bank office is sold pursuant to the terms of this Final Judgment, then this Final Judgment shall no longer enjoin the actions of NBT and Oxford Bank.

XII

Entry of this Final Judgment is in the public interest.

United States District Judge.

———— ————,

Dated:————————

United States District Court for the Northern District of New York

United States of America, Plaintiff, v. *National Bank and Trust Company of Norwich and National Bank of Oxford, Defendants,* and *C.T. Conover, Comptroller of the Currency, Intervenor,*

Civil Action No. 83-CV-537; Hon. Roger J. Miner.

Filed: March 7, 1984.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)–(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment against defendants in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On May 6, 1983, the United States of America filed a civil antitrust action under Section 15 of the Clayton Act, 15 U.S.C. 25, seeking to enjoin permanently as a violation of Section 7 of the Clayton Act, 15 U.S.C. 18, the proposed merger of National Bank and Trust Company of Norwich ("NBT") and National Bank of Oxford ("Oxford Bank"), whose application to merge and had been granted by the Comptroller of the Currency ("Comptroller"), Intervenor herein, on April 8, 1983. The complaint alleged that the effect of the proposed merger may be substantially to lessen competition in the provision of retail banking services generally, commercial banking services generally, and certain defined specific banking services in the relevant section of the country, Chenango County, New York. As provided in the Bank Merger Act, 12 U.S.C. 1828(c)(7)(A), as amended, the timely commencement of this action stayed consummation of the merger. The Comptroller of the Currency intervened in the action on June 10, 1983, pursuant to the provisions of 12 U.S.C. 1828.

In the midst of trial plaintiff and defendants reached a settlement of this litigation. Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Panalties Act. Entry of the proposed Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment, and to punish violations of the Judgment. At the time of entry of the Final Judgment, the Comptroller of the Currency intends to withdraw from the case.

II

Events Giving Rise to the Alleged Violation

NBT is a national bank chartered by the Comptroller of the Currency. It is headquarterd in the City of Norwich, Chenango County, New York and has seventeen offices in four counties in central New York State. Nine of these offices are located in Chenango County. NBT, as of June 30, 1983, had total deposits of $283,962,000. Oxford Bank is also a national bank chartered by the Comptroller of the Currency. Oxford Bank has its sole office in the village of Oxford, Chenango County, New York. Oxford Bank, as of June 30, 1983, had total deposits of $16,607,000. The City of Norwich is eight miles from the village of Oxford.

In July 1982, NBT filed an application with the Comptroller seeking approval of a merger of Oxford Bank into NBT. The Department of Justice, in a September 10, 1982 letter to the Comptroller, concluded that the merger would have a "significantly adverse" effect on competition. The Comptroller nonetheless approved the merger on April 8, 1983.

As commercial banks, NBT and Oxford Bank offer the same basic financial products and services to consumers. Those products and services can be separated into two general categories. The first category is consumer (or retail) banking services provided to individuals and households. These services include demand deposit accounts, savings accounts, time deposits, money market deposit accounts, consumer loans, and residential mortgage loans. The second category is business (or commercial) banking services, including demand deposit accounts and commercial loans.

NBT and Oxford Bank directly compete in providing these services in a market area convering the northern three-fourths of Chenango County. Aside from NBT and Oxford Bank, there are only three other depository institutions that are significant competitors in this market. They are (1) a branch office of the First City division of Lincoln First Bank, N.A.; (2) a branch office of Binghamton Savings Bank; and (3) Chenango Federal Savings and Loan Association. All three of these offices are located in Norwich.

In terms of total deposits in the northern three-fourths of Chenango County, NBT is the largest bank in the market. NBT holds about 55% of total deposits. Oxford Bank holds about 7% of total deposits in the market.

The complaint alleges that the effect of the acquisition may be substantially to lessen competition in retail banking and commercial banking in violation of Section 7 of the Clayton Act.

III

Explanation of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The Proposed Final Judgment contains no admission by either party as to any isue of fact or law. Under the provisions of the Antitrust Procedures and Penalties Act entry of the proposed Final Judgment is conditional upon a determination by the Court that the proposed Final Judgment is in the public interest.

The proposed Final Judgment provides that NBT and Oxford Bank may merge, but that in exchange for being allowed to merge with Oxford Bank, NBT will divest two of its offices in Norwich and will end the "home office protection" that currently prevents other depository institutions from opening branches in the City of Norwich. Thus, the Final Judgement will bring actual new entry into the market and will remove existing legal barriers to additional entry. The merger of Oxford Bank into NBT may take place upon the occurrence of the later of: the Court's approval of the proposed Final Judgment in compliance with the terms of the Antitrust Procedures and Penalties Act or the entry of NBT into binding contracts for the sale of its North Plaza and South Plaza Offices.

A. Divestitures of the North Plaza and South Plaza Offices

The proposed Final Judgment requires defendant NBT to divest all ownership interests in two of its existing branch offices: the North Plaza and South Plaza Offices, both located in the Town of Norwich. These offices may be sold separately or to a single purchaser, but must include in their sale all tangible assets, deposit and loan accounts held by or attributed to each branch, and such other contracts as are appropriate to accomplish the sale of each office as a going concern. The purchaser, who must be either a banking or thrift organization (other than a credit union) not currently located in the northern three-quarters of Chenango County, or a new depository institution, must be resonably satisfactory to the plaintiff, United States. The purchaser must, in order to be acceptable to the United States, state in writing that it has a present intention of operating each office it purchases.

In connection with the sale of the North Plaza and South Plaza Offices, NBT is prohibited by the proposed Final Judgment from taking any steps designed to cause any person to transfer any account now attributed to either office, from transferring any management personnel from those offices, or from taking any other steps that cause the diminution or destruction of the North Plaza or South Plaza Offices as viable branch offices. Finally, NBT may not reacquire those branches without the prior approval of the Department of Justice for a period of ten years.

B. Home Office Protection Removal

The City of Norwich and the village of Oxford are now closed by New York State Law to branching by other depository financial institutions. N.Y. Banking Law section 105 (Supp. 1983). As a result of the merger, Oxford Bank will become a branch of NBT and "home office protection" in the village of Oxford will terminate. The proposed Final Judgment requires NBT to take such steps as are necessary to terminate home office protection in the City of Norwich. NBT may satisfy this requirement by any appropriate means so long as it does not result in home office protection being reestablished in the village of Oxford. Moreover, NBT may take no steps to reestablish home office protection in Norwich or Oxford for a period of ten years.

C. Hold Separate Provisions

If defendants elect to merge Oxford Bank and NBT after the approval by the Court of the proposed Final Judgment but before the required divestitures of the North Plaza and South Plaza Offices and the lifting of home office protection for the City of Norwich, NBT expressly assumes the risk of being required to divest Oxford Bank in the event the plaza office divestitures and the lifting of home office protection do not occur within the time periods set out in the proposed Final Judgment. The Oxford Bank divestiture would occur if the divestitures of the North Plaza and South Plaza Offices and the lifting of the Norwich City home office protection have not been completed by August 22, 1984 (or by no later than February 22, 1985, if an extension of time is granted by the Court). The defendants cannot request, and the Court will not grant, a further time extension beyond February 22, 1985.

In order that the Oxford Bank divestiture, if necessary, be a meaningful one, and that it be divested as a going concern, certain interim obligations are imposed on the defendants by the proposed Final Judgment. These obligations, which take effect if defendants choose to merge the banks before the North Plaza and South Plaza Offices are divested and the Norwich City home office protection is lifted, require that the assets and liabilities of Oxford Bank be separately accounted for and that no management personnel shall be transferred from Oxford to any other part of NBT. During this interim period, NBT is prohibited from taking any steps to encourage any customer of Oxford Bank (or any person who approaches Oxford Bank to establish a customer relationship) to transfer any account to any part of NBT. No action will be taken by the defendants that would cause any diminution or destruction or impairment of the viability of the Oxford Bank.

These "hold separate" restrictions shall terminate 15 days after delivery to the Court and to the Chief of the Special Regulated Industries Section of the Antitrust Division a sworn statement that the divestitures of the North Plaza or South Plaza Offices and the lifting of the Norwich City home office protection have been completed, unless plaintiff notifies the Court that it does not believe that these conditions have been fulfilled. In that event, the Court shall determine whether to terminate these restrictions.

The proposed Final Judgment requires NBT to submit periodic reports to the plaintiff describing the steps it has taken to comply with the proposed Final Judgment. NBT is prohibited, for a period of ten years, from reacquiring either of the divested North Plaza or South Plaza Offices, or from acting to reimpose home office protection in Norwich City or the village of Oxford.

IV

Remedies Available to Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment is not expected to either impair or assist the bringing of any private antitrust damage actions, since Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), allows a judgment to be invoked as *prima facie* evidence in private litigation only where the judgment operates as an estoppel between the parties. The proposed Final Judgment would not appear to have such a *prima facie* effect.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides for a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Stanley M. Gorinson, Chief, Special Regulated Industries Section, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530.

VI

Alternatives to the Proposed Final Judgment

As an alternative to a consent decree, the United States sought a permanent injunction to block the proposed merger of NBT and Oxford Bank. After commencing a trial of a civil action seeking such an injunction, the United States chose to negotiate the proposed Final Judgment since the relief obtained through the settlement, divestiture of two offices together with the removal of the legal barrier to entry into the City of Norwich, a barrier that would have remained in place even if the merger had been enjoined, is believed likely to have at least as much pro-competitive long-term impact as would have flowed from a permanent injunction of the merger.

If NBT elects to consummate the merger with Oxford Bank before it divests the South Plaza and North Plaza Offices and ends home office protection in the City of Norwich, NBT expressly assumes the risk that it will not be able to sell these plaza offices to a satisfactory buyer or buyers. If NBT does not complete the required divestitures and lifting of home office protection within the time period set forth in the Final Judgment, a Court appointed selling agent shall promptly sell Oxford Bank. This sale mechanism provides a viable method of reestablishing the Oxford banking office as a separate competitor in the market.

The relief obtained in the proposed Final Judgment provides important pro-competitive results, primarily in the form of the introduction of at least one new competitor as a result of the divestitures of the North Plaza and South Plaza Offices, and the removal of legal barriers to additional entry in Norwich City as well as in Oxford village. While different in form than the prayer for injunction of the proposed merger, the relief obtained should have positive competitive results in the market.

Although most provisions of the proposed Final Judgment were revised and refined in the course of negotiations, no other relief substantially different in kind was considered by the United States, except insofar as plaintiff sought the assistance of Intervenor, the Comptroller of the Currency, in policing the "hold separate" provision of the proposed Final Judgment. The Bank Merger Act's automatic injunction provision is a congressional recognition of the difficulty attending efforts to undo a bank merger. The proposed Final Judgment permits the merger under "hold separate" strictures that will facilitate the divestiture of Oxford Bank if the primary relief is not obtained in the time periods required by the proposed Final Judgment. In the event that divestiture should be required, it may be necessary to ascertain whether the hold separate provisions have been strictly complied with by the defendants. While the Comptroller has elected not to be a party to the decree for this purpose, the Department of Justice has been advised by the Comptroller of the Currency that:

> [Y]ou may be assured that this Office, as part of its normal bank examination responsibilities, does undertake to determine that each national bank being examined is acting in a safe, sound, and lawful manner. Thus, this Office would determine, in the course of its routine examinations of the Norwich and Oxford banks, whether the banks are in compliance with any outstanding court order, including any consent decree entered in the referenced litigation. We would, of course, advise the Antitrust Division should we find during such examination non-compliance with the terms of the decree.[1]

Thus, the Comptroller will undertake to provide no special assistance in connection with the proposed Final Judgment. In the event the divestiture of Oxford Bank should become necessary, we are not as confident as we otherwise would be that the divestiture will take place without difficulty.

VII

Determinative Documents

There are no materials or documents that the United States considered determinative in formulating this proposed Final Judgment. Therefore, none are being filed along with this Competitive Impact Statement.

Respectfully submitted,

John V. Thomas, Bruce P. White, David Schertler,

Attorneys, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530, 202/724-6721.

Dated: March 6, 1984.

Certificate of Service

I, Bruce P. White, attorney for Plaintiff, do hereby certify that I have on this date served a copy of the Competitive Impact Statement on the attorneys of record for Defendants National Bank and Trust Company of Norwich and National Bank of Oxford, and intervenor, C. T. Conover,

[1] Letter from Brian W. Smith, Chief Counsel, Comptroller of the Currency, to Stanley M. Gorinson, Chief, Special Regulated Industries Section, Antitrust Division, dated February 23, 1984.

Comptroller of the Currency by hand delivering copies to:

Michael E. Friedlander, Esquire, Metzger, Shadyac & Schwarz, 1275 K Street, NW., Washington, D.C. 20005

Charles McEnerney, Jr., Office of the Comptroller of the Currency, 490 L'Enfant Plaza, SW., Washington, D.C. 20219

Dated: March 6, 1984; Washington, D.C.

Bruce P. White,

Attorney, Department of Justice.

[FR Doc. 84-6704 Filed 3-13-84; 8:45 am]

BILLING CODE 4410-01-M

United States v. Beverly Enterprises, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Middle District of Georgia, Macon Division, in *United States v. Beverly Enterprises, et al.*, Civil Action No. 84–70–1–MAC. The Complaint in this case alleges that the proposed acquisition of Southern Medical Services, Inc. ("SMS") by Beverly Enterprises and Beverly Enterprises-Alabama, Inc. (collectively "Beverly") would violate Section 7 of the Clayton Act, 15 U.S.C. 18, because it may substantially lessen competition in the provision of nursing home care in and around the cities of Macon, Georgia; Augusta, Georgia; Mobile, Alabama; and Montgomery, Alabama. In addition to Beverly and SMS, the Complaint also names as defendants, American Trust of Hawaii, Inc., as Trustee under the SMS Profit Sharing Plan; George H. Smith and Jack B. Bruce. American Trust, Bruce and Smith were stockholders in SMS. These three defendants and SMS were dismissed from the lawsuit following the filing of the proposed Final Judgment and the consummation of the Beverly-SMS acquisition.

The proposed Final Judgment would order Beverly to divest seven nursing homes in the four areas named in the Complaint as well as one nursing home in Huntsville, Alabama. The Department earlier had advised Beverly that it was continuing its investigation of the proposed acquisition to determine if the transaction violated Section 7 of the Clayton Act in Huntsville. The judgment would require Beverly to transfer its interests in the eight nursing homes to First American Health Care, Inc. of Huntsville, Alabama by September 1, 1984. First American has agreed to acquire the eight homes pursuant to a purchase agreement dated February 2, 1984. Until the closing on the First American purchase agreement, First American will manage the facilities under contract, and Beverly will take all reasonable steps necessary to ensure that the homes are operated as independent and separate facilities. In the event of termination, delay or default under the First American purchase agreement, Beverly must notify the Department and the Court, and the Court shall determine the manner and timing of the divestiture required by the judgment.

The judgment also would require Beverly to notify the Department before buying any other nursing home in the five areas. Further, Beverly is not permitted to acquire any ownership or control in First American or any other entity which obtains ownership or control in any of the eight nursing homes involved.

Public comment is invited within the statutory 60 day comment period. Such comments, and responses thereto, will be pubished in the **Federal Register** and filed with the Court. Comments should be directed to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, Room 7218, U.S. Department of Justice, Washington, D.C. 20530. Telephone: 202/633–2425.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

U.S. District Court

Middle District of Georgia, Macon Division

In the Matter of: *United States of America*, Plaintiff, v. *Beverly Enterprises, Beverly Enterprises-Alabama, Inc., Southern Medical Services, Inc., American Trust of Hawaii, Inc. as Trustee under the Southern Medical Services, Inc. Profit Sharing Plan, George A. Smith, and Jack B. Bruce*, Defendants.

Civil Action No. 84–70–1–MAC.

Filed: February 28, 1984.

Stipulation

Whereas,

(1) Defendant Beverly Enterprises and defendant Beverly Enterprises-Alabama, Inc. (collectively "Beverly") have notified plaintiff that they plan to divest to First American Health Care, Inc. ("First American") certain equitable and legal interests in eight nursing homes following consummation of Beverly's agreement with defendant Southern Medical Services, Inc. ("SMS");

(2) Plaintiff has been provided with copies of the purchase agreement between Beverly and First American, along with copies of proposed management contracts, a promissory note and pledge agreement;

(3) First American has represented to plaintiff that it is its present intention to operate these facilities as ongoing businesses;

(4) Plaintiff has advised SMS, Beverly and First American that plaintiff's approval of the proposed divestiture by Beverly to First American is based upon the documentation described in Paragraph 2 above and on the representation made in Paragraph 3 above and is contingent upon Beverly's agreement to and the Court's entry of the Stipulation and the proposed Final Judgment, also filed this day.

It is hereby stipulated and agreed by and between plaintiff and Beverly that:

(1) Defendants may consummate the acquisition by Beverly of SMS and the purchase agreement between Beverly and First American;

(2) Plaintiff and Beverly consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof of defendants and by filing that notice with the Court;

(3) Beverly agrees to be bound by the terms of the proposed Final Judgment as of the date of this Stipulation; and

(4) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: February 27, 1984.

Plaintiff Counsel: J. Paul McGrath, *Assistant Attorney General*. Mark Leddy, John W. Poole, Jr., Terrence F. McDonald, Kathleen M. Eyre, *Attorneys*, U.S. Department of Justice, Antitrust Division, 10th & Pennsylvania Ave., NW., Washington, D.C. 20530, Telephone (202) 633–3082

Counsel for Beverly Enterprises and for Beverly Enterprises-Alabama, Inc.: James Douglas Welch, Popham, Haik, Schnobrich, Kaufman & Doty, Ltd., 2000 L Street, NW., Suite 802, Washington, D.C. 20036, Telephone (202) 887–5154.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on January 18, 1984, and plaintiff and defendants, Beverly Enterprises and Beverly Enterprises-Alabama, Inc., by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby, ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and the parties hereto.

The complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act (15 U.S.C. 18).

II

As used in this Final Judgment:

(A) "Beverly" means Beverly Entreprises, a California corporation with principal offices in Pasadena, California and Beverly Enterprises-Alabama, Inc., a California corporation with its principal offices in Pasadena, California.

(B) "SMS" means Southern Medical Services, Inc., a Georgia corporation with its principal offices in Birmingham, Alabama.

(C) "First American" means First American Health Care, Inc., an Alabama corporation with its principal offices in Huntsville, Alabama.

(D) "Department" means the United States Department of Justice, Antitrust Division, Washington, D.C.

(E) "Relevant areas" means Mobile, Madison and Montgomery counties in Alabama; Bibb, Jones, Richmond and Columbia counties in Georgia and the city of North Augusta, South Carolina.

(F) "Relevant nursing home facilities" means Southern Medical of East Macon and Southern Medical of North Macon in Macon, Georgia; Southern Medical of Augusta in Augusta, Georgia; Lynwood Nursing Home and Southern Medical of Springhill in Mobile, Alabama; Perry Hill Health Facility and Montgomery Health Care Center in Montgomery, Alabama; and Southern Medical of Huntsville, Alabama.

(G) "Proposed SMS acquisition" means the purchase agreement between Beverly and SMS entered into on October 19, 1983.

(H) "First American purchase agreement" means the contract between Beverly, Beverly Enterprises-Georgia, Inc. and First American entered into on February 2, 1984, including the related promissory note, pledge agreement and instruments that restructure any mortgage indebtedness for any of the relevant nursing home facilities, which documents are referred to in the purchase agreement, a copy of which is attached as Exhibit A.

(I) "First American management agreement" means any contract between Beverly and First American to manage any of the relevant nursing home facilities.

III

This Final Judgment applies to Beverly and to its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Beverly Enterprises shall require, as a condition of the sale or other disposition of all or substantially all of its assets involved in the provision of nursing home care, that the acquiring party agree to be bound by the provisions of this Final Judgment.

V

Beverly shall divest itself absolutely, permanently and in good faith of all legal and equitable ownership, rights or other interests, including but not limited to rights under management contracts or leases or rights granted by the state through its certificate-of-need procedure, in the relevant nursing home facilities. This divestiture shall be accomplished in such a way as to ensure reasonably that the relevant nursing home facilities can be operated by the purchaser as a viable, ongoing business engaged in the provision of nursing home services. However, the foregoing shall not be construed to create rights in any third party or to obligate Beverly to do more than sell the relevant nursing home facilities on an "as is" basis. This divestiture shall be accomplished in accordance with the terms of the First American purchase agreement as supplemented by the provisions of this Final Judgment. The First American purchase agreement may be modified only with the Department's approval, or failing that, with the Court's approval.

VI

(A) Beverly shall make its best efforts to complete as promptly as possible, but no later than September 1, 1984, the sale of the relevant nursing home facilities pursuant to the First American purchase agreement and shall take all steps necessary to meet its obligations under the First American purchase agreement and all reasonable steps to require performance by First American of its obligations under the purchase agreement. Beverly shall promptly notify the Department of any fact, circumstance or event that is likely to delay or prevent the closing on the First American purchase agreement. Beverly shall immediately notify the Department upon closing on the First American purchase agreement.

(B) In the event of either (1) termination of the First American purchase agreement prior to closing, (2) delay of the closing of the First American purchase agreement to a time after September 1, 1984, or (3) default after closing:

(a) Beverly shall immediately notify the Department and the Court by registered mail; and

(b) the Court shall, as soon as possible, determine the manner and timing of the divestiture of the relevant nursing home facilities as required by this Final Judgment, including, for example, whether the sale should be effectuated by Beverly, by a qualified agent independent of Beverly and with no substantial financial dealings with or fiduciary responsibilities to Beverly, or otherwise, *provided that* (i) Beverly shall not, absent some emergency condition, assume management or control of any relevant nursing home facility; and (ii) Beverly shall not retain any legal interest in any relevant nursing home facility for a period exceeding nine (9) months from the date of the occurrence of any event specified in (B) (1), (2) or (3) above; and

(c) as to any relevant nursing home facility for which an approved management agreement is not in effect, within fifteen (15) days Beverly shall transfer the relevant nursing home facility involved to a qualified nursing home administrator independent of Beverly who shall assume its operation and control pursuant to terms substantially identical to the First American management agreement attached as Exhibit B. Such management agreements may be modified only with the Department's approval, or failing that, with the Court's approval.

VII

(A) Beverly shall enter into the First American management agreements for the relevant nursing home facilities for the period March 1, 1984 until the closing on the First American purchase agreement. The First American management agreements shall be substantially identical to the management agreement attached as Exhibit B. These management agreements may be modified only with the Department's approval, or failing that, with the Court's approval. Beverly retains the right, however, to take actions clearly necessary to comply with federal, state and local laws and regulations.

(B) In the event of termination of any First American management agreement for any reason other than the closing on the First American purchase agreement:

(1) Beverly shall notify the Department and the Court by registered mail immediately; and

(2) within fifteen (15) days Beverly shall transfer the relevant nursing home facility involved to a qualified nursing home administrator independent of Beverly who shall assume its operation and control pursuant to terms substantially identical to the First American management agreement attached as Exhibit B. Such management agreements may be modified only with the Department's approval, or failing that, with the Court's approval.

VIII

Beverly shall not, without 60 days prior written notice to the Department, acquire or otherwise obtain any equitable interest, right or title, including but not limited to rights under management contracts or leases or rights granted by the state through its certificate-of-need program, in any nursing home in the relevant areas.

IX

Beverly shall not acquire or otherwise obtain any ownership or control over First American or in any entity that acquires or otherwise obtains any ownership or control over the relevant nursing home facilities.

X

(A) Until the closing on the First American purchase agreement or other divestiture as required by this Final Judgment, Beverly shall take all reasonable steps necessary to ensure that the relevant nursing home facilities are operated as independent and separate nursing home facilities.

(B) Beverly shall not, except as provided under Sections VI and VII:

(1) prior to closing on the First American purchase agreement, participate in the selection of employees or managers for any relevant nursing home facility or, for one (1) year thereafter, solicit any administrator from any relevant nursing home facility to work for Beverly;

(2) participate in any way in the management of any relevant nursing home

facility including but not limited to the setting of rates and wages;

(3) influence or attempt to influence, directly or indirectly, any operational or financial decisions or actions by the operators of any relevant nursing home facility; or

(4) obtain, directly or indirectly, information about the operational or financial decisions or actions of any relevant nursing home facility, except that for the period during which any management contract is in effect, Beverly may have access to records clearly necessary to comply with federal, state or local laws and regulations or for Beverly to carry out the First American purchase agreement.

XI

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Beverly made to its principal office, be permitted:

(1) access during office hours of Beverly to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Beverly, who may have counsel present, relating to any matters contained in this Final Judgment; or

(2) subject to the reasonable convenience of Beverly and without restraint or interference from it, to interview officers, employees and agents of Beverly, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to Beverly's principal office, Beverly shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section XI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(c) If at the time information or documents are furnished by Beverly to the Antitrust Division, Beverly represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Beverly marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to Beverly prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Beverly is not a party, or divulging such material under the Freedom of Information Act, 5 U.S.C. 552.

XII

This Final Judgment will expire on the later of the following dates:

(1) the tenth anniversary of its date of entry; or

(2) when First American or any purchaser of the relevant nursing home facilities under the Final Judgment shall have fulfilled all of its obligations to Beverly under any such purchase agreement.

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XIV

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Exhibit A

Purchase Agreement

This Agreement is made and entered into this 2nd day of February, 1984, by and among Beverly Enterprises, Beverly Enterprises-Georgia, Inc. and Beverly Enterprises-Alabama, Inc., each of which is a California corporation (collectively referred to herein as "BEA"), and First American Health Care, Inc., an Alabama corporation (the "Buyer").

Recitals

Whereas, upon the consummation of the transactions contemplated by the Agreement between and among Beverly Enterprises, Beverly Enterprises-Alabama, Inc., Southern Medical Services, Inc., American Trust Company of Hawaii, Inc., George H. Smith and Jack B. Bruce dated October 19, 1983 (the "SMS Agreement"), BEA will own all of the issued and outstanding shares of Common Stock (the "Shares") of each of the corporations set forth on Exhibit A attached hereto (collectively, the "Corporations") which Corporations own or lease and operate the seven nursing home facilities located at the addresses set forth on Exhibit A attached hereto (collectively, the "Facilities").

Whereas, BEA operates the Montgomery Health Care Center, located at 520 South Hull Street, Montgomery, Alabama (the "Montgomery Facility"), which it leases from Geriatric Multicare, Inc. and The Medical Clinic Board of the City of Montgomery, Alabama—Midtown.

References herein to the Montgomery Facility and the Facilities shall be deemed to include all land, and improvements and appurtenances thereto, personal property and other assets utilized in the operation of the Montgomery Facility and the Facilities, including furniture, fixtures, equipment, supplies, inventory, books and records and all other items of personal property, but excluding cash and accounts receivable; and

Whereas, the Buyer desires to purchase the Shares and the Montgomery Facility from BEQ, and BEA desires to sell the Shares and the Montgomery Facility to the Buyer, on the terms and conditions hereinafter set forth.

Agreement

Now, therefore, in consideration of the foregoing premises and the mutual covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

Article I

Purchase of the Montgomery Facility and the Shares

1.01. *Purchase and Conveyance.* Subject to the terms and conditions set forth in this Agreement, at the Closing (as hereinafter defined), BEA shall sell, convey, transfer and deliver to the Buyer, and the Buyer shall purchase and accept from BEA, the Shares and the Montgomery Facility. On the Closing Date (as hereinafter defined), the Buyer shall deliver to BEA (a) a cashier's or certified bank check payable to BEA in the sum of $100,000 and (b) a promissory note issued by the Buyer in favor of BEA, such note to be personally guaranteed by Bryson F. Hill, Jr., to be dated the Closing Date, to be in the original principal amount of $400,000, to bear interest on the unpaid principal amount thereof at the rate of 12% per annum, principal and interest to be payable in equal monthly installments (based on full amortization of the principal amount thereof over 20 years) commencing on April 20, 1984 and continuing on the twentieth day of each subsequent month with a final payment of the then unpaid principal balance on March 20, 1994, to be secured by a pledge by the Buyer to BEA of all of the Shares pursuant to the Pledge Agreement attached as Exhibit B hereto, and otherwise in the form attached as Exhibit C hereto.

1.02. *Assumption of Montgomery Facility Liabilities.* As additional consideration for its purchase of the Montgomery Facility, the Buyer hereby assumes, subject to the terms and conditions hereof, all of the liabilities and obligations of Beverly Enterprises with respect to the Montgomery Facility other than those current liabilities and obligations described in clauses (a) through (e) of Section 7.05 hereof.

1.03 *Closing.* The closing under this Agreement (the "Closing") shall, subject to the conditions set forth in Articles VI and VII hereof, take place at the offices of BEA at 873 South Fair Oaks Avenue, Pasadena, California, beginning at 10:00 a.m., March 1, 1984, and shall be effective as of 12:01 a.m., March 1, 1984 (the "Closing Date"), or at such other time and/or place as shall be fixed by mutual consent of the parties hereto; *provided* that the Closing shall not take place unless all of the conditions set forth herein shall have been satisfied or waived in writing. In the event the transactions described herein fail to close on said date, the transactions shall close as soon as reasonably possible thereafter, and the parties hereto agree to use their best efforts

to insure that the transactions close on the Closing Date or as soon thereafter as possible. If the transactions contemplated hereby shall be ready to close except that Buyer shall not have been licensed to operate the Montgomery Facility and the Facilities, BEA and Buyer shall enter into Management Agreements, in the form attached hereto as Exhibit D, with respect to the Montgomery Facility and the Facilities.

Article II

Representation And Warranties of BEA

Except as set forth in written disclosure schedules (collectively, the "Disclosure Schedules") attached hereto and numbered to correspond to the Sections of this Article II, BEA makes the following representations and warranties to the Buyer:

2.01 *Organization; Standing.* BEA is a corporation duly organized, validly existing and in good standing under the laws of the State of California and has full corporate power and authority to own and lease its property and assets and to conduct its business as now being conducted.

2.02 *Authority.* The execution, delivery and peformance by BEA of this Agreement and the transactions contemplated hereby have been duly authorized and approved by all necessary corporate action on the part of BEA, and this Agreement has been duly executed and delivered by, and consititues a valid, binding and enforceable obligation of BEA. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby by BEA will violate any provision of the Articles of Incorporation or Bylaws of BEA.

2.03 *Ownership of the Shares.* At the Closing BEA will own of record and beneficially all of the Shares of each of the Corporations, and the Shares issued by each Corporation comprise all of the issued and outstanding capital stock of such Corporation. At the Closing, BEA will have good and marketable title to the Shares, free and clear of all liens, encumbrances or charges, restrictions, rights or interests of others of any kind.

2.04. *Title to Assets.* The Corporation have good and marketable title to, or valid leasehold interests in, the Facilities, and BEA has a valid leasehold interests in the Montgomery Facility, free and clear of all mortgages, liens, pledges, charges and encumbrances, except as noted on the title insurance commitments previously delivered to Buyer and except for such easements, restrictions or rights or interests of others, if any, which do not, as to any particular Facility, materially interfere with the use of such Facility as a nursing home facility.

2.05 *Litigation.* There are no actions, suits or proceedings pending or, to the knowledge of BEA, threatened against or affecting any of the Corporations or any of the Facilities or the Montgomery Facility before any court, governmental agency, bureau or instrumentality which could have a material adverse effect on any of the Corporations, the Facilities or the Montgomery Facility.

Article III

Representations and Warranties of the Buyer

The Buyer makes the following representations and warranties to BEA:

301.1. *Organization; Standing.* The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Alabama, and has full corporate power and authority to own and lease its property and assets and to conduct its business as now being conducted.

3.02. *Authority.* The execution, delivery and performance by the Buyer of this Agreement and all transactions contemplated hereby have been duly authorized and approved by all necessary action and this Agreement has been duly executed and delivered by, and constitutes a valid, binding and enforceable obligation of, the Buyer.

3.03. *No Violation.* Neither the execution, delivery or performance of this Agreement nor the consummation of the transactions contemplated hereby (a) violates or will violate the Articles of Incorporation or Bylaws of the Buyer, or (b) results or will result in any breach of any of the terms or provisions of, or constitutes or will constitute a default under, or causes or will cause the acceleration of the maturity of or change any financial term of any debt or obligation pursuant to, any contract, agreement or instrument to which the Buyer is a party or by which the Buyer or any of its property is bound or (c) violates or will violate any applicable statute, law, rule or regulation or any judgment, decree, order, regulation or rule of any court or any governmental authority.

3.04. *No Defaults.* There are no current defaults by the Buyer under any contract, agreement, obligation, commitment or understanding of any nature that could have a material adverse effect on the Buyer.

3.05. *Litigation.* There are no actions, suits or proceedings pending or, ot the knowledge of the Buyer, threatened against or effecting the Buyer or any of its property before any court, governmental agency, bureau or instrumentality which could have a material adverse effect on the Buyer.

Article IV

Condition of the Facilities

The Buyer expressly acknowledges that BEA is making no representations or warranties hereunder whatsoever with respect to the condition (financial, physical or otherwise) of the Montgomery Facility or the Facilities or the Corporations, and, therefore, the Buyer acknowledges and agrees that, prior to the Closing, it will make whatever inspection of the Montgomery Facility, the Facilities and/or the books and records of the Corporations, the Facilities and the Montgomery Facility that it deems necessary or appropriate. In light of the foregoing, the Buyer further acknowledges and agrees that it is acquiring the Montgomery Facility and the Corporations (through the purchase of the Shares) and, therefore, the Facilities on an "as is" basis and will have no recourse against BEA for any claims, demands, losses, costs, expenses, obligations, liabilities, actions, suits, damages ro deficiencies of any kind, including, without limitation, reasonable attorneys' fees, which the Buyer shall incur or suffer except as specifically set forth in Sections 7.05 and 8.02 hereof.

Article V

Covenants

5.01 *Regular Course of Business.* BEA shall use its best efforts to cause each of the Corporations to operate their respective Facilities in substantially the same manner as heretofore operated, and BEA shall use its best efforts to ensure that neither BEA nor any of the Corporations shall make any material change in the operation of the Facilities without the prior written consent of the Buyer.

5.02 *Access to Facilities and Records.* Prior to the Closing Date, BEA will use its best efforts to provide the Buyer (through its designated employees or, where appropriate, through authorized representatives of the Buyer's regular independent accountants and counsel) access during normal business hours to the Montgomery Facility and the Facilities and the books and records of the Corporations.

5.03. *Additional Disclosure.* From time to time between the date hereof and the Closing Date, BEA shall promptly advise the Buyer in writing of any matter hereafter arising which, if existing or occurring at the date of this Agreement, would have been required to be set forth or described in any of the schedules or exhibits attached hereto or which affects the accuracy or completeness of any representation or warranty made by BEA hereunder.

5.04. *Consents.* Between the date hereof and the Closing Date, BEA shall use its best efforts, without the payment of any consideration to the persons or entities from whom or which consents for agreements are required, to obtain at the earliest practicable date prior to the Closing Date all consents and agreements of third parties necessary for the performance by BEA of its obligations under this Agreement or to the consummation of the transactions contemplated hereby. No consideration, whether such consideration shall consist of the payment of money or shall take some other form, for any such consent or agreement shall be given or promised by BEA without the prior written approval of the Buyer.

Article VI

Conditions to the Obligations of the Buyer

Each and every obligation of the Buyer under this Agreement to be performed on or before the Closing Date shall be subject to the satisfaction, on or before the Closing Date, of each of the following conditions, unless otherwise waived in writing by the Buyer:

6.01. *Representations and Warranties True.* The representations and warranties made by BEA in Article II hereof shall be correct and complete in all material respects at and as of the date hereof and at and as of the Closing Date as though such representations and warranties were made at and as of each such date.

6.02. *Performance.* BEA shall have performed and complied with all agreements,

obligations and conditions required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

6.03. *Title Insurance.* BEA agrees to deliver to the Buyer, at BEA's expense, on the Closing Date or as soon thereafter as reasonably possible, standard form owner's or lessee's policies of title insurance issued by title insurance companies reasonably acceptable to the Buyer insuring the respective Corporation's interest in the Facilities free and clear of all liens, encumbrances, and exceptions other than (a) those exceptions specified in the usual printed exceptions contained in such policies and (b) those liens and encumbrances set forth on the title insurance commitments previously delivered to Buyer. BEA further agrees to deliver to the Buyer, at BEA's expense, on the Closing Date or as soon thereafter as reasonably possible, any current surveys received by BEA under the SMS Agreement, showing all easements, improvements, structures and encroachments, of the real property comprising each of the Facilities. No title insurance or survey will be provided with respect to the Montgomery Facility.

6.04. *No Proceeding or Litigation.* No suit, action or legal or administrative proceeding by any governmental body or other person shall have been instituted or threatened which questions the validity or legality of the transactions contemplated by this Agreement or which might materially adversely affect the business of the Corporations, taken as a whole.

6.05. *Consents.* All consents from third parties required under Section 5.04 hereof to consummate the transactions contemplated hereby shall have been obtained.

6.06. *Certificates.* BEA shall have furnished the Buyer with such certificates of the officers of BEA and of others to evidence compliance with the conditions set forth in this Article VI as may be reasonably requested by the Buyer.

6.07. *Restructuring of Mortgage Indebtedness.* The second mortgage indebtedness payable to Hill/Guthrie & Associates in the original aggregate principal amount of $3,081,000 with respect to the Huntsville, Augusta and East Macon Facilities shall be restructured as of the Closing so that the unpaid principal amount thereof will bear interest at 11% per annum, principal and interest to be payable in equal monthly installments (based on full amortization of the principal amount thereof over 20 years) commencing on April 20, 1984 and continuing on the twentieth day of each subsequent month with a final payment of the unpaid principal balance, and accrued interest thereon, on March 20, 1994. Such indebtedness shall be secured by the existing second mortgages and a pledge of the Shares and shall be personally guaranteed by Bryson F. Hill, Jr.

6.08. *SMS Closing.* The transactions contemplated by the SMS Agreement shall have been consummated.

Article VII

Conditions to the Obligations of BEA

Each and every obligation of BEA under this Agreement to be performed on or before the Closing Date shall be subject to the satisfaction, on or before the Closing Date, of each of the following conditions, unless otherwise waived in writing by BEA:

7.01. *Representations and Warranties True.* The representations and warranties made by the Buyer in Article II hereof shall be correct and complete in all material respects at and as of the date when made and at and as of the Closing Date as though such representations and warranties were made at and as of each such date.

7.02. *Performance.* The Buyer shall have performed and complied with all agreements, obligations and conditions required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

7.03. *No Proceedings or Litigation.* No suit, action or proceeding or legal or administrative proceeding by any governmental body or other person shall have been instituted or threatened which questions the validity or legality of the transactions contemplated by this Agreement.

7.04. *Consents.* All consents from third parties required under Section 5.05 hereof to consummate the transactions contemplated hereby shall have been obtained.

7.05. *Working Capital.* On or prior to the Closing Date each of the Corporations shall have made to BEA a distribution in respect of its Shares of all of their respective cash on hand and in banks and all other current assets other than the cash surrender value of life insurance policies securing long-term bond indebtedness and amounts escrowed in connection with the payment of long-term bond indebtedness and together with all (a) accounts payable, (b) accrued current wages payable and vacation and sick leave pay payable, (c) accrued current interest on indebtedness which has not been escrowed with a trustee, (d) bank loans to the Corporations for working capital purposes and (e) all other current liabilities accrued under generally accepted accounting principals; *provided* that liabilities to be distributed by the Corporations to BEA under this Section 7.05 shall not include any indebtedness due to banks, finance companies or other lenders which is secured by any real or personal property or fixtures owned or utilized by such Corporations or any amounts due under capitalized lease obligations of the Corporations.

7.06. *Certificates.* The Buyer shall have furnished BEA with such certificates of the officers of the Buyer and of other evidence compliance with the conditions set forth in this Article VII as may be reasonably requested by BEA.

7.07. *Restructuring of Mortgage Indebtedness.* The second mortgage indebtedness payable to Hill/Guthrie & Associates in the original aggregate principal amount of $3,081,000 with respect to the Huntsville, Augusta and East Macon Facilities shall be restructured as of the Closing so that the unpaid principal amount thereof will bear interest at 11% per annum, principal and interest to be payable in equal monthly installments (based on full amortization of the principal amount thereof over 20 years) commencing on April 20, 1984 and continuing on the twentieth day of each subsequent month with a final payment of the unpaid principal balance, and accrued interest thereon, on March 20, 1994. Such indebtedness shall be secured by the existing second mortgages and a pledge of the Shares and shall be personally guaranteed by Bryson F. Hill, Jr.

7.08. *SMS Closing.* The transactions described in the SMS Agreement shall have been consummated.

Article VIII

Indemnification

8.01. *Survival of Representations and Warranties.* The respective representations and warranties of BEA and the Buyer contained herein shall survive the Closing.

8.02. *Indemnity.* BEA agrees to indemnify and hold the Buyer harmless from and against any damage, claim, liability, cost, loss or expense, including, without limitation, reasonable attorneys' fees, which the Buyer shall incur or suffer and which shall arise out of or result from the inaccuracy of any representation or warranty made by BEA in Article II hereof.

8.03. *Defense of Claims.* Promptly after the receipt by the Buyer of notice of the commencement of any action or the assertion by any third party of any claim with respect to which, in its judgment, the Buyer may be entitled to indemnification under Section 8.02 hereof, the Buyer shall use its best efforts to notify BEA in writing of the commencement of such action or the assertion of such claim. In cases any such action is brought or any such claim is asserted, and upon notice thereof to BEA in accordance with this Section 8.03, BEA shall be entitled, but shall not be required, to elect to have the sole and exclusive right to control the defense of and settlement of any such claim, and, in such case, Buyer shall have the right to participate in the defense thereof (at its own expense). If, however, BEA does not elect to have sole and exclusive control of the defense of such claim or action, or if BEA fails to make such an election within 15 days after notice of such claim or action, then the Buyer shall assume such defense and BEA shall be entitled to participate in such defense (at its own expense); *provided* that in no event shall the Buyer settle or otherwise dispose of any such claim or action without BEA's prior written consent.

Article IX

Miscellaneous Provisions

9.01. *Further Assurances.* Each party hereto agrees to use its best efforts to cause the conditions to the other party's obligations herein set forth to be satisfied at or prior to the Closing. Each of the parties hereto agrees to execute and deliver any and all further agreements, documents or instruments necessary to effectuate this Agreement and the transactions contemplated hereby or reasonably requested by the other party to perfect or evidence their rights hereunder. Each party shall promptly notify the other party of any information delivered to or obtained by such party which would prevent the consummation of the transactions contemplated by this Agreement, or would

indicate a breach of the representations or warranties of any of the parites of this Agreement.

9.02. *Notices.* All notices made pursuant to this Agreement shall be duly made and given if given in person or sent by United States mail, registered mail, return receipt requested, postage prepaid, to the parties at the addresses set forth below, or as set forth in any notice of change of address given in writing in the manner prescribed herein to all other parties hereto:

If to BEA: Beverly Enterprises-Alabama, Inc., 873 South Fair Oaks Avenue, Post Office Box 90130, Pasadena, California 91109, Attention: President or Chairman of the Board

With a copy to: Steven Della Rocca, Esq., Latham & Watkins, 555 South Flower Street, Los Angeles, California 90071

If to the Buyer: First American Health Care, Inc., P.O. Box 207, 401 Franklin Street, Huntsville, Alabama 35801, Attention: President

Any such notice sent by United States mail shall be deemed to have been given three business days after posting, addressed and prepaid as set forth above, and notices delivered in person shall be deemed to have been given when delivered.

9.03. *Expenses.* Whether or not the transactions contemplated hereby are consummated, each party agrees to pay all of its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

9.04. *Choice of Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

9.05. *Non-Assignment.* This Agreement may not be assigned by any party; *provided* that any party hereto may assign its rights hereunder to a wholly-owned subsidiary or a parent corporation; *provided, further,* that any such arrangement shall not relieve the assignee of liability hereunder.

9.06. *Waiver.* No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other terms, provision or condition of this Agreement.

9.07. *Captions.* The captions of the several sections and paragraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation with respect to this Agreement.

9.08. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute a single original agreement.

9.09. *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction nor shall it invalidate or render unenforceable in any jurisdiction any other provision herein.

9.10. *Legal Expenses.* If any legal action, arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged or actual dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in such action or proceeding in addition to any other relief to which it may be entitled.

9.11. *Entire Agreement.* This Agreement (including all attachments hereto) constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. This Agreement may not be changed except by a written instrument executed by all of the parties hereto.

In witness whereof, the parties hereto have executed this Agreement on the date first above written.

Beverly Enterprises, Name: Larry B. Cornish, *Title: Vice-President.*

Beverly Enterprises-Alabama, Inc., Name: Larry B. Cornish, *Title: Vice President.*

Beverly Enterprises-Georgia, Inc., Name: Larry B. Cornish, *Title: Vice President.*

First American Health Care, Inc., Name: Bryson F. Hill, Jr., *Title: President.*

Exhibit A

Corporation

Southern Medical of Huntsville, Inc., 4320 Judith Lane, S.W., Huntsville, AL 35804

Lynwood Management Co., Inc., P.O. Box 9427, 4164 Halls Mill Road, Mobile, AL 36609

Perry Hill Health Facility Inc., 100 Perry Hill Road, Montgomery, AL 36193

Southern Medical of Springhill, Inc., 37137 Dauphine Street, Mobile, AL 36690

Southern Medical of Augusta, Inc., P.O. Box 5778, 2021 Scott Road, Augusta, GA 30906

Southern Medical of East Macon, Inc., 1060 Old Clinton Road, Macon, GA 31201

Southern Medical of North Macom, Inc., P.O. Box 2505, 2255 Anthony Road, Macon, GA 31204

Exhibit B

Pledge Agreement

This pledge agreement is made and entered into this 1st day of March, 1984, between First American Health Care, Inc., an Alabama corporation ("Pledgor"), and Beverly Enterprises, a California corporation ("Pledgee").

Recitals

Whereas, pursuant to a Pledge Agreement dated February —, 1984, by and among Pledgor, Pledgee and certain other parties (the "Purchase Agreement"), Pledgee is transferring to Pledgor all of its right, title and interest in and to all of the outstanding capital stock of each of the corporations set forth on Exhibit A attached hereto in exchange for, among other things, a certain Secured Promissory Note of even date herewith in the original principal amount of $400,000 made by Pledgor in favor of Pledgee (the "Note"); and

Whereas, Pledgor and Pledgee desire that payment of the Note be secured by the Collateral (as defined in Section 1 hereof).

Agreement

Now, therefore, in consideration of the foregoing premises and the agreements and covenants hereinafter set forth, the parties hereto do hereby agree as follows:

1. *Pledge.* Pledgor hereby Pledges, creates and grants a security interest to Pledgee in the following collateral:

All of the outstanding capital stock of each of the corporations set forth on Exhibit A (collectively, the Corporations"), evidenced by certificates designated on Exhibit A;

together with all securities, certificates and instruments representing or evidencing ownership of the Collateral hereunder, and all proceeds and products of any Collateral hereunder, including, without limitation, stock, cash, property or other dividends, securities, rights and other property now or hereafter at any time or from time to time received, receivable or otherwise distributed or distributable in respect of or in exchange for any or all of such Collateral; all options, warrants and other rights to subscribe for or purchase voting or non-voting capital stock of the Corporations, whether now existing or hereafter arising during the term of this Agreement with respect to any of the other Collateral; all securities of the Corporations now or hereafter owned or acquired by Pledgee and all options, warrants and other rights to subscribe for or purchase voting or non-voting capital stock of the Corporations now owned or hereafter acquired by Pledgee and any present or future notes, bonds, the ventures or other evidence of indebtedness owned by Pledgee that (i) are at any time convertible into capital stock of the Corporations or (ii) have or at any time would have voting rights with respect to the Corporations, hereinafter collectively referred to as the "Collateral." The security interest hereunder shall secure payment in full when due of all indebtedness of Pledgor to Pledgee under the Note and any modifications, consolidations, replacements, extensions or renewals thereof, payment of all other indebtedness and performance of all other obligations under this Agreement and payment of all other indebtedness of Pledgor to Pledgee now existing or hereafter arising, and any modifications, consolidations, replacements, extensions or renewals thereof. Pledgor agrees to endorse or assign the Collateral in blank and to deliver the Collateral so endorsed or assigned to Pledgee upon the execution hereof.

2. *Term of Pledge.* This Agreement shall continue and Pledgee shall retain possession of, and retain its security interest in, the Collateral until payment in full of all amounts payable by Pledgor under or by virtue of the Note or under any provision of this Agreement. Pledgee shall redeliver the Collateral upon final payment of all such amounts.

3. *Pledgee's Remedies Upon Default.* Upon (a) the failure to pay when due the principal of or interest on the Note or any other indebtedness of Pledgor to Pledgee secured hereby or (b) the failure of Pledgor to perform or observe any of the other terms, conditions or covenants contained in the Note, any other indebtedness of Pledgor to Pledgee secured hereby, this Agreement or any other

instrument or agreement constituting additional security for the Note, which failure to perform or observe shall not have been cured or remedied by Pledgor within ten (10) days after the occurrence thereof, Pledgor expressly convenants and agrees that Pledgee may, at its option, exercise any one or more of the rights set forth as follows:

(1) Declare all unpaid principal, accrued interest and any other sums due and payable under the Note immediately due and payable;

(2) Sell all or any part of the Collateral, at one or more public or private sales in any commercially reasonable manner and upon any commercially reasonable terms and conditions, consistent with obtaining a fair and reasonable price for such Collateral, and Pledgee shall be entitled, but shall not be required, to purchase any or all of the Collateral at any such sale; or

(3) Hold the Collateral and apply all proceeds thereof against the indebtedness secured hereunder.

The remedies set forth above shall not be exclusive, and Pledgee shall have available to it any and all other remedies with respect to the Collateral that may be available to a secured party pursuant to the Alabama Uniform Commercial Code and any and all other rights or remedies available under any other applicable law, as the same may from time to time be in effect. Pledgee may exercise its rights under this Agreement independently of any other collateral or guaranty that Pledgor may have granted or provided to Pledgee in order to secure payment and performance of the Note, and Pledgee shall be under no obligation or duty to foreclose or levy upon any other collateral given by Pledgor to secure the obligation or to proceed against any guarantor before enforcing its rights under this Agreement. The remedies granted herein shall be cumulative and the exercise of any one remedy shall not preclude the exercise of any other, and any sale of the Collateral pursuant to the terms hereof, shall not operate to release Pledgor until full payment in cash of any deficiency has been made to Pledgee.

4. *Pledgor's Representations and Warranties.* Subject only to the validity of pledgee's conveyance of its right, title and interest in the Collateral to Pledgor pursuant to the Purchase Agreement, Pledgor represents and Warrants that:

(a) Pledgor is the sole owner of the Collateral; there are no security interests, liens or encumbrances, or adverse claims of title or any other interest whatsoever therein except that created by this Agreement; and no financing statement, pledge or other security agreement of any kind covering the Collateral or any portion thereof or any proceeds thereof exists or is on file in any public office;

(b) Each instrument or document constituting the Collateral is genuine and in all respects what it purports to be, and the Collateral has not been altered in any way;

(c) Pledgor has the full power and authority, without obtaining the consent of any other person, entity or governmental authority, to enter into and perform this Agreement;

(d) Upon delivery of the Collateral to Pledgee, Pledgee shall have a valid and duly perfected first priority security interest in the Collateral;

(e) The Collateral includes all of the issued and outstanding capital stock of the Corporations, and all such capital stock is validly issued, fully paid and nonassessable; and

(f) Neither the execution and delivery of this Agreement by Pledgor nor the consummation of the transactions herein contemplated nor the fulfillment of the terms hereof will result in a breach of any of the terms or provisions of, or constitute a default under, or constitute an event which with notice or lapse of time or both will result in a breach of or constitute a default under, Pledgor's Articles of Incorporation or Bylaws or any agreement, indenture, mortgage, deed of trust, equipment lease, instrument or other document to which Pledgor is a party or by which Pledgor or its properties are bound or will conflict with any law, order, rule or regulation applicable to Pledgor of any court or any federal or state government, regulatory body or administrative agency, or any other governmental body having jurisdiction over Pledgor or its properties.

5. *Covenants of Pledgor.* Subject only to the validity of the Pledgee's conveyance of its right, title and interest in the Collateral to Pledgor pursuant to the Purchase Agreement, Pledgor covenants that:

(a) Pledgor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein except as expressly provided herein;

(b) Pledgor will procure or execute and deliver any document, deliver to Pledgee any instrument, give any notices and take any other actions which are necessary or appropriate in the reasonable judgment of Pledgee to perfect or to continue the perfection and first priority of Pledgee's security interest created hereby or to protect the Collateral against the rights, claims, or interests of third persons, and Pledgor will pay all costs incurred in connection therewith. At and in accordance with the request of Pledgee, Pledgor shall instruct some or all of the Corporations to pay all sums payable or to make all distributions in respect of the Collateral to Pledgee or as Pledgee directs, if such notice has not previously been given pursuant to this Agreement. Pledgee may also so instruct the Corporations, or any of them, directly without first requesting Pledgor to do so;

(c) Pledgor will not, without the prior written consent of Pledgee, in any way encumber, or hypothecate, or create or permit to exist any lien, security interest or encumbrance on or other interest in the Collateral except that created by this Agreement nor will Pledgor sell, transfer, assign, exchange or otherwise dispose of the Collateral. If the Collateral or any part thereof is sold, transferred, assigned, exchanged or otherwise disposed of in violation of these provisions, the security interest of Pledgee shall continue in such Collateral or part thereof notwithstanding such sale, transfer, assignment, exchange or other disposition, and Pledgor will hold the proceeds thereof in a separate account for Pledgee's benefit. Pledgor will, at Pledgee's request, transfer such proceeds to Pledgee in kind;

(d) Pledgor will pay and discharge all taxes, assessments and governmental charges or levies against the Collateral prior to the delinquency thereof and will keep the Collateral free of all unpaid charges whatsoever;

(e) Pledgee shall have the right at any time, but shall not be obligated, to make any payments and do any other acts Pledgee may deem necessary to protect its security interest in the Collateral, including, without limitation, the rights to pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Pledgee appears to be prior to or superior to the security interest granted hereunder, and to appear in and defend any action or proceeding purporting to affect its security interest in the Collateral or the value of the Collateral and, in exercising any such powers or authority, to pay all expenses incurred in connection therewith, including attorneys' fees, the repayment of which by Pledgor shall be secured under this Agreement. Pledgor hereby agrees that it shall be bound by any such payment made or such action taken by Pledgee hereunder. Pledgee shall have no obligation to make any of the foregoing acts;

(f) Pledgor hereby authorizes Pledgee, its employees or agents, at Pledgee's option, to collect, in the name of Pledgor or in the name of Pledgee as assignee, any payments or distributions in respect of any of the Collateral;

(g) Pledgor hereby irrevocably appoints Pledgee its attorney in fact, coupled with an interest to the extent necessary, to give payment instructions to the Corporations, or any of them, in accordance with this Agreement to collect all amounts payable and all distributions in respect of the Collateral, to endorse and cash checks and other instruments representing proceeds of Collateral and to perform all other acts under this agreement as Pledgee in its sole judgment reasonably exercised shall deem necessary or desirable;

(h) Pledgee is hereby authorized to pay all reasonable costs and expenses incurred in the exercise or enforcement of its rights hereunder, including attorneys' fees, and then to credit or use any further proceeds of the Collateral for the payment of any other amounts secured hereunder; and

(i) Pledgee shall only be accountable for monies which it actually receives from or in respect of the Collateral.

6. *Miscellaneous Provisions.*

(a) *Notice.* All notices, requests and other communications required or permitted to be made hereunder shall, except as otherwise provided, be in writing and may be delivered personally or sent by certified mail, postage prepaid, addressed as follows:

To Pledgee: Beverly Enterprises, 873 South Fair Oaks Avenue, Post Office Box 90130, Pasadena, California 91109. Attention: Chairman of the Board of Directors or President

To Pledgor: First American Health Care, Inc., P.O. Box 207, 401 Franklin Street, Huntsville, Alabama 35801. Attention: President.

Such notices, requests and other communications sent shall be effective

exactly there (3) business days after so deposited in the United States Mail. Either party may change its address by giving notice thereof to the other party herein in conformity with this Paragraph 6(a).

(b) *Choice of Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

(c) *Amendments.* This Agreement or any provision hereof may be mofified, amended, changed, waived or terminated only by a statement in writing signed by the party against which such modification, amendment, change, waiver or termination is sought to be enforced.

(d) *No Waiver.* No delay in enforcing or failing to enforce any right under this Agreement by Pledgee shall constitute a waiver by Pledgee of such right. No waiver by Pledgee of any default hereunder shall be effective unless in writing, nor shall any waiver operate as a waiver of any other default or of the same default on a future occasion.

(e) *Time of the Essence.* Time is of the essence of each provision of this Agreement of which time is an element.

(f) *Binding Agreement.* All rights of Pledgee hereunder shall inure to the benefit of its successor and assigns. Pledgor shall not assign any of its interest under this Agreement without the prior written consent of Pledgee. Any purported assignment inconsistent with this provision shall, at the option of Pledgee, be null and void.

(g) *Attorney's Fees.* In any action or proceeding brought to enforce any provision of this Agreement or to seek damages for a breach of any provision hereof or where any provision hereof is validly asserted as a defense, the successful or prevailing party shall be entitled to recover reasonable attorney's fees in addition to any other available remedy.

(h) *Statute of Limitations.* Pledgor waives the right to plead any statute of limitations as a defense to any indebtedness or obligation hereunder or secured hereunder to the full extent permitted by law.

(i) *Severability.* If any provision of this Agreement should be found to be invalid or unenforceable, all of the other provisions shall nonetheless remain in full force and effect to the maximum extent permitted by law.

(j) *Survival of Provisions.* All representations, warranties and covenants of Pledgor contained herein shall survive the execution and delivery of this Agreement and shall terminate only upon the full payment and performance by Pledgor of its indebtedness and obligations secured hereunder.

(k) *Entire Agreement.* This Agreement, together with any other agreement executed in connection herewith, is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof. Acceptance of or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.

(l) *Duty of Care.* Pledgee shall have no duty or obligation to care for the Collateral hereunder or to take any actions to protect the value of the Collateral or any rights or privileges the Pledgor might have with respect thereto, except that Pledgee shall exercise reasonable caution in the physical care of the Collateral in Pledgee's possession.

(m) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same agreement.

In witness whereof, the parties hereto have executed this Agreement as of the date set forth above.

First American Health Care, Inc.
By: _____

Name: Bryson F. Hill, Jr.,

Title: President.

Beverly Enterprises.
By: _____

Name: William M. Wright,

Title: Executive Vice President.

Exhibit C—Secured Promissory Note

$400,000.00 March 1, 1984.

First American Health Care, Inc., an Alabama corporation ("Maker"), for value received, hereby promises to pay to Beverly Enterprises, a California corporation ("Beverly"), at its offices at 873 South Fair Oaks Avenue, P.O. Box 90130, Pasadena, California 91109, the principal sum of Four Hundred Thousand Dollars ($400,000.00), together with interest on unpaid principal at a rate of twelve percent (12%) per annum, principal and interest to be payable in equal monthly installments (based on full amortization of the principal amount hereof over 20 years) on the twentieth day of each month commencing with April 20, 1984 and continuing through February 20, 1994, with a payment of the unpaid principal amount hereof, and all accrued interest thereon, on March 20, 1994.

This Note may be prepaid in whole or in part by Maker without premium or penalty. Any prepayment hereunder shall be first credited to accrued and unpaid interest and then to principal installments in the order of their maturity. Payments of principal and interest shall be made in such coin and currency of the United States of America is at the time of payment is legal tender for the payment of public and private debts. If any payment of principal of, or interest on, this Note falls due on a Saturday, Sunday or any legal holiday for state or federal banks, then such due date shall be extended to the next following business day.

This Note is secured by a pledge of certain securities pursuant to a Pledge Agreement of even date herewith made by Maker in favor of Beverly, and reference is hereby made to said Pledge Agreement for a description of the nature and extent of the security for this Note. The entire balance of the unpaid principal hereof, and the accrued interest thereon, shall, at the option of Beverly, and without necessity of presentation or demand of any kind, become immediately due and payable upon the occurrence of any event of default under Section 3 of said Pledge Agreement.

If any legal action or other arbitration or other proceeding is brought for the enforcement of this Note, Beverly shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding in addition to any other relief to which Beverly may be entitled. The right to plead any and all statutes of limitation as a defense to a demand hereunder is hereby waived by Maker to the full extent permitted by law. None of the provisions hereof and none of Beverly's rights or remedies hereunder on account of any past or future defaults shall be deemed to have been waived by Beverly's acceptance of any past due payments or by any indulgence granted by Beverly to Maker. Maker hereby waives demand for payment, notice of dishonor, presentment for payment or for acceleration of maturity and protest, together with all of the notices to which Maker might otherwise be entitled.

In witness whereof, Maker has caused this Note to be duly executed the day and year first above written.

FIRST AMERICAN HEALTH CARE, INC.
By _____

Name: Bryson F. Hill, Jr.,

Title: President.

Exhibit B—Management Agreement

This agreement dated this —— day of ————, 1984, between Beverly Enterprises, a California corporation, of 873 South Fair Oaks Avenue, Pasadena, California 91105 (hereinafter referred to as "Beverly"), and First American Health Care, Inc., an Alabama corporation of P.O. Box 207, 401 Franklin Street, Huntsville, Alabama, 35801 (hereinafter referred to as the "Manager").

Whereas, Beverly is licensed to operate a 129-bed skilled nursing facility (the "Huntsville Facility") located at 4320 Judith Lane, S.W., Huntsville, Alabama 35804.

Whereas, by a Stock Purchase Agreement dated of even date herewith (the "Purchase Agreement"), Beverly has agreed to sell the Facility to Manager, upon the occurrence of certain conditions precedent.

Whereas, in anticipation of a transfer of ownership, Beverly has requested the Manager to operate and manage the Facility on the terms and conditions hereinafter set forth.

Now, therefore, in consideration of the mutual convenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. *Management.* The Manager hereby agrees to operate and manage the Facility for its own account and to indemnify and hold harmless Beverly from any and all claims, losses, damages and expenses arising from the operation and management of the Facility by Manager during the term of this Management Agreement. The Manager shall pay, from its own funds or from the revenues of the Facility, the following expenses of operation which arise after the Management Date and prior to the Termination Date:

(a) All social security taxes, unemployment insurance taxes or premiums, withholding taxes and similar charges imposed on Beverly in connection with any employees or

personnel of the Facility during the management period;

(b) Proper claims which, if unpaid, might by law become a lien or charge upon the Facility;

(c) Any lien or claim for lien upon the Facility or its personal property or equipment; and

(d) All costs and expenses of maintaining and operating the Facility, including without limitation the salaries of employees, proper expenditures for repairs and maintenance, the cost and expense of utilities and related services, and any other charge, item or relating to or arising out of the operation of the business of nursing.

2. *Term and Termination.* This Management Agreement shall commence on ———, 1984 (herein the "Management Date") and shall terminate upon the earliest of the following to occur:

(a) The Effective Date (as defined in the Purchase Agreement);

(b) On the first day of the month following termination of the obligations of the Manager and Operator under the Purchase Agreement;

(c) After September 1, 1984, on the first day of the month following expiration of thirty (30) days from receipt of written notice from the other party terminating this Agreement; and

(d) By mutual agreement of the parties.

Said termination date is herein referred to as the "Termination Date." The obligation of the Manager to indemnify and hold harmless Beverly shall survive termination of this Agreement. The parties recognize and agree that this Management Agreement is an interim step pending the Closing pursuant to the Purchase Agreement. In the event of termination of the Management Agreement for reasons other than Closing, pursuant to the Purchase Agreement, Manager agrees to return the Facility to Beverly in the same condition as received, reasonable wear and tear excepted, and Manager agrees to assist Beverly to achieve an orderly transfer of operation and management back to Beverly. In such event, Manager shall promptly provide Beverly with an accounting for the period of Manager's operation of the Facility.

3. *Compensation.* The Manager shall retain as a fee for its management services any excess of revenues of the Facility over expenses of operation of the Facility. The Manager shall receive revenues of the Facility and shall bear all expenses of the Facility. The expenses of operation, as such term is used in this paragraph, shall include all expenses incurred in the operation and maintenance of the Facility during the term of this Management Agreement, including the following:

All payments and sums due under that certain first mortgage dated October 1, 1974, between Southern Medical of Huntsville, Inc., as Mortgagor and First Tennessee Bank as Mortgagee; all payments and sums due under that certain second mortgage dated July 1, 1981 between Southern Medical of Huntsville, Inc., as Mortgagor and Hill/Guthrie and Associates as Mortgagee.

4. *Employees.* All employees of the facility shall become employees of the Manager as of the Management Date. Manager shall employ on its own behalf and shall supervise, direct the work of, promote and discharge such employees and personnel as are necessary for the proper operation of the Facility. Manager shall pay such employees from its own funds, or from the revenues of the Facility. Manager will use care to select qualified, competent, licensed and trustworthy employees and personnel. In this connection, Manager shall provide worker's compensation coverage and shall be responsible for all employees' wages and benefits for all services rendered by such employees after the Management Date. Beverly shall be responsible for, and shall pay, all employees' wages and benefits for all services rendered by employees of the Facility prior to the Management Date.

5. *Insurance.* Manager agrees that it will maintain all policies of insurance which are presently in effect, or replace with equivalent coverage during the term of this Management Agreement, including fire and extended coverage insurance on the Facility, comprehensive liability coverages at current levels with the same insurance companies currently providing such coverage, unless otherwise approved by Beverly in writing, which approval shall not be unreasonably withheld.

6. *Utilities; Taxes: Debt Service; Maintenance.* During the term hereof, Manager agrees to pay all utility expenses incurred in connection with the operation of the Facility and agrees to pay, in addition to any tax escrow payments made under Section 3 hereof, all real and personal property taxes and assessments with respect to the Facility which become finally due and payable without penalty after the Management Date. Utilities, utility deposits, maintenance expenses, prepaid insurance and accrued employee sick leave and vacation shall be borne as of the Management Date in accordance with the Agreement.

7. *Licenses and Authority.* Beverly hereby assigns to Manager as of the Management Date its right to operate the Facility under all licenses issued by the Alabama Department of Health or other authorities having jurisdiction over the Facility, and assigns to Manager Beverly's rights to use the Medicare and Medicaid provideer numbers issued to Beverly. All licenses, certifications and provider agreements issued by the Alabama Department of Health and the U.S Department of Health and Human Resources, and all provider numbers issued thereunder, shall remain the property of Beverlyl, and Beverly and Manager each agree to use their best efforts to maintain all of the same in full force and effect during the term hereof. Beverly hereby designates the governing body of Manager as the governing body of the Facility. Manager shall keep the Facility and equipment therein in good order, repair and condition, and in compliance with all licensing rules and regulations.

8. *Access to Records.* Beverly shall not obtain, directly or indirectly, from Manager any confidential competitive or proprietary information with respect to the operation of the Facility except (a) information that is clearly necessary to effectuate its sale or (b) information that is clearly necessary for Beverly to comply with federal, state or local laws or regulations. All financial and patient records of the Facility, including patient trust and records thereof, shall remain in the possession and control of Beverly at the Facility until the Termination Date; provided, however, Manager shall have the full, complete and unrestricted right at all times and without prior notification to inspect and copy all of said records and to receive copies of all reports or other filings with and communications from the Alabama Department of Health, and any other governmental authority or agency having jurisdiction over the Facility. All of the same shall be turned over to the Manager at the Closing Date and thereafter Beverly shall hve full access to all of said records to the extent it deems necessary in connection with the preparation of its own financial reports, tax returns, cost reports and in connection with any audits or claims against it.

9. *Patient Trust Funds.* As soon after the Management Date as possible, Beverly shall provide Manager with a detailed accounting of patient trust funds as of the Management Date. The said accounting shall be updated to the Effective Date by Beverly and delivered to Manager at the Closing. All of said funds shall be transferred to the Manager at the Closing Date in exchange for Manager's duly executed receipt for the same.

10. *Records.* Manager shall keep accurate, true and complete books and records which shall accurately reflect the operation of the Facility during the management period, and shall provide required operational information to Beverly to ensure the timely filing of cost reports and information.

11. *Relationship.* Manager and Beverly shall not be construed as joint venturers or partners and neither shall have the power to bind or obligate the other, except to the extent expressly set forth in this Agreement. Beverly authorizes Manager to perform any act or to do anything necessary or desirable in the Manager's judgment to carry out the Manager's undertakings contained in this Agreement. All actions taken by Manager under the provisions of this Agreement shall be done as principal, and not as agent of Beverly, and all obligations or expenses incurred thereunder shall be at the expense of Manager, as provided for in this Agreement. It is the intention of Beverly and Manager that the Manager shall have the full authority to perform all of the acts which are necessary or desirable in its judgment to supervise and manage the day-to-day operation of the Facility, including the establishment and setting of charges at Facility.

12. *Notices.* All notices to be given by either party to this Agreement to the other party shall be in writing, and shall be given in person or by depositing such notice in the United States mail, certified or registered, postage prepared, return receipt requested addressed as follows:

Beverly Enterprises: Beverly Enterprises, Attn: President, 873 South Fair Oaks Avenue, Post Office Box 90130, Pasadena, California 91109

Manager: First American Health Care, Inc., P.O. Box 207, 401 Franklin Street, Huntsville, Alabama 35801

Any such notice so deposited in the United States mail shall be deemed to have been received three (3) days after deposit. Any party to whom notices are to be sent pursuant to this Agreement may from time to time change its address for further communications by giving notice in the manner prescribed by this paragraph to all other parties hereto.

13. *Assignment.* Beverly and Manager agree that this Agreement or the obligations hereunder may not be assigned without the prior written consent of the other party in each instance. Any assignment in contravention of this paragraph shall be null and void.

14 *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same agreement.

15 *Choice of Law.* It is the intention of the parties hereto that all questions with respect to the interpretation and enforcement of this Agreement and the rights and liabilities of the parties to this Agreement shall be determined in accordance with the laws of the State of California.

16. *Termination.* If this Agreement is terminated, the books and records shall be closed as of the Termination Date and Manager and Beverly shall each render such account of the activities of the other under this Agreement as shall be necessary to terminate their relationship in an orderly manner.

17 *Conflict with Agreement.* Except to the extent this Management Agreement conflicts with the Purchase Agreement, the provisions of the Purchase Agreement and the obligations of the parties thereunder shall continue.

In witness whereof, the parties hereto have caused this Management Agreement to be executed as of the day and year first above written.

Manager, First American Health Care, Inc.
By: _____

Bryson F. Hill, Jr.,
President.

Beverly Enterprises.
By: _____

Larry B. Cornish,
Vice President.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment ("Judgment") submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On January 18, 1984, the United States filed a civil antitrust complaint and a motion for preliminary injunction and temporary restraining order pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, challenging the proposed acquisition of Southern Medical Services, Inc. ("SMS") of Birmingham, Alabama by Beverly Enterprises and Beverly Enterprises-Alabama, Inc. (collectively "Beverly") of Pasadena, California as a violation of Section 7 of the Clayton Act, 15 U.S.C. 18. Also named in the complaint were American Trust of Hawaii, Inc. as Trustee under the SMS Profit Sharing Plan ("the Trustee"), which owns 34 percent of SMS' voting stock, and George A. Smith and Jack B. Bruce who each own 33 percent of SMS' voting stock. The complaint alleged the effect of the acquisition may be substantially to lessen competition in the provision of nursing home care in the following four local geographic markets: (1) The area in and around the cities of Macon and Gray, Georgia; (2) the area in and around the cities of Augusta, Martinez and Evans, Georgia and North Augusta, South Carolina; (3) the area in and around the city of Montgomery, Alabama; and (4) the area in and around the cities of Mobile and Eight Mile, Alabama. The complaint sought a preliminary and permanent injunction preventing defendants from consummating the proposed acquisition or from entering into any similar plan to acquire any stock or assets in any nursing homes in the four local markets.

Plaintiff and Beverly have stipulated that the proposed Judgment may be entered after compliance with the APPA. Entry of the proposed Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Judgment, and to punish violations of the proposed Judgment. Following the consummation of the SMS acquisition, plaintiff will file notice of its intent to terminate this action against SMS, the Trustee, George H. Smith and Jack B. Bruce by dismissal without prejudice as these parties will cease to exist or have disposed of all of their stock interest in SMS.

II

Events Giving Rise to the Alleged Violation

Nursing homes provide long-term inpatient care for geriatric patients requiring less nursing care than that supplied by acute care hospitals but more than that offered by residential and personal care homes and home health agencies. Defendant Beverly is the nation's largest nursing home chain, operating over 780 homes nationwide and had revenues of $816 million in 1982. SMS operates 49 homes in seven southeastern states. Its 1982 revenues exceeded $30 million.

Nursing homes compete in localized areas and the government was prepared to prove that Beverly and SMS presently compete in the four local markets in Alabama and Georgia and that the effect of the acquisition may be to substantially lessen competition in these markets. Each of the four markets alleged in the complaint is concentrated and as a result the proposed acquisition would not only eliminate a major competitor but allow Beverly to control a large percentage of the total licensed nursing home beds in those areas. Beverly's market share in each market after the proposed acquisition would have exceeded 29 percent and would have been as high as 48 percent in the Montgomery, Alabama market. Plaintiff was further prepared to prove that the nursing home industry is highly regulated and entry in both Alabama and Georgia is limited by state certificate-of-need laws. The Department, therefore, concluded that the proposed acquisition may substantially lessen competition in each of the four markets to the detriment of nursing home patients.

Although it did not include allegations as to the Huntsville, Alabama market in the complaint, the Department has continued to investigate the impact of the acquisition and preliminarily has determined that the acquisition may substantially lessen competition in that area as well. The proposed Final Judgment will prevent any anticompetitive effects of the acquisition in the Huntsville, Alabama market as well as in the four markets alleged in the complaint.

III

Explanation of the Proposed Judgment

Plaintiff and Beverly have stipulated that the proposed Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed Judgment is conditioned upon a determination by the Court that the proposed judgment is in the public interest.

The proposed Judgment is designed to ensure that the acquisition of SMS by Beverly does not substantially lessen competition among providers of nursing home care in the markets set forth above by requiring that Beverly divest itself of all of its interest in seven homes in the four areas alleged in the complaint plus one home in Huntsville to an independent, viable competitor. The terms of the proposed Judgment require that pursuant to the parties' stipulation, Beverly will, no later than September 1, 1984, transfer all legal and equitable ownership, rights or other interests in eight nursing home facilities to First American Health Care, Inc. ("First American") of Huntsville, Alabama. Pursuant to a purchase agreement entered into on February 2, 1984, First American will acquire the following eight Beverly homes (seven formerly owned by SMS and one owned by Beverly): Southern Medical of East Macon and Southern Medical of North Macon in Macon, Georgia; Southern Medical of Augusta, Georgia; Lynwood Nursing Home and Southern Medical of Springhill in Mobile, Alabama; Perry Hill Health Facility and Montgomery Health Care Center in Montgomery, Alabama; and Southern Medical of Huntsville in Huntsville, Alabama.

The proposed Judgment also contains provisions designed to ensure that if for any reason the divestiture to First American does not occur or in the event of delay of the closing or default after closing, Beverly will immediately notify both the Department and the Court and the Court shall determine the manner and timing of the divestiture as required by the Judgment. Beverly may not assume management or control of the homes in those circumstances and may not retain any legal interest in the facilities for a period exceeding nine months. The Judgment further provides that Beverly shall enter into certain management agreements with First American to permit First American to operate the homes until regulatory approvals are

forthcoming and the purchase agreement can be completed. If, for any reason, the First American management agreements terminate before the purchase agreement is consummated or if First American defaults on its purchase obligation, the management of the homes will be transferred to a qualified nursing home operator independent of Beverly who shall assume the operation and control of the facilities. Also, Beverly may not acquire any ownership or control in First American or in any entity that acquires ownership in the facilities to be divested during the duration of the Judgment.

The proposed Judgment also requires Beverly to provide 60 days prior written notice to the Department for any purchase of any equitable interest, right or title in any nursing home in the five geographic areas set forth above. This provision will allow the Department to take appropriate action in the event a proposed acquisition may be anticompetitive.

Finally, the proposed Judgment requires that Beverly ensure that the transferred homes be operated as independent and separate nursing home facilities. Specifically, Beverly shall refrain from selecting employees, from participating in the management of these facilities or from influencing any operational or financial decisions or actions of these facilities. The proposed Judgment also specifies procedures for determining Beverly's compliance with the Judgment.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

As provided by the APPA, any person wishing to comment upon the Judgment may within the statutory 60-day comment period submit written comments to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530. These comments and the Department's responses will be filed within the Court and published in the **Federal Register**. All comments will be given due consideration by the Department, which remains free to withdraw its consent to the Judgment at any time prior to entry. The Judgment provides that the Court retains jurisdiction over this action, and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation, or enforcement.

VI

Alternatives to Proposed Final Judgment

In addition to the relief provided by the proposed Final Judgment, the Department initially sought a provision and would have requested at trial that Beverly be required to give prior notice to the Department for all acquisition agreements or managment contracts it entered into for nursing home facilities located within a specified radius of any existing facility operated by Beverly. Beverly's proposed acquisition of SMS is only the most recent in a series of numerous nursing home acquisitions it has made in recent years. Only after the Department previously expressed antitrust concerns regarding two of its proposed acquisitions did Beverly restructure the transactions to avoid suit. Those two acquisitions, as well as the proposed SMS acquisition, were brought to the Department's attention prior to consummation as a result of the premerger motification provisions of Section 7A of the Clayton Act (15 U.S.C. 18a). However, many nursing home acquisitions, including a substantial number by Beverly in recent years, are not of sufficient size to require prior notification to the Department under Section 7A. Thus, acquisitions that may substantially lessen competition may not be discovered by federal antitrust enforcement agencies until after consummation, or perhaps not at all. The Department believes the public interest would be advanced if it had the opportunity to receive prior notice of acquisitions within close geographic proximity to existing Beverly facilities.

During negotiations between the Department and Beverly, it became clear that Beverly would not enter into a consent decree that includes such a notice requirement. The Department ultimately dropped its demand for the provision because it believed that the paramount public interest in this action required, prior to consummation of the SMS acquisition, that Beverly be bound to divest and not interfere in the operations of the eight homes it First American deal fell through. This would prevent a commingling of the assets involved and thereby facilitate effective and prompt divestiture if, for example, First American failed to obtain the necessary regulatory approvals. It was unclear whether the Department could obtain such a binding obligation since the consummaption of the Beverly SMS acquisition was scheduled for Tuesday, February 28, 1984 and the Court may have allowed the transaction to go forward without having a decree in place.

The Department continues to believe that Beverly ought to provide the Department with notice of its acquisition of any nursing home within a specified radius of any of its existing homes. This would serve the public interest in maintaining competition in the provision of nursing home care, an intensely local and very important service industry. Also, such a provision would not appear to place an undue burden on Beverly. Nonetheless, the Department agreed to a decree that did not provide such notice because of the overriding public interest that a binding commitment to divest the eight homes involved in this case be in place prior to consummation of the SMS acquisition. In this connection, the Department notes that Beverly has stipulated to be bound by the terms of the proposed Judgment as of February 27, 1984.

On balance, the substantial expense of further litigation, the uncertainty of obtaining relief beyond what is embodied in the proposed Final Judgment, and the questionable availability of preliminary relief preventing consummation of the acquisition pending negotiation of a consent decree, led the Department to conclude that further litigation would not be in the public interest.

VII

Determinative Material and Documents

The Department considered the attached Purchase Agreement and related documents between Beverly and First American in formulating the Judgment.

Dated: February 27, 1984.

Respectfully submitted.

Terrance F. McDonald,

Kathleen M. Eyre,

Attorney, Antitrust Division, Department of Justice, Washington, D.C. 20530, Telephone: (202) 633-3082.

[FR Doc. 84-6542 Filed 3-13-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in

an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market with particular emphasis upon its potential impact upon competitive enterprises in the same areas.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of application involving the establishment of branch plants or facilities, the potential effect of such new facilities in other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Richard C. Gilliland, Director, U.S. Employment Service, Employment and Training Administration, 601 D Street, NW., Room 8000, Patrick Henry Building, Washington, D.C. 20213.

Signed at Washington, D.C. this 6th day of March 1984.

Joseph Seiler,

Director, Office of Program Operations.

APPLICATIONS RECEIVED DURING THE WEEK ENDING MARCH 10, 1984

Name of applicant and location of enterprise	Principal product or activity
Wieser Concrete Products, Inc., Maiden Rock, Wisconsin.	Manufacture of commercial and agricultural precast products; and provision of ready-mix concrete aggregates.

[FR Doc. 84-6845 Filed 3-13-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel; Advisory Committee Renewal

In accordance with the provisions of the Federal Advisory Committee Act, as amended (Title 5—Appendix I), and after consultation with the Committee Management Secretariat, notice is hereby given that renewal of the Arts and Artifacts Indemnity Panel (Advisory Committee) has been approved by a member of the Federal Council on the Arts and the Humanities on behalf of the Federal Council.

The Arts and Artifacts Indemnity Panel (Advisory Committee's) activities include: (1) Advising the Federal Council on policy options related to the administration of the Arts and Artifacts Indemnity Act, as amended (20 U.S.C. 971–7); (2) reviewing and making recommendations on applications for Federal indemnity; (3) providing expert judgement with respect to the dollar valuation, the adequacy of packing, shipping and security arrangements, and the cultural, historical, educational, and scientific significance of the objects to be indemnified; and (4) reviewing claims submitted for payment under the Indemnity Act.

The charter for the Arts and Artifacts Indemnity Panel has been filed with the standing committees of the Senate and the House of Representatives having jurisdiction over the Federal Council and with the Library of Congress.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 84-6826 Filed 3-13-84; 8:45 am]

BILLING CODE 7036-01-M

Humanities Panel; Advisory Committee Renewal

In accordance with the provisions of the Federal Advisory Committee Act, as amended (Title 5, App I), and section 10(a)(4) of the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4), notice is hereby given that renewal of the Humanities Panel Advisory Committee has been approved by the Chairman of the National Endowment for the Humanities.

The Humanities Panel advisory committee advises the National Council on the Humanities and the Chairman of the National Endowment for the Humanities concerning policies, programs and procedures and makes recommendations on applications for financial support presented to the National Endowment for the Humanities.

The charter for the Humanities Panel has been filed with the standing committees of the Senate and the House of Representatives having jurisdiction over the Endowment and with the Library of Congress.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 84-6827 Filed 3-13-84; 8:45 am]

BILLING CODE 7036-01-M

National Council on the Humanities; Advisory Committee Renewal

In accordance with the provisions of the Federal Advisory Committee Act, as amended (Title 5—Appendix I), and section 8 of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 957), notice is hereby given that renewal of the National Council for the Humanities has been approved by the Chairman of the National Endowment for the Humanities.

The National Council on the Humanities advises the Chairman of the National Endowment for the Humanities with respect to policies, programs and procedures for carrying out his functions and it reviews applications for financial support and makes recommendations thereon to the Chairman.

The charter for the National Council for the Humanities has been filed with standing committees of the Senate and the House of Representatives having jurisdiction over the Endowment and with the Library of Congress.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 84-6828 Filed 3-13-84; 8:45 am]

BILLING CODE 7036-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses to Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 7th day of March 1984 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

NRC EXPORT APPLICATIONS

Name of applicant, date of application, date received, application No.	Material type (percent of enriched uranium)	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Mitsubishi International Corp., Feb 10, 1984, Feb. 21, 1984, XSNM02119	3.45	16,539	571	Reload fuel for Takahama, Unit 2	Japan.
Mitsubishi International Corp., Feb 10, 1984, Feb. 21, 1984, XSNM02120	3.45	16,884	583	Reload fuel for Ohi 2	Do.
Mitsubishi International Corp., Feb 1, 1984, Feb. 21, 1984, XSNM02121	2.45	13,129	322	Reload fuel for Miharna Unit 1	Do.
Mitsubishi International Corp., Feb 17, 1984, Feb. 24, 1984, XSNM02122	3.20	34,489	1,104	Reload fuel for Sendai Unit 2	Do.
EXXON Nuclear Co., Inc. Feb 24, 1984, Feb. 27, 1984, XSNM02123	3.80	24,850	945	Reload fuel for Chinshan 1	Taiwan.

[FR Doc. 84-6854 Filed 3-13-84 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power and Light Co.; Issuance of Amendment to Facility Operating License

The U.S Nuclear Regulatory Commission (the Commission) has issued Amendment No. 77 to Facility Operating License No. DPR-23 issued to Carolina Power and Light Company (the licensee), for the H. B. Robinson Steam Electric Plant, Unit No. 2, (the facility) located in Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment approves the steam generator repair program for the H. B. Robinson Steam Electric Plant Unit No. 2 and provides licensing conditions related to the repair operation.

The amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of Proposed Issuance of Amendment to Facility Operating License in connection with this action was published in the **Federal Register** on November 24, 1982 (47 FR 53157). On April 12, 1983, the Hartsville Group was granted status as an intervenor. On December 28, 1983, the Atomic Safety and Licensing Board (ASLB) issued a Further Notice of Hearing which established a hearing date on February 7, 1984. On February 10, 1984 the ASLB issued on Order Dismissing Proceeding which authorized the Nuclear Regulatory Commission staff to handle the license amendment that would permit the proposed steam generator repair.

The Commission has issued a Final Environmental Statement on November 29, 1983, which was noticed in the **Federal Register** on December 16, 1983 (48 FR 55932), and has concluded that the action will not significantly affect the quality of the human environment.

For further details with respect to this action see (1) the application date July 1, 1982, as supplemented on September 16, 1982 and further; (2) the Steam Generator Repair Report dated January 6, 1983, as supplemented on March 21, May 5, June 3, July 11, July 14, July 15, July 25, August 3, August 11, and October 31, 1983; (3) Amendment No. 77 to License No. DPR-23; (4) the Commission's related Safety Evaluation (NUREG-1004) dated November 1983; (5) the Commission's related Final Environmental Statement (NUREG-1003) dated November 1983; and (6) the ASLB Order Dismissing the Proceeding dated February 10, 1983. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550. A copy of items (3), (4), (5) and (6) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 28th day of February 1984.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactor Branch #1, Division of Licensing.

[FR Doc. 84-6855 Filed 3-13-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-537-CP]

United States Department of Energy; Project Management Corporation; Tennessee Valley Authority (Clinch River Breeder Reactor Plant); Order Vacating Conference With Parties

March 8, 1984.

The Board has previously noticed a Conference With Parties, to be held March 14, 1984 at the Commission Hearing Room in Bethesda, Maryland (49 FR 3556). However, circumstances have recently arisen which make it impossible for all members of the Board to participate at this time. In addition, counsel have indicated that all documents pertaining to site redress will not be completed and reviewed prior to that date.

Accordingly, the Conference With Parties previously scheduled for March 14, 1984 is hereby vacated. The date and place of any further proceedings will be announced at a later date.

For the Atomic Safety and Licensing Board.

Marshall E. Miller,

Chairman, Administrative Judge.

[FR Doc. 84-6856 Filed 3-13-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-305]

Wisconsin Public Service Corp.; (Kewaunee Nuclear Power Plant); Exemption

I

The Wisconsin Public Service Corporation (the licensee) holds Operating License No. DPR-43, which authorizes operation of the Kewaunee Nuclear Power Plant (the facility). This license provides, among other things, that it is subject to all rules, regulations or Orders of the Commission now or hereafter in effect. The facility is a pressurized water reactor located in Kewaunee County, Wisconsin.

II

Section III.L of Appendix R to 10 CFR Part 50 requires, among other things, that alternative or dedicated shutdown capability provided for a specific fire area shall be able to (a) achieve and maintain subcritical reactivity conditions in the reactor; (b) maintain reactor coolant inventory; (c) achieve and maintain hot standby conditions for a PWR; (d) achieve cold shutdown conditions within 72 hours; and (e) maintain cold shutdown conditions thereafter.

By letter dated December 22, 1981, the NRC staff transmitted a fire Protection Safety Evaluation to the licensee for the facility informing the licensee that its proposed design for fire protection of safe shutdown capability was in compliance with Sections III.G.3 and III.L of Appendix R with three exceptions. To achieve full compliance, the licensee was required to commit to resolution of these exceptions. The licensee responded on January 22, 1982 and made such commitments.

The December 22, 1981 letter also informed the licensee that the proposed design was an "alternative" system which was to be installed according to the applicable schedule in 10 CFR 50.48(c)(4). This portion of (c)(4) requires implementation before startup after the earliest of the following events commencing 180 days or more after NRC approval:

(1) The first refueling outage;

(2) Another planned outage that lasts for at least 60 days; or

(3) An unplanned outage that lasts for a least 120 days.

Our review of the licensee submittals indicated that the modifications proposed were of an extensive nature, numerous, and required a significant amount of new equipment. The licensee felt that the system modifications were extensive enough to be considered a dedicated system. The staff disagreed in that regard but did agree that the system was acceptable as an alternative shutdown system and that it met the requirements of Appendix R to 10 CFR 50.

In the submittal dated January 22, 1982 the licensee provided the justification for the schedule proposed and requested that the implementation schedule specified in 10 CFR 50.48(c)(4) for the proposed fire protection modification at the Kewaunee Nuclear Power Plant be extended until the end of the refueling outage scheduled for the spring of 1984.

In a submittal dated August 4, 1982, the licensee confirmed information which had been presented to the staff in a meeting June 23, 1982 (See Meeting Summary dated June 24, 1982). This letter presented a detailed schedule of the work to be completed, and the complexity of the schedule. It also shows the effects of the enforcement of the NRC schedule, the most noticeable of which is the five and one half month additional down time required for the NRC required schedule. Based on our review, we concluded that the exemption should be granted. On October 7, 1982 and exemption was granted to extend the time requirement for completion of the system from the spring 1983 refueling outage to the spring 1984 refueling outage.

In a submittal dated September 7, 1983, the licensee confirmed information which had been presented to the staff in a meeting July 28, 1983 (See Meeting Summary dated September 16, 1983). This submittal provided a revised schedule based on information regarding the status of implementation in several areas including Engineering, Equipment Tie-ins and Restart Procedures, Impact on Plant Procedures, Impact on Plant Operation and Impact on Maintenance. Information regarding the Dose Commitments, Improvements to Safety and Licensing Considerations was also provided. The submittal requested an extension from the spring 1984 refueling outage to the spring 1987 outage.

We have reviewed the licensee's September 7, 1983 submittal in support of the extension of the schedule. The basis for the revised schedule is that the detailed design work done during the past year revealed much more work than could be visualized with the conceptual design on which the original schedule was based. This is supported by the amount of additional engineering work required. The added work falls into three categories:

(1) Unanticipated problems;

(2) Improved design or installation methods; and

(3) Reduction of man-rem exposure.

This amounted to, among other things, over 800 engineering drawings being generated or revised. Examples of the scope of the changes found necessary were an increase in the number of electrical cables from 485 to 945 and an increase in the number of procedure changes from 250-350 to 600-1000. The latter would amount to 2 or 3 work package installations per week for a year, a severe overload for the operators of an operating plant.

The primary consideration must be the safety of the plant. As indicated above, the facility was in full compliance with the BTP prior to the issuance of Appendix R. The independent consultant who performed the facility Fire Protection Program Analysis did a comparison of the facility compliance with the BTP and found that of 2400 specific items, there were no items of non-compliance.

The fact that the facility has achieved and maintained a high level of safety in the area of fire protection is also evident in the recent SALP-3 rating of a category 1 in this area. The staff noted the "effective implementation of the Fire Protection Program" and "excellent housekeeping practice." The high level of safety achieved at the facility justifies the more orderly implementation schedule proposed herein.

The high level of fire safety through compliance with the BTP is in no way degraded through the implementation of Appendix R, but in fact, is continually improved. For example, by late 1984 there will be only three fire areas in the plant not in full compliance with Section III.L of Appendix R. (It is worthy to note that the facility was in full compliance with the other applicable requirements of Appendix R by November of 1981, specifically Sections III.J and III.O) These three areas are the Control Room, Relay Room, and Fire Area TU-95, which contains the Auxiliary Feedwater (Shutdown) Panel, and the auxiliary feedwater pumps. These areas are already fire-safe, due to their design, fire detection and suppression features, and frequency of personnel access. For example, all cable utilized in these areas and throughout the Kewaunee plant is fire-retardant. This, complemented by the administrative controls, reduces the "fire loading" to a minimum.[1] The Control Room is continuously occupied by operations personnel, and the Relay Room, located directly below the Control Room, is frequently inspected by plant staff (currently once each hour). Fire Area TU-95 is also frequently inspected by the plant staff (twice per eight-hour shift). The Control Room is

equipped with 15 ionization detectors, one smoke detector, three 20-lb CO_2 fire extinguishers, and two 2.5-gallon pressurized fire extinguishers. The Relay Room is equipped with 17 ionization detectors, a Low Pressure CO_2 System and one 20-lb CO_2 fire extinguisher. Fire Area TU–95 is equipped with six ionization detectors, one fire hose station, and one CO_2 hose station. These features combine to reduce the probability of a debilitating fire in these areas to an acceptably small value.

In submittals dated December 28, 1983 and January 25, 1984, the licensee proposed compensatory measures for the Control Room, Relay Room and Fire Area TU–95 which provide post-fire safe shutdown capability. These measures include upgrading the present alternative shutdown capability by providing additional instrumentation, revising the shutdown procedure, isolating one auxiliary feedwater pump, and having available one charging pump independent of area TU–95. These measures are discussed in the Safety Evaluation enclosed.

By the fall of 1984, there will be further improvement in the fire safety of the facility. From this point unitl completion of the project, each task completed will result in commensurate increase in fire safety by reducing the possibility through physical separation that a localized fire could affect both trains of safe shutdown equipment. This represents a continual improvement in plant safety until completion of the project.

However, to preserve the current operational safety of the facility, this extension is required. This is evident in light of the impact of the Appendix R work on the technical specification requirements. It is worthy to note that if this work is to be completed in accordance with the current schedular requirements, the plant would be placed in one Limiting Condition for Operation (LCO)[2] after another until the scheduled shutdown to get as much work as possible completed. This would, in effect, be equivalent to operating with one train of safeguards disabled for the entire cycle. This may meet the letter of the technical specifications, but it certainly does not meet their intent. Even if this work were performed during operation, a significant extension of the next scheduled outage would be required to complete the Appendix R work.

The importance of maintaining operational safety has been recently emphasized by the NRC. In 1981, the Performance Appraisal Team emphasized the importance of evaluating the "adverse impact caused by the performance of the modification on the operating facility.[3] More recently, in SECY–83–41, the staff has stated:

> Fire prevention and suppression systems are, of course, desirable. However, they must not assume such importance that they jeopardize safety concerns.

In light of the staff position and the supporting information presented in the licensee submittal, the proposed extension is justifiable from the standpoint of safety.

This schedule is also consistent with recent Commission policy on "integrated scheduling."[4] It allows for dramatic improvements in other areas of the plant while continually improving fire safety. Examples of these other improvements are the Safety Assessment System which is coupled with a new plant process computer, upgrade of the core exit thermocouples, and reactor vessel level instrumentation. These three projects are competing directly with Appendix R for licensee resources.

Installation of the Safety Assessment System (SAS) and new plant process computer are currently scheduled to begin this fall and continue through the 1984 refueling outage.[5] In addition to complying with NRC TMI Action Plan requirements, this equipment will also play a vital rule in the licensee's programs to implement NRC requirements issued as a result of the Salem reactor trip breaker event.[6] The SAS will provide new capability to the operator to assess plant status, including trending; the new plant process computer will provide improved data processing, including improved post-trip review capability.

The core exit thermocouple upgrade and installation of reactor vessel level instrumentation projects are part of the licensee's program to comply with the staff Inadequate Core Cooling Instrumentation requirements, and are scheduled for 1985 and 1986, respectively.[7] Some work on each of these projects will be performed during the 1984 outage.

The schedule also provides for smoother management of internal resources for implementation of other regulatory requirements such as Integrated Leak Rate Testing and Inservice Inspection (especially the Reactor Vessel Examination). Finally, the proposed schedule also provides work load leveling which enables the licensee to continue to perform the considerable amount to routine work that must also be done, including about 150 design changes per year and the several thousand tasks that are done each refueling. It is estimated that about 39 personnel would be involved full time with Appendix R modifications during normal plant operations and about 77 personnel would be involved during refueling outages. These personnel would be in addition to a plant staff of 203 personnel during operations and 333 to 393 during refueling outages.

Finally, because of good faith efforts, the licensee continues to lead much of the industry in implementation of the Appendix R requirements. The licensee had the first approved Safety Evaluation. The final design will require essentially no "operator action" to achieve and maintain hot shutdown, and only minimal operator action to achieve cold shutdown. Additionally, containment entry will not be required. It is significant to note that the licensee design did not require any exemptions from the technical requirements of Appendix R.

Based on the above considerations and the related Safety Evaluation, we find that the licensee has completed a substantial part of the fire protection features at the Kewaunee plant in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the remaining modifications necessary for strict conformance with sections III.G and III.L of Appendix R to 10 CFR 50. We find that because of the already completed upgrading of the facility fire protection features, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this implementation during the spring 1987 refueling outage.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and therefore grants an exemption from the

[1] Kewaunee Nuclear Power Plant Fire Protection Program Analysis, April 30, 1977, submitted to Edson G. Case (NRC) on May 2, 1977.

[2] Limiting Conditions for Operation (LCO) are those restrictions on reactor operation, resulting from equipment performance capability, that must be enforced to ensure safe operation of the facility.

[3] Inspection Report 50–305/81–27, John Taylor, NRC, to E. R. Mathews, WPSC, dated March 16, 1982.

[4] Generic Letter 83–20, D. G. Eisenhut (NRC) to all Operating Reactor Licensees, et al.

[5] Letter from C. W. Giesler (WPSC) to D. G. Eisenhut (NRC), dated April 15, 1983.

[6] Generic Letter 83–28, D. G. Eisenhut (NRC) to all Licensees, dated July 8, 1983.

[7] Letter from C.W. Giesler (WPSC) to D.G. Eisenhut (NRC), dated March 9, 1983.

schedular requirements of 10 CFR 50.48(c)(4) until prior to startup from the fifth refueling outage commencing more than 180 days after December 1981 (the date of approval for the modifications), or spring 1987 refueling outage.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action see (1) the licensee's request dated September 7, 1983, and (2) the related Safety Evaluation dated February 29, 1984 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Kewaunee Public Library, 822 Juneau Street, Kewaunee, Wisconsin 54216.

Dated at Bethesda, Maryland this 29th day of February 1984.

For the Nuclear Regulatory Commission

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-6858 Filed 3-13-84; 8:45 am]

BILLING CODE 7590-01-M

Preliminary Decision Related to U.S. Department of Energy's General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories

AGENCY: Nuclear Regulatory Commission.

ACTION: Preliminary decision on concurrence in U.S. Department of Energy's Guidelines.

SUMMARY: This preliminary draft decision sets forth the findings of the Nuclear Regulatory Commission ("NRC" or "Commission") on whether to concur in the General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories (guidelines) proposed by the U.S. Department of Energy (DOE). These guidelines were developed pursuant to section 112(a) of the Nuclear Waste Policy Act (NWPA) and were submitted to the Commission on November 22, 1983. The Commission has concluded that it will grant its concurrence in the guidelines subject to the satisfactory resolution of several conditions.

The Commission will concur in these siting guidelines provided that DOE:

(1) Amends the siting guidelines to recognize NRC's jurisdiction for resolution of differences between the guidelines and 10 CFR Part 60;

(2) Commits to obtain NRC's concurrence on revisions to the siting guidelines that relate to NRC jurisdiction;

(3) Revised the siting guidelines so that:

(a) DOE modifies its use of high effective porosity to limit its use to those situations that could be considered as a favorable siting condition;

(b) DOE commits to revise its siting guidelines on the unsaturated zone so that they are consistent with the final NRC amendments on the unsaturated zone;

(c) DOE should relocate the favorable condition relating to total dissolved solid concentrations in the groundwater, presently contained in section 960.4–2–1 (b)(7) of the guidelines, to section 960.4–2–8–1 where effects on natural resources are considered. As an alternative, DOE could delete this provision;

(d) DOE should not frame its guidelines such that a 1,000 year groundwater travel time (10 CFR 60.113) would be adjusted, particularly in the early stages of site selection;

(e) DOE should delete the word "permanently" from its definition of "disturbed zone;"

(f) DOE should clarify its meaning of "short-term" extreme erosion and revise the guidelines as appropriate;

(g) DOE should delete the word "significant" from section 960.4–2–8–1(c)(2) of the siting guidelines where reference is made to "Evidence of *significant* subsurface mining" (emphasis added).

(h) DOE should modify the guidelines so that they are consistent with the Commission's definition of "anticipated processes and events" and "unanticipated process and events."

(i) DOE should modify the guidelines so that potentially adverse conditions (e.g., dissolutioning) be considered if they affect isolation within the controlled area even though the condition may occur outside the controlled area.

(4) Modifies the siting guidelines to make clear that engineered barriers cannot constitute a compensating measure for deficiencies in the geologic media during site screening;

(5) Specifies in greater detail how the guidelines will be applied at each siting stage including site nomination and characterization (for example, DOE should specify in the implementation guidelines which guidelines would be applied at each stage of site screening);

(6) Supplements the guidelines to indicate the kinds of information necessary for DOE to make decisions on the nomination of at least five repository sites and subsequently recommending three sites to the President for characterization (examples of the kinds of information which the Commission has in mind can be found in NRC Regulatory Guide 4.17); and

(7) Adds additional disqualifying conditions to the guidelines with sufficient specificity to ensure that unacceptable sites are eliminated as early as practicable. Disqualifying conditions should be provided for those factors specified in section 112(a) of NWPA including seismic activity, atomic energy defense activities, proximity to water supplies, the effect upon the rights of users of water, the location of valuable natural resources, hydrology, geophysics, proximity to populations, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, and National Forest Lands.

DATE: Comment period expires April 4, 1984. Comments received after this date will be considered if it is practical to do so but consideration of late comments cannot be assured. Written comments should not exceed ten pages in length.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch. Deliver comments to: Room 1121, 1717 H Street NW., Washington, D.C., between 8:15 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Regis R. Boyle, Section Leader, Regulatory and Environmental Section, Repository Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 427–4127.

SUPPLEMENTARY INFORMATION:

I. Introduction

This preliminary decision by the Commission relates to its proceeding on whether to concur in the General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories ("siting guidelines" or "guidelines") proposed by the U.S. Department of Energy ("DOE").

In its Order of December 12, 1983, the Commission posed five questions relevant to the Commission's concurrence in DOE's siting guidelines (48 FR 55789). The questions were discussed at the Commission's January 11, 1984 public meeting and are listed below.

Question 1: Do the guidelines omit any relevant technical criteria established in 10 CFR Part 60?

Question 2: Could any guidelines not related to 10 CFR Part 60 result in selecting a site that would not be a reasonable candidate for license application?

Question 3: The guidelines and 10 CFR Part 60 sometimes employ different wording to define terms and to describe certain technical criteria. Could these differences result in selecting a site that would not be a reasonable candidate for a license application?

Question 4: Would the selection of sites in accordance with the guidelines be a reasonable means to identify alternative sites for the purposes of the National Environmental Policy Act (NEPA)?

Question 5: Are the guidelines sufficient to assure the selection of sites that would be reasonable candidates for a license application?

In formulating this decision, the Commission applied the following criteria to the siting guidelines: (1) The siting guidelines must not be in conflict with 10 CFR Part 60; [1] (2) The siting guidelines must not contain provisions that might lead DOE to select sites that would not be reasonable alternatives for an Environmental Impact Statement (EIS); and (3) The siting guidelines should not contain provisions that are in conflict with NRC responsibilities as embodied in the NWPA.

On the basis of these criteria, the Commission will concur in these siting guidelines provided that DOE:

(1) Amends the siting guidelines to recognize NRC's jurisdiction for resolution of differences between the guidelines and 10 CFR Part 60;

(2) Commits to obtain NRC's concurrence on revisions to the siting guidelines that relate to NRC jurisdiction;

(3) Revises the siting guidelines as indicated in Section IV of this decision;

(4) Modifies the siting guidelines to make clear that engineered barriers cannot constitute a compensating measure for deficiencies in the geologic media during site screening;

(5) Specifies in greater detail how the guidelines will be applied at each siting stage including site nomination and characterization (for example, DOE should specify in the implementation guidelines which guidelines would be applied at each stage of site screening);

(6) Supplements the guidelines to indicate the kinds of information necessary for DOE to make decisions on the nomination of at least five repository sites and subsequently recommending three sites to the President for characterization (examples of the kinds of information the Commission has in mind can be found in NRC Regulatory Guide 4.17); and

(7) Adds additional disqualifying conditions to the guidelines with sufficient specificity to ensure that unacceptable sites are eliminated as early as practicable. Disqualifying conditions should be provided for those factors specified in section 112(a) of NWPA including seismic activity, atomic energy defense activities, proximity to water supplies, the effect upon the rights of users of water, the location of valuable natural resources, hydrology, geophysics, proximity to populations, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, and National Forest Lands.

By satisfying the above stated conditions, the DOE can obtain the concurrence of the Commission in the siting guidelines. However, the Commission encourages DOE to carry on a continuing and cooperative dialogue with the states and affected Indian Tribes in order to minimize misunderstandings and to keep them fully apprised of activities related to the siting of a high-level radioactive waste repository.

The Commission expects that DOE will revise the guidelines in response to this preliminary decision. Public comment is particularly desired on the issues raised in this preliminary decision. In commenting on this decision, the public should assume that DOE adequately addresses the Commission's conditions.[2] After considering public comments on this preliminary concurrence decision, the Commission will publish its final concurrence decision in the **Federal Register**. If the final concurrence decision sets forth conditions that DOE must meet in order to obtain the Commission's concurrence, then the Commission expects DOE to submit revised guidelines that will satisfy the Commission's stated conditions. If the Commission determines that the conditions have been met, it will inform DOE that the Commission's concurrence in the guidelines is then effective.

II. Procedural Background

Section 112(a) of the Nuclear Waste Policy Act of 1982 ("NWPA" or "Waste Act"), 42 U.S.C. 10312(a), directs DOE to issue general guidelines for the recommendation of sites for repositories and to obtain the concurrence of the NRC. The NWPA does not specify any procedure for the Commission's concurrence. In ruling on a petition by the Yakima Indian Nation, the Commission found that NRC's concurrence responsibility is not rulemaking and does not require notice and opportunity for public comment (48 FR 39536). Nevertheless, in response to requests that the Commission structure its concurrence process as Notice and Comment rulemaking, the Commission decided that in order to crystallize the issues, it would accept written comments on DOE's proposed siting guidelines and then conduct a public meeting on those siting guidelines.

On November 22, 1983, DOE submitted proposed siting guidelines for Commission concurrence. Written comments were received from the U.S. Environmental Protection Agency (EPA), six states, one Indian Tribe, four public interest groups, and one industry group. Subsequently, on January 11, 1984, the Commission conducted a day-long public meeting on the siting guidelines. The participants were DOE, EPA, eight states, one Indian Tribe, four public interest groups, one industry group, and one individual. During that meeting, the Commission announced that the record of the proceeding would be left open until February 1, 1984. Additional written submittals were received from DOE, EPA, the U.S. Geological Survey (USGS), nine states, two public interest groups, two industry groups, and two Indian tribes.

III. Criteria for Concurrence

The NWPA does not specify the scope or establish any criteria for Commission concurrence. The Yakima Indian Nation contended, without any supporting documentation, that Congress intended the Commission to review all aspects of the siting guidelines and the process leading to their proposed final form. The State of Nevada stated that plenary review of the siting guidelines is properly a task for the United States Court of Appeals and that the Commission's review is limited by its organic jurisdiction to assuring the public's health and safety. Accordingly,

[1] A conflict with 10 CFR Part 60 means any difference between it and the siting guidelines which, taking into account their different purposes, would lead DOE to propose for licensing a site which probably would not satisfy 10 CFR Part 60.

[2] In reaching its final decision on concurrence, the Commission will rely primarily on comments received during the 21 day comment period and those received during the public comment period which closed on February 1, 1984. Comment letters on this preliminary decision should not exceed ten pages.

Nevada recommended, "The standard which the NRC must apply in deciding whether to concur or not to concur in DOE site recommendation guidelines is whether, as a matter of law, the guidelines are (1) consistent with the requirements of the Act; (2) consistent with the Commission's own general statutory mission and responsibility, to protect the radiological health and safety of the public; and (3) consistent with other applicable administrative decisions or regulations adopted pursuant to either." Serious Texans Against Nuclear Dumps (STAND) suggested a similar standard but would limit Nevada's third standard for concurrence (identified above), to consistency with the requirements of 10 CFR Part 60.

The Commission's jurisdiction is established by the Atomic Energy Act of 1954, as amended ("Atomic Energy Act"); the National Environmental Policy Act of 1969, as amended ("NEPA"); the Energy Reorganization Act of 1974, as amended ("ERA"); and NWPA. These Acts provide the Commission broad jurisdiction over matters regarding protection of the public health and safety from exposures to radiation and over environmental impacts arising from NRC licensed facilities. This Commission's review of another agency's action is necessarily limited by the extent of this Commission's jurisdiction. Accordingly, the Commission's review of DOE's siting guidelines is limited in accordance with its jurisdiction.

The technical criteria that the Commission will use in licensing a repository are contained in 10 CFR Part 60. This rule implements the Commission's jurisdiction. Because a purpose of the guidelines is to ensure that DOE chooses sites that are suitable for development as a repository, a prime NRC concern in determining whether to concur in DOE's siting guidelines is to ensure that the guidelines are not in conflict with 10 CFR Part 60.

The Commission's regulations in 10 CFR Part 60 primarily address matters of public health and safety but are also concerned with DOE's site selection process as it affects the Commission's ability to comply with NEPA. Under section 114(f) of NWPA, the Commission is to adopt DOE's Environmental Impact Statement ("EIS") to the extent practicable. Thus, the Commission also reviewed DOE's siting guidelines to determine whether, if implemented in a reasonable manner, there is anything in those guidelines which might lead DOE to select sites that would not be reasonable alternatives for an Environmental Impact Statement.

Finally, the Commission has considered whether the siting guidelines are in conflict with its responsibilities as embodied in the NWPA. The Commission has not examined how the guidelines deal with matters beyond its jurisdiction.

Accordingly, the Commission applied the following criteria to make its concurrence decision: (1) The siting guidelines must not be in conflict with 10 CFR Part 60; (2) The siting guidelines must not contain provisions that might lead DOE to select sites that would not be reasonable alternatives for an Environmental Impact Statement; and (3) The siting guidelines should not contain provisions that are in conflict with the NWPA.

IV. Application of the Concurrence Criteria

In this section, the Commission states its principal concerns with the guidelines and considers the oral testimony presented at the January 11, 1984, public meeting (hereafter called participants or commenters) and the written comments submitted to the Commission through the extended comment period which ended on February 1, 1984. The Commission has considered the comments which relate to the concurrence criteria discussed in Section III. Any other issues raised by the participants, but immaterial to the Commission's concurrence criteria, have not been addressed here.

In its Order of December 12, 1983, the Commission posed five questions relevant to the Commission's concurrence in DOE's siting guidelines. The questions were discussed at the Commission's January 11, 1984 public meeting and in written comments. These questions, along with the Commission's findings, are presented below.

Question 1

Do the guidelines omit any relevant technical criteria established in 10 CFR Part 60?

Discussion

The Commission finds that DOE's guidelines omit only one provision in 10 CFR Part 60 which requires discussion. 10 CFR 60.122(a)(2) requires DOE to demonstrate that a potentially adverse condition will not compromise the performance of the geologic repository. The DOE siting guidelines make no reference to this demonstration. Section 960.3–2–2–2 of the guidelines states "This evaluation shall consider *on balance those favorable conditions and potentially adverse conditions* identified as such at a preferred site in relation to the qualifying condition and the disqualifying condition, if appropriate, of each guideline." (emphasis added)

The NRC approach for evaluating potentially adverse conditions in 10 CFR Part 60 is different from that used by DOE in the guidelines. The NRC approach is only possible after site characterization because by then, NRC will have the benefit of extensive data acquired during site characterization. DOE, however, must consider potentially adverse conditions before all of this data is available. Consequently, DOE must treat adverse conditions differently because DOE will apply the guidelines when data are limited. Therefore, even though the siting guidelines do not contain the provision identified in 10 CFR 60.122(a)(2), the Commission finds that the DOE approach is not in conflict with 10 CFR Part 60.

Conclusion

The Commission finds that DOE, in developing its repository siting guidelines, has included all of the relevant technical criteria established in 10 CFR Part 60.

Question 2

Could any guidelines not related to 10 CFR Part 60 result in selecting a site that would not be a reasonable candidate for license application?

Discussion

The Commission has identified six provisions in the siting guidelines for which there is no comparable requirement in 10 CFR Part 60 and which might result in selecting a site that would not be a reasonable candidate for a license application.

(a) *Resolution of inconsistencies between 10 CFR Part 60 and guidelines.* Section 9601.1 of the siting guidelines states that "The guidelines set forth in this Part are intended to complement the requirements set forth in the Act, 10 CFR Part 60, and 40 CFR Part 191. In applying these guidelines, *the DOE will resolve any inconsistencies between the guidelines and the above documents in a manner determined by the DOE to most closely agree with the intent of the Act.*" (emphasis added)

The Commission's interpretation of its regulations is binding on DOE. Therefore, to the extent that DOE believes that the guidelines are inconsistent with 10 CFR Part 60, DOE must conform the guidelines to 10 CFR Part 60 as the means of conforming to the NWPA. If DOE believes that such an approach results in failing to meet

certain requirements of the NWPA, it should seek an exemption from NRC before acting in a manner contrary to the provisions of 10 CFR Part 60.

(b) *NRC concurrence in future revisions to guidelines.* In the *Draft of the Department of Energy's Analysis and Consideration of Comments Received on the General Guidelines for Recommendation of Sites for Nuclear Waste Repositories*, DOE stated, "If future revisions of 10 CFR Part 60 contain provisions with which the guidelines are incompatible, the DOE will revise the guidelines, as permitted by the Act."

The Commission believes that for NRC concurrence under section 112(a) of the NWPA to be meaningful, this section must be interpreted to require DOE to obtain NRC concurrence in subsequent revisions to the siting guidelines which involve matters under NRC jurisdiction. Therefore, the Commission finds that the guidelines should explicitly state that revisions of the guidelines which involve matters under NRC jurisdiction will be subject to the concurrence of the NRC.

(c) *High effective porosity as a favorable condition.* The guidelines identify as a favorable siting condition a geologic medium with a high effective porosity. Section 960.4–2–1(b)(4) of the guidelines states that a favorable condition for reducing the release of radionuclides would be "a high effective porosity along paths of likely radionuclide travel between the host rock and the accessible environment."

The Commission finds that a high effective porosity is not always a favorable siting condition. Groundwater flow velocity is the product of hydraulic gradient and hydraulic conductivity divided by effective porosity. A high effective porosity is a favorable condition if the product of the hydraulic gradient and hydraulic conductivity remains constant. However, under some circumstances, porosity and hydraulic conductivity have been shown to be positively correlated. In those situations, flow velocities may be greater at a site with a high porosity depending on site specific conditions. Therefore, under some circumstances, the condition on effective porosity may be adverse rather than favorable.

Furthermore, DOE defines "effective porosity" as "the amount of interconnected pore space and *fracture openings* . . ." (emphasis added). To conclude that a high effective porosity is a favorable condition would imply that an abundance of "fracture openings" would be a favorable site condition. While this may be valid in some instances, a large number of fracture openings would not always be a favorable siting condition. The Commission finds that DOE should modify its use of effective porosity to limit its use to those situations that it could be considered as a favorable siting condition.

(d) *Unsaturated zone.* Section 960.4–2–1 of the siting guidelines includes conditions applicable to siting a repository in the unsaturated zone. The final technical criteria (10 CFR Part 60) approved by the Commission on June 13, 1983, contain no specific provisions related to the unsaturated zone. In January 1984, the Commission approved for publication draft provisions related to the unsaturated zone for incorporated into 10 CFR Part 60. While the Commission considers that the DOE siting guidelines are not in conflict with the Commission's criteria to be published for public comment, the final amendments to the Commission's siting criteria may be revised as the result of consideration of public comments on the proposed amendments. DOE should commit to revise its siting guidelines so that they are consistent with the final NRC amendments.

(e) *Total dissolved solid concentration of groundwater.* Section 960.4–2–1(b)(7) identifies groundwater with total dissolved solids of 10,000 parts per million (ppm) or more along the path of likely radionuclide travel to be a favorable condition. It is not clear to the Commission how a total dissolved solid concentration of 10,000 ppm or more in the groundwater would contribute to the compliance of section 960.4–1 for radionuclide releases to the accessible environment. Furthermore, groundwater containing a high concentration of dissolved solids may have an adverse effect on the performance of the engineered barrier system. Thus, we are not convinced that this condition is favorable.

DOE explains that this favorable condition was developed so that site locations with poor-quality ground water would be given preference over those with aquifers containing potable water or water capable of being used for irrigation. If the provision is retained in the final guidelines, then the Commission finds that it should be placed in section 960.4–2–8–1 of the siting guidelines where effects on natural resources are considered.

(f) *Minimum depth.* Section 960.4–2–5 of the siting guidelines states that a site would be disqualified "if site conditions do not allow all portions of the underground facility to be situated at least 200 meters below the directly overlying ground surface". 10 CFR Part 60 does not contain a provision related to locating a repository 200 meters below the surface. However, 10 CFR 60.122(b)(5) has as a favorable conditions: "Conditions that permit the emplacement of waste at a minimum depth of 300 meters from the ground surface". In the siting guidelines, DOE has a similar favorable condition which states: "Site conditions that permit the emplacement of waste at a depth of at least 300 meters below the directly overlying ground surface".

The Commission finds that DOE may disqualify sites if a repository could not be constructed 200 meters blow the surface and that such a disqualifying condition is not in conflict with 10 CFR Part 60.

Conclusion

The Commission finds, subject to the satisfactory resolution of the above comments, that the provisions in the guidelines not related to 10 CFR Part 60 would not result in selecting a site that is not a reasonable candidate for a license application.

Question 3

The guidelines and 10 CFR Part 60 sometimes employ different wording to define terms and to describe certain technical criteria. Could these differences result in selecting a site that would not be a reasonable candidate for a license application?

Discussion:

Listed below are instances where different wording is employed in the siting guidelines when compared to that in 10 CFR Part 60.

(a) *Groundwater travel time.* Section 960.4–2–1(d) of the siting guidelines tates that "A site shall be *disqualified* if the expected pre-waste-emplacement groundwater travel time along any path of likely radionuclide travel from the disturbed zone to the accessible environment is less than 1,000 years, unless the characteristics and conditions of the geologic setting, such as the capacity for radionuclide retardation and the groundwater flux, would limit potential radionuclide releases to the accessible environment to the extent that the requirements specified in section 960.4–1 could be met."

DOE modifies this disqualifying condition by stating that sites having a groundwater travel of less than 1,000 years would still be considered if mitigating conditions are present. The NRC criterion at 10 CFR 60.113 allows adjustments to a 1,000 year groundwater travel time, but only on a case-by-case basis where approved or specified by the Commission. Under the guidelines,

DOE would be making determinations with respect to groundwater travel time that may prove unacceptable to the Commission.

The Commission believes that DOE should not frame its guideline such that a 1,000 year groundwater travel time (10 CFR 60.113) would be adjusted, particularly in the early stages of site selection. Therefore, the Commission finds that DOE should modify the guidelines so as not to rely on the possibility of an NRC adjustment.

(b) *Definition of "disturbed zone".* Section 960.2 of the siting guidelines defines "disturbed zone" as "* * * that portion of the controlled area, excluding shafts, whose physical and chemical properties are projected to change *permanently* as a result of underground facility construction or heat generated by the emplaced radioactive wastes such that the resultant change of properties could have a significant effect on the performance of the geologic repository" (emphasis added).

The Commission finds that if the disturbed zone encompasses only the area that is permanently changed, then DOE may neglect areas where transient changes occur that could have a significant effect on repository performance. Transient changes to the repository's physical, chemical, and hydrological environment significantly affecting waste isolation may extend beyond the zone that is permanently disturbed.

The NRC and DOE measure the path of groundwater travel from the outer boundary of the disturbed zone to the accessible environment. If DOE and NRC establish different boundaries for the disturbed zone, according to their respective definitions, each may find different lengths for the path of groundwater travel. Consequently, groundwater travel time, a key criterion for both NRC and DOE, would also be different. The Commission finds that DOE should delete the word "permanently" from its definition of "disturbed zone."

(c) *Definition of "restricted area".* Section 960.2 of the siting guidelines defines "restricted area" as a term that applies "before repository closure". The definition of "restricted area" in 10 CFR Part 60 does not contain the phrase "before repository closure". DOE explained that the different wording is needed to clarify that administrative controls cannot be presumed to exist throughout the postclosure phase. As this is consistent with the usage in 10 CFR 60.111, the Commission views the differences in definitions to be insignificant.

(d) *Definition of "beyond reasonably available technology".* Section 960.4-2-3(c) of the siting guidelines uses the phase "engineered measures beyond reasonably available technology" in describing a potentially adverse condition for rock characteristics. 10 CFR 60.112(c)(20) uses a similar phrase, "complex engineering measures", in describing a potentially adverse conditions for rock or groundwater. DOE states that the term "beyond reasonably available technology" defines the term "complex".

While the Commission would not necessarily define "complex" in the same manner as DOE has, the Commission finds that the NRC and DOE phrases are not contradictory in the context of their use.

(e) *Erosion.* Section 960.4–2–5(c)(1) of the siting guidelines states that a potentially adverse condition would be "A geologic setting that shows evidence of *sustained* extreme erosion during the Quaternary Period" (emphasis added).

A similar adverse condition at 10 CFR 60.122(c)(16) does not qualify erosion as "sustained". The Commission finds that the DOE condition is less conservative than the NRC condition because the DOE condition would not take into account short-term extreme erosion as would the NRC condition.

DOE explained that periods of short-term extreme erosion would not be considered potentially adverse. This may be true if short-term refers to brief, episodic events, such as flash floods, that could cause extreme erosion. However, a short-term period taken from the perspective of geologic time (i.e., the Quaternary Period) could last tens of thousands of years. The Commission finds that the DOE should clarify the meaning of short-term and revise the guidelines as appropriate.

(f) *Subsurfacing mining.* Section 960.4–2–8–1(c)(2) of the siting guidelines states that a potentially adverse condition regarding a site's natural resources would be "Evidence of *significant* subsurface mining or extraction for resources within the site if it could affect waste containment or isolation" (emphasis added). DOE's qualification of subsurface mining as "significant" differs from a similar provision at 10 CFR 60.122(c)(18) which states that the potentially adverse condition would be "evidence of subsurface mining". DOE explained that it used the term "significant" to exclude activities such as surface or near-surface mining that might not affect repository performance.

In 10 CFR Part 60, the Commission never intended to imply that subsurface mining would include surface or near-surface mining. However, all evidence of subsurface mining would be considered to be adverse until it had been thoroughly evaluated. Therefore, the Commission finds no need for the term "significant" and recommends that it be deleted from section 960.4–2–8–1(c)(2) of the guidelines.

(g) *Anticipated and unanticipated processes and events.* The guidelines define and use the phrases: "characteristics and processes affecting expected repository performance" and "potentially disruptive processes and events." 10 CFR Part 60 defines and uses related phrases: "anticipated processes and events" and "unanticipated processes and events." DOE explained that the sets of phrases have parallel meanings but DOE chose its wording for reasons of clarity.

The Commission finds that the different categorization of events and processes by DOE may lead to overlooking in the site selection process some site characteristics that are important to repository performance and considers that the guidelines should be revised. The Commission's definition of anticipated processes and events includes consideration of all geologic processes and events that have occurred during the Quarternary period, and may include some events that DOE would categorize as "disruptive." This different approach to categorizing processes and events could also lead to an inadequate site characterization program, performance assessments that are not adequate to provide reasonable assurance that the performance objectives of 10 CFR Part 60 are met, and an incomplete license application. Unless these definitions, and the related assessments and investigations, are made consistent, DOE could select sites using the guidelines that would not be a reasonable candidate for a license application. Therefore, the Commission finds that DOE should modify the guidelines to be consistent with 10 CFR Part 60.

(h) *Dissolution.* Section 960.4–2–6(c) of the siting guidelines states that a potentially adverse condition would be "*significant* dissolution *without the site.*" (emphasis added.) A similar adverse condition at 10 CFR 60.122(c)(10) would consider dissolution without reference to its significance or where it occurs.

The inclusion of the word "significant" in the DOE provision is inconsistent with 10 CFR Part 60, which considers evidence of dissolution to be a potentially adverse condition that must be fully characterized and evaluated and shown not to be significant in the license application. DOE's approach

could lead to incomplete information on, and evaluation of, dissolution in the license application.

On the matter of the extent of the needed investigations, 10 CFR Part 60 requires that potentially adverse conditions be considered even if they are outside the controlled area if they affect isolation within the controlled area (as used in 10 CFR Part 60, site means the location of the controlled area). DOE should modify these aspects of the guidelines to be consistent with 10 CFR Part 60.

(i) *Site Ownership.* Section 960.4–2–8–2(a) of the siting guidelines states that the "site shall be located on land for which the DOE can obtain, in accordance with the requirements of 10 CFR Part 60, ownership, surface and subsurface rights, and control of access * * *"

10 CFR Part 60.121(a) specifies that "Both the geologic repository operations area and the controlled area shall be located in and on lands that are either acquired lands under the jurisdiction and control of DOE, or lands permanently withdrawn and reserved for its use."

The Commission finds that the 10 CFR Part 60 provision and the siting guideline provision are not in conflict as DOE would undertake to obtain the necessary controls under the language proposed in the guidelines.

Conclusion

The DOE siting guidelines provide definitions and provisions applicable to geologic waste disposal. 10 CFR Part 60 establishes technical criteria for the licensing of a high-level radioactive waste repository. The siting guidelines of DOE need not be identical to NRC criteria because the purpose of the siting guidelines is different from 10 CFR Part 60. The siting guidelines are to be used to select sites for repository development while 10 CFR Part 60 will be used to evaluate a site after it has been selected for licensing following an extensive site characterization program. Although the definitions and provisions in the DOE siting guidelines are not always identical with those in 10 CFR Part 60, the Commission finds, subject to the satisfactory resolution of the above comments, the definitions and provisions are not in conflict with those in 10 CFR Part 60.

Question 4

Would the selection of sites in accordance with the guidelines be a reasonable means to identify alternative sites for the purpose of the National Environmental Policy Act (NEPA)?

Discussion

The NWPA has increased the Commission's interest in DOE's compliance with NEPA. In the usual case, the NRC relies on license applicants to prepare Environmental Reports which, among other things, detail the investigation of alternative sites. These reports are a primary source of information for the NRC's implementation of its NEPA responsibilities. In this case, the applicant is another federal agency with independent NEPA responsibilities. This situation is not unique; the Commission has licensed several nuclear power plants built by the Tennessee Valley Authority ("TVA"). In some cases, the Commission used TVA's Environmental Impact Statement as an Environmental Report for the preparation of NRC's Draft and Final Environmental Impact Statements. Section 114(f) of NWPA modifies the relationship between the NRC and DOE by directing the Commission to adopt as much of DOE's Environmental Impact Statement as is practicable. Thus, the NRC has a particular interest in those activities of DOE that may ultimately have a bearing on the NRC's ability to adopt the EIS.

Some commenters contended that the guidelines would not lead DOE to select sites that would be reasonable alternatives for the purposes of NEPA. The Yakima Indian Nation supported this contention by noting that the guidelines are too subjective and non-selective. Wisconsin stated that compliance with the guidelines will not ensure that any recommended sites will be adequate alternatives for NEPA purposes because the guidelines do not require DOE to consider all the impacts which must be addressed in an Environmental Assessment or Environmental Impact Statement. Similarly, Texas recommended that the guidelines be altered to require DOE to evaluate environmental impacts prior to site characterization.

Serious Texans Against Nuclear Dumps (STAND) and the Yakima Indian Nation noted that the guidelines will not ensure that DOE will have three adequate sites after characterization has been completed. As noted by the Yakimas, DOE has taken the position that if one or more of the characterized sites prove to be unsuitable, the remaining one or two sites will suffice. STAND elaborated further by stating that the NWPA requires that three adequate sites be characterized so that (1) there are acceptable alternatives for the President, and (2) there are second and third sites available in case a site submitted to Congress is vetoed by the host state or affected Indian Tribe. STAND concluded that "since the guidelines do not necessarily require that an adequate site be selected and characterized, the three adequate sites necessary for submission to Congress and to be discussed in the EIS may not exist."

DOE, in its supplemental testimony, stated that the siting guidelines will generate the technical information, as well as the environmental information, necessary for the nomination of suitable candidate sites in accordance with NWPA. As a result, DOE maintained that when the final EIS is prepared, sufficient information will exist for informed decisionmaking consistent with both NEPA and the NWPA.[3]

NRC Response and Finding

The Commission finds that the DOE siting guidelines contain a mix of geotechnical, institutional,

[3] The State of Washington contended that section 960.3–2–2–4(7) of the guidelines is inconsistent with section 112(b) of NWPA. Washington believes that section 112(b)(1)(E)(iv) requires DOE to compare all potential repository sites and locations in its evaluation of alternative sites, while section 960.3–2–2–4(7) of the guidelines would require DOE to compare only the five sites nominated for characterization.

Washington's interpretation of section 112(b)(1)(E)(iv) of NWPA is inconsistent with the clear statutory scheme established in section 112. Section 112(b)(1)(E)(iv) provides that the Secretary's nomination of a site as a candidate for characterization under section 112(v) shall be accomplished by an environmental assessment which shall include, among other things: a reasonable comparative evaluation by the Secretary of each site with other sites and locations that have been considered.

Washington would interpret the word considered to include all sites and locations currently under consideration including alternatives to deep geologic repositories. This interpretation of the word considered is not supported by the rest of section 112(b), or the overall statutory scheme. An examinaton of the entire site selection process shows that for the purposes of section 112(b)(1)(E)(iv) the word considered means those sites nominated for consideration for characterization. Only those sites will have the comparable levels of site information available necessary to make the "reasonable comparative evaluation" specified in section 112(b)(1)(E)(iv). Moreover, because the only purpose of that comparative evaluation is the choice of three sites for characterization, sections 112(b)(1) (B) and (C), there would be no statutory purpose served by including in the comparison sites not proposed for characterization.

Finally, the overbreadth of Washington's interpretation is clear from its inclusion of alternatives to deep geologic disposal. Section 114(f) explicitly excludes such alternatives from consideration in the final environmental impact statement to be prepared in support of a proposed repository site. Certainly, the preliminary documents designed to lead up to this chorice of a final proposed site need not include extraneous information irrelevant to that final choice. Accordingly, the Commission finds that DOE's interpretation of section 112(b)(1)(E)(iv) warrants NRC deference.

socioeconomic, and environmental factors that must be considered in the site selection process. The judgments that must be made in applying the guidelines range from "technical judgments" (e.g., thermo-mechanical response of the host rock) to "value judgments" (e.g., trade-offs between potential effects on national parks as opposed to prime agricultural land use). The guidelines appear to cover the spectrum of factors that must be considered in order to select reasonable alternative sites for NEPA purposes. However, the Commission recognizes that the siting guidelines alone do not assure that appropriate sites will be selected. Of equal importance is the implementation of the guidelines. The site selection process established by the NWPA (i.e., developing general siting guidelines, publishing Environmental Assessments, preparing site characterization plans, and publishing a site specific Environmental Impact Statement) provides an adequate framework for selecting alternative sites that comply with NEPA. Indeed, the Commission has not found that the guidelines contain provisions that would lead DOE to select alternative sites that could not be suitable sites for NEPA compliance. Therefore, if the guidelines are properly applied, DOE should select sites that would be reasonable alternatives for NEPA.

Because the NRC is required to adopt the DOE's EIS to the extent practicable, the NRC is particularly interested in how the guidelines will be applied at key stages in the site selection process. Unless the guidelines are applied with data appropriate to the decision to be made, NRC may not be able to adopt the DOE alternative sites as meeting the "rule of reason." Therefore, the Commission finds that DOE should specify in greater detail how the guidelines will be applied at each siting stage including site nomination and characterization. This might be done by specifying, in the implementation guidelines, which guidelines would be applied at each stage of site screening. DOE should also indicate the kinds of information, such as that identified in Regulatory Guide 4.17, that would be used by DOE to make decisions on the nomination of sites and subsequent recommendation of three sites for characterization. The information needs for each individual category of the technical guidelines (e.g., geohydrology, geochemistry, rock characteristics, climatic changes, etc.) should be specified.

Conclusion

The Commission believes that, subject to the satisfactory resolution of the conditions set forth in this decision, using the DOE guidelines in the overall context of the site selection process established by the NWPA would be a reasonable means for identification of alternative sites for NEPA purposes.

Question 5

Are the guidelines sufficient to assure the selection of sites that would be reasonable candidates for a license application?

Discussion

Many commenters viewed this question as being the central issue on whether the Commission should grant or withhold its concurrence. The principal issues raised by many of the commenters were: (a) The guidelines overemphasize the use of engineered barriers; (b) The guidelines are subjective, vague, and non-specific; (c) The postclosure guidelines should not take precedence over preclosure guidelines; (d) The guidelines do not specify the level of data needed to make decisions; and (e) The guidelines lack an adequate implementation methodology. A summary of these issues and the Commission's response and findings follows.

a. *The guidelines over-emphasize the use of engineered barriers.* Many commenters contended that DOE emphasizes engineered barriers at the expense of the natural ability of the site to isolate the high-level waste. These commenters believe that the guidelines would allow DOE to select a site for characterization in anticipation that engineered barriers would remedy any geologic deficiencies. The commenters recommended that DOE eliminate engineered barriers as a siting consideration. To support their argument, these commenters cited or interpreted various provisions of the NWPA and 10 CFR Part 60.

STAND contended that the siting guidelines are inconsistent with NWPA because they include undue consideration of engineered barriers. STAND's argument is based on its interpretation of section 112(a) and section 114(f) of NWPA. Section 112(a) provides in pertinent part: "geologic considerations . . . shall be primary criteria for the selection of sites in various geologic media". Section 114(f) provides in pertinent part: "For the purposes of complying with the National Environmental Policy Act of 1969 . . ., and this section, the Secretary shall consider as alternate sites to be developed under this subtitle 3 candidate sites with respect to which (1) site characterization has been completed under section 113; and (2) the Secretary has made a preliminary determination, that such sites are suitable for development as repositories consistent with the guidelines promulgated under section 112(a)".

STAND believes that section 112(a) precluded DOE from giving engineered barriers primary importance in the siting guidelines. STAND further believes that section 114(f) requires DOE's site characterization process to result in at least 3 potentially licensable sites after characterization. To ensure that DOE finds three such sites, STAND believes that DOE should not rely at all on engineered barriers at the site selection stage, but should reserve engineered barriers as a safety margin for assuring that a site will remain viable after characterization.

The States of Texas and Nevada also believe that section 112(a) precludes DOE from including engineered barriers in its siting guidelines. They note that section 113(b)(1)(B) requires DOE to provide to the NRC and states, information on waste form or packaging and their interactions with site geology no sooner than when DOE proceeds to prepare to sink a shaft for the purposes of site characterization. They further note that section 121(b)(1)(B) requires NRC to provide for multiple barriers in its licensing criteria, 10 CFR Part 60. Therefore, they believe that these provisions of NWPA imply that DOE was not authorized under NWPA to include engineered barriers in its siting guidelines.

Texas and Nevada argued that the siting guidelines' emphasis on engineered barriers is inconsistent with 10 CFR Part 60. Nevada cited part of the preamble to 10 CFR 60 which states ". . . engineered and natural barriers must each make a definite *contribution* in order for the Commission to be able to conclude that the EPA standard will be met." (48 FR 28196) (emphasis added). Nevada feels that DOE has elevated the contribution of engineered barriers to a more significant level than that contemplated by the Commission. Texas also noted provisions at 10 CFR 60.112 and 10 CFR 60.113(a)(1)(i) which separate the siting process from consideration of the engineered barrier system. Consequently, Texas recommended that DOE should likewise separate consideration of engineered barriers from the siting process.

EPA expressed a slightly different view by recommending that DOE should not take full credit for the perfomance of

waste packages and waste forms (i.e., engineered barriers) required by 10 CFR Part 60 when making *comparative* performance assessments of potential sites. Instead, EPA believes that DOE should assume that waste packages and waste forms perform at least an order of magnitude less effectively than that required by 10 CFR Part 60 in order to compare the differences in isolation capabilities among the sites.

In their supplemental testimony, the Yakima Indian Nation stated that the EPA proposal is a step in the right direction but does not go far enough. The Yakimas recommended that the credit given to engineered barriers should be reduced by a factor of 100 from the minimum requirements of 10 CFR 60.113.

In addition to de-emphasizing the contribution of the engineered barriers, EPA recommended how DOE might give more emphasis to a site's natural characteristics. Since the natural characteristics of a site become more important for isolation as time progresses, EPA recommended that comparative performance assessments consider time periods of 50,000 to 100,000 years rather than just the 10,000 years considered in the containment requirement of proposed 40 CFR Part 191. EPA recommended that the performance assessments, used for comparative evaluations of sites, should be the same as those that will be used in judging compliance with 40 CFR Part 191 except for less emphasis on engineered barriers and more attention to times greater than 10,000 years.

The Edison Electric Institute (EEI) took an opposite view on engineered barriers. EEI believes that the guidelines over emphasize natural barriers, thereby departing from a "systems approach." Under a systems approach one would judge a repository's performance according to the combined contributions of all its components (i.e., the engineered and natural barriers). EEI maintains that a systems approach, in both siting and construction, would ensure a proper combination of man-made and natural components.

DOE, in its supplemental testimony, stated that DOE will "not rely on engineered barriers to compensate for deficiencies in the natural barriers of the repository system." DOE stated that "it is not the Department's intent" to suppress information regarding the innate capabilities of candidate sites by considering engineered barriers. However, DOE stated that it will evaluate alternative statements in the siting guidelines to clarify its intent with regard to engineered barriers.

NRC Response and Finding

The Commission finds that engineered barriers must be considered in the site selection process but cannot be used to compensate for geologic deficiencies during site screening. In developing 10 CFR Part 60, the Commission received comments which argued that the Commission's approach placed too great an emphasis on engineered barriers and provided insufficient incentives to select a site with optimal geologic and hydrologic characteristics. In response, the Commission stated that both engineered and natural barriers are important, and structured the NRC technical criteria in a manner that demands not only the use of advanced engineering methods, but also the selection of a site with excellent natural isolation capabilities.

The Commission notes that engineered barriers are explicitly mentioned at 10 CFR 60.122(a)(1) (in connection with geologic conditions), 10 CFR 60.122(c)(7) (in connection with groundwater), and 10 CFR 60.122(c)(8) (in connection with geochemical processes). Since engineered barriers are included in the NRC siting criteria, the Commission does not object to their inclusion in the DOE siting guidelines.

The Commission believes that NWPA does not legally preclude DOE from including engineered barriers in its siting guidelines. Section 112(a) establishes detailed geologic considerations as the *primary* criteria for site selection, but not the only criteria for site selection. Thus, the guidlelines are not required to rely solely on geologic criteria.

Furthermore, the Commission considers that in selecting sites, DOE should consider the effect that the geohydrologic setting would have on the performance of engineered barriers in order to avoid any hostile geohydrologic setting that, through geochemical processes, could accelerate the degradation of the engineered barrier system.

Nonetheless, the Commission believes that the DOE siting guidelines must not rely on engineered barriers to compensate for geologic weaknesses of the site during the site screening stages. For example, it would not be prudent to select a site where there is evidence of active faulting by relying on engineered barriers.

With regard to the EPA recommendation, to deemphasize engineered barriers in the comparative performance assessments by DOE, as part of the site selection process, such assessments would not be in conflict with 10 CFR Part 60 and may be employed as appropriate by DOE for this purpose. However, at the time of license application, DOE would be required to meet the criteria in 10 CFR Part 60. DOE has testified that its use of engineered barriers in comparative performance assessments would provide for an equal contribution at each site. Thus, no matter how large or small that contribution may be, it would in effect cancel out in a comparative evaluation leaving the sites' hydrogeologic properties as the distinguishing factors.

The EPA also suggested that it may be appropriate for DOE to examine times up to 100,000 years in their performance assessments. There is nothing in 10 CFR Part 60 that would prohibit DOE from extending the time period to 100,000 years if they so desire.

b. *The guidelines are subjective, vague, and non-specific.* Many commenters believe that the guidelines are so vague and non-specific that it would be impossible to use them to compare sites in any meaningful way. Many commenters stated that the guidelines should establish specific, numerical criteria against which a site could be measured by an objective observer. The commenters also believe that the guidelines could be made more specific by increasing the number of disqualifying conditions.

On the other hand, the U.S. Geological Survey (USGS) stated in its supplemental testimony that it is not possible to have totally objective criteria for the highly variable and complex geohydrologic systems. The USGS indicated that a high degree of subjective judgment is required in this process, particularly at the early stages of site screening when data are very limited and unequally distributed among potential sites. USGS noted that even after three sites are characterized, a totally numerical objective ranking system is neither appropriate nor feasible.

The guideline's lack of specificity was a major contention among the States. Utah stated that the guidelines are so non-specific that they allow the location of a repository virtually anywhere outside a national park or city limit. North Carolina, in its supplemental testimony, stated that the guidelines lacked specificity because of a noticeable absence of measurable thresholds. Nevada contended that the guideline's lack of specificity is not consistent with the requirements in the NWPA. Section 112(a) requires DOE to specify detailed geologic considerations in the guidelines. Nevada believes that geologic considerations in the guidelines are not detailed. Section 112(a) also

requires that the guidelines "shall specify factors that qualify or disqualify any site from development as a respository". In Nevada's view such factors must be quantitative, but most factors in the guidelines are qualitative. In its supplemental testimony, Nevada stated that while quantification is desirable, it recognizes that "in many instances, the data is not available to support numerical thresholds at this time."

Several commenters believe that the guidelines could be made more specific if they were developed for a particular geologic medium rather than all media. Wisconsin, in its supplemental testimony, stated that geotechnical criteria cannot be quantified on a national scale but must be medium-specific. Wisconsin believes that these medium-specific criteria are necessary to develop candidates for characterization, particularly if there is more than one site in each medium. Similarly, Washington and Mississippi pointed out in their supplemental testimony, that rock/media specific guidelines would allow a much higher level of quantification to be incorporated into the final guidelines. Likewise, Minnesota recommended that DOE develop "rock type subsets of the guidelines that would provide the quantification and parameters that would made each rock type a favorable or unfavorable media for waste isolation."

With regard to medium specific guidelines, USGS, in its supplemental testimony, noted that medium specific guidelines could be developed but such guidelines would not ensure an equal amount of data at all sites.

Many commenters also stated that the guidelines are overly vague because they do not specify a sufficient number of disqualifying conditions. The State of Nevada pointed out that of the 21 technical guidelines, only seven contain disqualifying conditions. According to STAND, of the seven disqualifying conditions, none would clearly disqualify unacceptable sites. STAND and others believe that the guidelines are constructed in a manner that would prevent drawing a conclusion on a disqualifying condition unless the entire system's performance were jeopardized. In this way, STAND contends that DOE may discover and then disregard a disqualifying condition on the premise that its presence would not affect the system's performance.

Wisconsin noted that there were no disqualifying conditions for geochemistry, rock characteristics, tectonics, water supplies, and national forest lands. In addition, Wisconsin and others noted that the guidelines' lack disqualifying conditions for some of the NRC technical criteria. These include (1) a minimum depth of 300 meters (10 CFR 60.122(b)(5)), and (2) site ownership (10 CFR Part 60.121).

DOE responded to its supplemental testimony to arguments that the guidelines do not contain a sufficient number of disqualifying factors. DOE believes that it has expanded the list of factors, required by section 112(a) of the NWPA, that would qualify or disqualify a site. DOE noted that the guidelines contain 22 qualification conditions and 11 disqualification conditions. In addition, DOE notes that the inverse of a qualification condition is a disqualification condition; i.e., "a site shall be disqualified if * * * (2) the qualifying condition of any system or technical guideline cannot be met" section 960.3–1–4). Thus, according to DOE, the guidelines contain 33 explicit and implicit disqualifying conditions, any one of which can disqualify a site from further consideration for development as a repository.

NRC Response and Finding

The Commission notes that several methods have been suggested for making the guidelines more specific. These methods include: (1) Adding more disqualifying conditions; (2) preparing medium-specific guidelines; and (3) establishing numerical guidelines.

A number of commenters recommended that DOE add more disqualifying conditions to their guidelines. [4] In their written testimony, several commenters noted that the guidelines do not specify disqualifying conditions for prospective sites which would prohibit these sites from being developed as a repository including factors pertaining to the location of valuable natural resources, hydrology, geophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge Systems, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Section 112(a) states, "Such guidelines shall specify factors that qualify or disqualify any site from development as a repository * * *" The Commission recognizes that quantitative disqualifying conditions may not be feasible. However, the Commission finds that more qualitative disqualifying conditions can be developed and should be included for each of the above factors listed in section 112(a) of the NWPA to help ensure that unacceptable sites will be eliminated as early in the site selection process as practicable.

With regard to the development of medium-specific guidelines, the Commission notes that the NWPA states that the guidelines shall specify considerations for the selection of sites in *various* geologic media (emphasis added). Thus, the Commission finds that the approach taken by DOE, of developing general rather than medium-specific guidelines, is not in conflict with NWPA.

From a technical standpoint, the Commission believes that it would be very difficult, if not impossible, for DOE to write numerical guidelines that would work for all geologic media and situations at the early site screening stages. The Commission's staff has reviewed all the comment letters sent to DOE and NRC concerning numerical guidelines. The State of Nevada, in its supplemental testimony, stated "that in many instances, the data is just not available to support numerical thresholds at this time." The USGS noted in its supplemental testimony that inexact nature of earth science does not allow a fully quantitative characterization of the natural barriers in space and time. A few commenters, however, offered examples of numerical guidelines, but the Commission finds that these are not generally applicable.

With only limited data and a requirement to use the numerical criteria in the guidelines, DOE would have to evaluate sites with overly simplistic models and assumptions that would not be reliable. The Yakima Indian Nation noted in its supplemental testimony, that attempts at system performance

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[4] Mississippi believes that DOE misinterpreted section 112(a) by not providing separate qualifying and disqualifying factors for "proximity to populations," "highly populated areas," and "populations within an area 1 mile by 1 mile adjacent to the site."

In relevant part, section 112(a) provides: Such guidelines shall specify factors that qualify or disqualify any site from development as a repository, including factors pertaining to—proximity to populations—. Such guidelines shall specify population factors that will disqualify any site from development as a repository if any surface facility of such repository would be located (1) in a highly populated area; or (2) adjacent to an area 1 mile by 1 mile having a population of not less than 1,000 individuals.

The Commission views the second sentence quoted above dealing with population factors as explaining Congressional intent regarding the general consideration of proximity to population mentioned in the first sentence. Thus, the Commission believes that DOE's interpretation of section 112(a) was reasonable in not considering the first reference to proximity to populations as establishing a requirement for population related siting criteria different from those required by the second sentence.

assessment (i.e., modeling) before the site has been characterized "will be an exercise in unverifiable speculation." Therefore, the Commission finds that application of mumerical guidelines prior to site characterization is not practical.

In summary, the Commission finds that some areas of the guidelines would not adequately provide a foundation for site-screening decisions. As a result, the Commission finds that DOE should set forth additional disqualifying conditions in the guidelines for prospective sites that would ensure that unacceptable sites are eliminated as early as practicable.

c. *Postclosure guidelines should not take precedence over preclosure guidelines.* In response to public comments on the February 7 draft of 10 CFR Part 960, DOE ranked the guidelines according to their relative importance: the most important appearing first, and the least important last. The guideline hierarchy consists of two major divisions: postclosure guidelines, which would receive primary consideration, and preclosure guidelines, which would receive secondary consideration. DOE, in its supplemental testimony, stated that postclosure radiological safety is considered to be a more critical concern than preclosure radiological safety because of the relatively greater uncertainties associated with the quantification of geologic characteristics, processes, and events into the future and their impacts on expected repository performance, as compared to those associated with active controls that can be maintained through permanent closure.

Many commenters believe that postclosure guidelines should not take precedence over preclosure guidelines. These commenters reasoned that blanket assignment of lower significance to the preclosure guidelines is arbitrary and inconsistent with the NWPA and 10 CFR Part 60. Wisconsin referred to section 112(a) of the NWPA which requires that detailed geologic considerations should be the primary criteria for site selection. Although DOE has made detailed geologic considerations its primary criteria, Wisconsin believes that sufficient data would not be available to evaluate these criteria prior to site characterization. Hence, DOE could not use its primary criteria in deciding which sites should be selected for characterization. The State of Utah noted that the NWPA's reference to detailed geologic considerations as primary criteria cannot justify DOE placing less importance on the preclosure guidelines.

Although some commenters generally agreed that postclosure guidelines should not take precedence over preclosure guidelines, they did not agree on how the guidelines should be ranked. For example, Minnesota recommended that DOE use a risk analysis to substantiate its ranking of guidelines. Minnesota believes that a risk analysis would prove that guidelines for transportation, population density and distribution, and environmental quality would be more important than those guidelines identified by DOE. Texas recommended that guidelines for erosion, tectonics, and dissolution be considered among the primary factors for the selection of sites. Similarly, STAND found that guidelines for tectonics, dissolution, and human interference are not ranked as high as they should be. Wisconsin, however, took a different position and recommended that DOE not establish priorities among the guidelines.

In its supplemental testimony, USGS stated that it is appropriate for the guidelines to give priority to post-closure considerations. USGS noted that post-closure performance depends heavily on large-scale natural geologic and hydrologic characteristics which cannot be engineered or significantly modified. USGS concluded that it is important that potential repository sites be selected with geohydrologic properties generally favorable to long-term isolation.

NRC Response and Finding

While DOE itself has ranked its proposed siting guidelines according to its assessment of relative importance, the Commission sees no explicit requirement for this or any other ranking in the NWPA. Accordingly, NWPA provides DOE with the discretion to establish this or any other ranking, so long as DOE meets all of the requirements in 10 CFR Part 60 in order to obtain a license.

The technical requirements of 10 CFR Part 60 are not arranged in a manner that would indicate their relative importance. Nevertheless, when DOE applies for a license from the NRC, the NRC will assure itself that *all* of the applicable requirements in 10 CFR Part 60 are satisfied and will not consider any requirements to be of secondary importance. The Commission notes that some licensing requirements, such as those for waste retrieval, compliance with 10 CFR Part 20, and 10 CFR Part 71, have been relegated to receiving secondary emphasis in the guidelines. Despite this arrangement, DOE has indicated that in the final analysis all the qualifying conditions, including those adapted from 10 CFR Part 60, must be satisfied. Consequently, since DOE must comply with all applicable NRC regulations, the issue of ranking or ordering the guidelines will not materially affect NRC in carrying out its statutory responsibilities.

d. *The Guidelines do not specify the level of data needed to make decisions.* Many commenters take exception to DOE's reference to "available data" and use of "conservative assumptions" to evaluate sites when the data is not available. The State of South Carolina stated that the "vague and open-ended references to 'available evidence/data/information' should be deleted from the Guidelines." Utah believes that the guidelines should require sufficient data collection at each step in the site selection process to assure that the selection process is sound. Utah further believes that it is not aceptable to base environmental assessments and site nominations on existing data. Similary, Mississippi feels that DOE will nominate and recommend sites with an inadequate, if not faulty, data base. With regard to "conservative assumptions," the Yakima Indian Nation noted that it will always be easier to make assumptions than to get the data. If the data are not available to make decisions, the Yakimas suggested that DOE obtain the data rather than making conservative assumptions. On the other hand, USGS believes that there is enough information to make conservative and informed estimates that are defensible with technical qualifications.

Some commenters recommended that DOE delete its reference to "available data" and specify a minimum and equal level of data that would be needed to make decisions, particularly the decisions to nominate and select sites for characterization. Other commenters added that before DOE nominates sites, the level of data on those sites should be equal. However, in its supplemental testimony, Wisconsin stated that DOE "must abandon its efforts to treat all states equally during screening because the data are not equally available." In a similar manner, USGS stated that conservative and informed estimates of geohydrolic conditions can be made even though the level of data is unequal among sites.

NRC Responses and Finding

The NWPA instructs DOE to use available data when selecting sites for characterization. Section 112(b)(H)(3) states:

In evaluating the sites nominated under

this section prior to any decision to recommend a site as a candidate site, the Secretary shall use *available* geographical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at a site unless (i) such preliminary boring or excavation activities were in progress upon the date of enactment of this Act or (ii) the Secretary certifies that such available information from other sources, in the absence of preliminary borings or excavations, will not be adequate to satisfy applicable requirements of this Act or any other law: Provided, That preliminary borings or excavations under this section shall not exceed a diameter of 6 inches (emphasis added).

The Commission finds that DOE's reference to available data is not in conflict with the NWPA.

Because of the limitations on the current state of knowledge in the earth sciences area, the Commission finds that specifying a common level of data is not realistic and might be too inflexible in practical applications for particular sites and different media. On the other hand, the Commission considers that the guidelines must be applied with adequate data to support the siting decisions that must be made by DOE to prerpare its EIS for the license application. Unless DOE has applied the guidelines in a reasonable way in making its siting decisions, the Commission may be unable to adopt DOE's EIS. Accordingly, in order for the Commission to be able to more readily adopt DOE's EIS, the Commission finds that DOE should specify the kinds of information DOE will use to make decisions on the nomination of sites and recommending sites for characterization. For each category of technical criteria in the guidelines, DOE should describe the type and level of information needed to conclude whether the site meets that aspect of the guidelines. Examples of these information needs can be found in Regulatory Guide 4.17.

e. *The guidelines lack an adequate implementation methodology.* Many commenters suggested that some of the guidelines' deficiences could be corrected with a proper implementation methodology. These deficiencies include: (1) Allowing decisions to be based on available data no matter how limited; (2) considering engineered barriers in the siting process; and (3) using qualitative rather than numerical criteria. A methodology was first proposed by representatives of 20 states at an August 18, 1983 meeting with DOE in Dallas, Texas. Later, 13 states and the Yakima Indian Nation wrote letters requesting DOE to adopt the methodology. The States of Wisconsin, Nevada, South Carolina, Mississippi and the Yakima Indian Nation referenced or alluded to these letters in their testimony before the Commission.

Briefly, the implementation methodology, as described in the letters to DOE, would require DOE to write new guidelines for each siting decision. Thus, DOE would have separate guidelines for site screening, site nomination, and site recommendation for characterization. DOE would repeat the consultation and concurrence process, specified in the NWPA, for each set of guidelines.

Wisconsin endorsed the implementation methodology because it calls for a sequential development of implementation guidelines and methodologies. South Carolina noted that the current implementation guidelines suggest an overly vague and uncertain process of decision. Instead, South Carolina recommended that the guidelines should state that decision methodologies, which cannot be spelled out in the guidelines at this time, would be developed in consultation with the states and Indian tribes pursuant to the NWPA. The comment from Nevada is typical of the sentiments of all the states; "The states collectively and individually have pointed out to DOE since the beginning that in order to understand the guidelines and know their potential effect in important site screening decisions that we must know how they will be applied."

The USGS stated that perhaps there is some merit to an implementation methodology which provides different guidelines for different stages of screening but USGS concluded that such a methodology does not appear necessary. The USGS believes that the procedures in the guidelines and the NWPA already account for the sequential staging of decisions.

A specific implemenation matter was raised by the Environmental Policy Institute (EPI) and the Umatilla Indians. EPI contended that DOE has improperly interpreted section 116(a) of NWPA to ratify all site screening decisions made prior to enactment of NWPA. EPI believes that there is nothing in NWPA which justifies DOE's determination that siting guidelines do not apply to the identification of potentially acceptable sites for the first repository. The Umatilla Indians hold a similar view on this matter.

DOE believes that its interpretation is supported by the schedules established by NWPA. Section 116(a) gave DOE 90 days to notify states that they contained potential repository sites, while section 112(a) gave DOE 180 days to promulgate siting guidelines. Under these conditions, DOE believes that Congress could not have intended DOE to apply the siting guidelines to identifying the first set of potential repository sites.

EPI replied that DOE's argument is inconsistent with the provision of a 90 day period for DOE to inform the states. EPI believes that no delay would have been required if Congress intended DOE to satisfy its previous decisions because those decisions were made before the enactment of NWPA. Thus, EPI believe that Congress gave DOE 90 days to use the guidelines to reconsider its previous determinations of potentially available sites.

The Edison Electric Institute (EEI) recognized the states' desire to participate in the repository program. EEI pointed out, however, that the public's participation does not end with the siting guidelines. In its supplemental testimony, EEI states that the site selection process involves more than adoption of the guidelines and their application. EEI maintains that siting involving a number of additional actions, including the preparation of environmental assessments, site characterization plans, and environmental impact statements. At each of these points, affected states, Indian Tribes, and the public will have an opportunity to both scrutinize and participate in the process. EEI contends that development and adoption of the guidelines does not constitute the only, or even the most important opportunity for input by interested persons into the process.

NRC Response and Finding

The NWPA requires that DOE issue general guidelines for the recommendation of sites for repositories. Other provisions in the NWPA refer to the general guidelines when describing various decisions in the site-selection process. The implementation methodology proposed by the states would have DOE write separate guidelines for site screening, site nomination, and site recommendation for characterization. NWPA does not require separate guidelines for each point in the decision making process. Accordingly, the Commission finds that the states' proposal for separate guidelines at each stage of the site selection process is not legally required and is not necessary for the Commission to fulfill its responsibilities. Rather, the NWPA establishes a process (of which the guidelines is one part) which when

implemented should lead to selection of an acceptable site.

Following the issuance of the siting guidelines, DOE must nominate at least five sites for characterization. According to section 112(b)(1)(E), each nomination must be accompanied by an environmental assessment which includes an evaluation of each site against the guidelines. The Commission finds that the guidelines, in combination with high-quality environmental assessments, will provide an adequate basis for nominating sites. After nominating at least five sites, DOE will recommend to the President three of these sites for characterization. According to section 112(b), the decision to select three sites for characterization is to be made by the Secretary of Energy. As noted earlier, the Commission has a particular interest in the Secretary's selection of these three sites because these sites are the alternatives to be considered in the EIS prepared by DOE and which NRC is required to adopt to the extent practicable.

The Commission finds with respect to the comments of EPI and the Umatilla Indians that DOE's interpretation of section 116(a) is reasonable. Certainly, it would be anomalous to expect DOE to use the guidelines to reconsider its previous identification of sites within the statutory 90 days when those guidelines were not required to be promulgated for another 90 days. Under these circumstances, the Commission believes that DOE's interpretation of section 116(a) is not clearly in conflict with NWPA.

The Commission recognizes that the public's participation in the repository program does not end with the guidelines but will continue in the development of environmental assessments, site characterization plans, and environmental impact statements. These documents give the public access to decisions that will, in the end, designate a site for repository development.

The Commission also recognizes that the site selection process does not end with issuing the siting guidelines. The procedures for selecting a repository site,as envisioned by NWPA, are lengthy and involved. The success of the site selection process will depend on the proper implementation of *all* of these procedures in concert rather than any single procedure.

The Commission believes that the site selection framework contained in the NWPA is adequate to select sites for development as repositories, and finds that staged or tiered guidelines are not required by the NWPA and are not necessary for the Commission to fulfill its responsibilities. Nonetheless, the Commission considers the implementation portions of the present guidelines to be vague and uncertain and could impede NRC's adoption of DOE'S EIS. In order to better be able to adopt DOE's EIS, which will include consideration of alternative sites that are determined to be suitable for development as repositories using the guidelines, the Commission finds that DOE must specify in greater detail how the guidelines will be applied at each siting stage including site nomination and characterization. For example, the Commission finds that DOE should, in clarifying its implementation approach, identify which guidelines would be used for each siting decision. This example is illustrative but not inclusive of the revisions needed to meet this condition for NRC concurrency.

Conclusion

Subject to the satisfactory resolution of the above conditions for NRC concurrence, the Commission finds that the guidelines should be sufficient to assure the selection of sites that would be reasonable candidates for a license application.

V. Commission Findings

Subject to the satisfactory resolution of the conditions set forth in this decision, the Commission finds that (1) the siting guidelines are not in conflict with 10 CFR Part 60; (2) the siting guidelines do not contain provisions that might lead DOE to select sites that would not be reasonable alternatives for an EIS; and (3) the siting guidelines do not contain provisions that are in conflict with its responsibilities as embodied in the NWPA. The separate views of Commissioner Roberts follow.

Commissioner Roberts' Views on DOE Siting Guidelines.

I believe that the concurrence provision 5 and 6 go beyond what the Commission is required to do by section 112 of the Nuclear Waste Policy Act. My reading of section 112 is that it would only require that the Commission review the proposed DOT Siting Guidelines for *substantial* inconsistencies with our Part 60 regulations. Thus, I do not support the position that section 112 requires the NRC to make a sweeping review of the DOE waste program or intrude unnecessarily in their decisionmaking process at this very early stage. To do so would be counterproductive.

If required by the Commission, provisions 5 and 6 would force a level of specificity from DOE which is not warranted and, indeed, would be premature at this stage of the process. Having said this, I am fully cognizant of the substantial concerns raised by a number of States in our oral presentation of January 11. While I am sympathetic toward their concern, I believe that the Commission must restrict its review to the health and safety factors as embodied in our Part 60 regulations. Thus I support only the inclusion of provisions 1 through 4 and 7 as conditions for concurrence.

Dated at Washington, D.C., this 9th day of March 1984.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 84-6859 Filed 3-13-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co.; Granting of Relief From ASME Section XI Inservice Inspection Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Virginia Electric and Power Company. The relief relates to the inservice inspection program for the Surry Power Station Unit Nos. 1 and 2 (the facilities) located in Surry County, Virginia. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of February 28, 1984.

The relief permits the licensee to perform certain inservice inspections in a manner different form that prescribed in Section XI of the ASME Boiler and Pressure Vessel Code and applicable Addenda, as required by 10 CFR Part 50, because of inaccessibility, configuration of components, radiation level, or other valid reasons.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the letter granting relief.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this relief.

For further details with respect to this action, see (1) the application for relief and letters dated May 17 and September 28, 1979, December 15, 1980, March 25,

and May 25, 1982 and January 7, March 7, April 14, and December 27, 1983 (2) the Commission's letter dated February 28, 1984 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 28th day of February 1984.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 84-6857 Filed 3-13-84; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan; the Witco Chemical Co. et al.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a joint request from The Witco Chemical Corporation and the Millmaster Onyx Group, Inc. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for a five plan year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Prior to granting an exemption, the PBGC is required to give interested persons an opportunity to comment on the exemption request. The effect of this notice is to advise interested persons of this exemption request and to solicit their views on it.

DATES: Comments must be submitted on or before April 30, 1984.

ADDRESSES: All written comments (at least three copies) should be addressed to: Director, Corporate Planning and Program Development Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006. The request for exemption and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: James M. Graham, Attorney, Corporate Planning and Program Development Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006; (202) 254-4860. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (ERISA), 29 U.S.C. 1384, provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)-(C), are that—

(A) The purchaser has an obligation to contribute to the plan for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above will be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance from the requirements of section 4204(a)(1)(B) does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on procedures for variances for sales of assets (29 CFR 2643.3(a)), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a joint request from The Witco Chemical Corporation ("Witco") and Millmaster Onyx Group, Inc. ("Millmaster") (collectively referred to as the "Parties") for a waiver of the bond/escrow requirement of ERISA section 4204(a)(1)(B). In the request, the Parties represent among other things, that:

1. Effective June 30, 1983, Witco purchased substantially all of the assets of the A. Gross & Company Division of Millmaster.

2. Witco has assumed Millmaster's responsibilities under a collective bargaining agreement with Local Number 8-131 of the Oil, Chemical and Atomic Workers International Union, AFL-CIO, which obligates Witco to contribute to the Oil, Chemical and Atomic Workers International Union

Industry Pension Fund (the "Fund"). Millmaster's potential withdrawal liability has been calculated by the Fund to be $371,400.

3. The amount of the bond/escrow required under section 4204(a)(1)(B) is approximately $69,534 (which is the average of Millmaster's contributions to the Fund for the three plan years preceding the year in which the sale occurred).

4. According to its audited consolidated financial statement, Witco and its subsidiaries had total net assets for its fiscal year ended December 31, 1982 of approximately $299 million, and an average annual net income for its fiscal years 1980–1982 of about $36 million.

5. A copy of this request has been sent by the Parties to the Fund and to the collective bargaining representative of Millmaster's former employees, by certified mail return receipt requested.

Comment

All interested persons are invited to submit written comments on the pending exemption to the above address, on or before April 30, 1984. All comments will be made a part of the record. Comments received, as well as the relevant information submitted in support of the application for exemption, will be available for public inspection at the address set forth above.

Issued at Washington, D.C. on this 6th day of March 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-6830 Filed 3-13-84; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

Form 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, Washington, D.C. 20549.

Form 20–F

No. 270–156

Notice is hereby given that pursant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for an extension of clearance Form 20–F which serves as a consolidated registration and annual report form for foreign private issuers subject to the reporting requirements of the Securities Exchange Act of 1934.

The form provides information on an annual basis permitting investors to make informed judgments on the performance of plan investment vehicles.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: March 8, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-6870 Filed 3-13-84; 8:45 am]

BILLING CODE 8010-01-M

Cincinnati Stock Exchange; Application for Unlisted Trading Privileges and of Opportunity for Hearing

March 8, 1984.

The above named national securities exchange has filed an application 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 common stock of:

Moore Corporation Limited

Common Stock, No Par Value (File No. 7–7352)

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 29, 1984 written data, views and arguments concerning the above-referenced application. 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 application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is 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. 84-6873 Filed 3-13-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7099]

Edgcomb Steel of New England, Inc., Common Stock, $2.50 Par Value; Application To Withdraw From Listing and Registration

March 8, 1984.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Edgcomb Steel of New England, Inc. ("Company") has filed an application to list its common stock on NASDAQ. Therefore, the Company wishes to remove its common stock from listing and registration on the BSE.

Any interested person may, on or before March 29, 1984, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-6872 Filed 3-13-84; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

March 8, 1984.

The above named national securities exchange has filed an application 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 common stock of:

Lafarge Corporation

Common Stock, $1 Par Value (File No. 7–7388)

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 29, 1984 written data, views and arguments concerning the above-referenced application. 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 application if it finds, based upon all that information available to it, that the extension of unlisted trading privileges pursuant to such application is 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. 84–6871 Filed 3–13–84; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 13811; 812–5776]

Queensland Coal Ventures Finance Limited; Filing of Application

March 8, 1984.

Notice is hereby given that Queensland Coal Ventures Finance Limited (the "Company") c/o Robert M. Chilstrom, Cravath, Swaine & Moore, One Chase Manhattan Plaza, New York, New York 10005, filed an application on February 17, 1984, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting the Company 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, a summary of which is set forth below, and to the Act and rules thereunder for the provisions thereof which are relevant to a consideration of the application.

The Company states that it is organized under the laws of the State of Victoria, Australia, and was incorporated in connection with the proposed formation of two separate unincorporated joint ventures (to be known as the Central Queensland Coal Associates Joint Venture and the Gregory Joint Venture, respectively) to own and operate certain coal mines and associated facilities in Queensland, Australia. All the shares of the Company will be owned by certain of the equity participants in the proposed joint ventures. The participants in the joint ventures are kwown as "Venturers".

The Company asserts that its sole purpose will be to issue bearer promissory notes ("Commercial Paper") in the United States commercial paper market and to make other borrowings and to assign to certain of the proposed participants in the joint ventures (the "Borrowers") proportional interests in the net proceeds of (i) issuances and sales by the Company of Commercial Paper, each issue of which will have the benefit of a letter of credit ("CP Letters of Credit") issued by one of three major United States and Japanese banks (the "CP Front Banks"), and (ii) such other borrowings made by the Company as provided in the Credit Agreements described below and in the application. According to the application, in respect of the Commercial Paper, each of the CP Front Banks will be indemnified to the extent provided in such Credit Agreements for amounts drawn under its CP Letter or Letters of Credit by a number of other banks ("CP Participants"). The application represents that, in consideration of the on-lending to the Borrowers to be effected by the assignment of such net proceeds, each of the Borrowers will separately agree with the Company, on a limited recourse basis, to make payments in their respective portions to discharge the Company's obligations ("Proceeds Assignment Obligations") to the holders of the Commercial Paper and holders of debt securities evidencing other borrowings.

The Company states that two separate Production Loan and Credit Agreement (the "Credit Agreements") among the Company, the Borrowers, a number of banks (including the CP Front Banks and CP Participants), and others will contain, among other things, (1) the commitments of the respective CP Participants to indemnify the CP Front Banks in respect of CP Letters of Credit issued by them in support of the Company's Commercial Paper and (2) the Company's assignment of proportional interests in the net proceeds of the respective issues of the Commercial Paper to the respective Borrowers. The Company further states that the CP Front Banks and CP Participants will have no recourse to the Company and only limited recourse to the respective Borrowers in respect of the unreimbursed disbursements made by the CP Front Banks under the CP Letters of Credit or the failure to discharge any other borrowings of the Company.

The Company's Commercial Paper will be issued under the respective Credit Agreements and a depository agreement among the Company, the CP Front Banks, and a United States bank, acting as issuing agent, drawing agent, trustee and depository thereunder. The Company states that the Commercial Paper will (i) have maturities not exceeding 270 days, (ii) be issued in denominations of not less than $100,000 (United States dollars), (iii) not be advertised for sale to the general public and (iv) be sold in the commercial paper market only to instutional investors or other entities which normally purchase commercial paper in large denominations. In connection with the issuance and sale of the Commercial Paper, the Company will appoint a corporate entity which normally acts in such capacity to accept service of process in any action commenced in any State or Federal court in the United States by any holder of the Commercial Paper against the Company based on the Commercial Paper. It is represented that the Company will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Commercial Paper shall have been paid. The Company represents that it will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Commercial Paper or otherwise.

The Company represents that it is expected that the respective issues of Commercial Paper will be accorded the commercial paper ratings of the respective CP Front Banks which issue the CP Letters of Credit (currently in each case the highest ratings granted). The Company further represents that the Commercial Paper will be exempt from registration under the Securities Act of 1933 pursuant to Section 3(a)(2) thereof.

According to the application, although there are no existing plans or proposals for the Company to issue any debt securities other than the Commercial Paper in certain circumstances the Credit Agreements would permit the Company to make other borrowings which would be similarly supported by

letters of credit or guarantees of (i) the relevant CP Front Banks (which letters of credit or guarantees would have the benefit of similar indemnities from the relevant CP Participants to the CP Front Banks) or (ii) each CP Front Bank and CP Participant, on a several basis (all such borrowings of the Company referred to as "Bank Guaranteed Financings").

The Company concedes that it may be deemed an "investment company" as defined in the Act in view of the fact that its only substantial assets will be its contractual rights under the respective Credit Agreements to require each of the Borrowers, on a limited recourse basis, to perform their respective Proceeds Assignment Obligations, which may be deemed to be securities under Section 2(a)(36) of the Act. The Company contends, however, that it should be granted the requested exemption because (i) the only significant assets of the Company will be its aforementioned contractual rights under the Credit Agreements, (ii) the Company will not sell or trade in such rights or other securities, (iii) none of the equity securities of the Company will be held by anyone other than certain of the Venturers, and (iv) the only other securities of the Company will be the Commercial Paper or other debt securities of the Company which may be issued in connection with Bank Guaranteed Financings.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 30, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-6874 Filed 3-13-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 20732; SR-Amex-84-5]

American Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

March 7, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 22, 1984, the American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, NY 10006 filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The proposed rule change permits customers to use certain qualifying escrow receipts or bank letters of guarantee as cover, in lieu of margin, for their short options positions, including broad-based index options positions.

Under the Amex proposal, margin would not be required for short put and call positions on broad-based stock index options, provided the customer furnished to the member organization carrying its account an appropriate letter of guarantee issued by a bank or trust company approved by the Amex. The rule change requires the letter of guarantee to certify that the guarantor is holding for the account of the customer, as security for each call index option contract written, "qualified securities" of at least ten different issuers,[1] the aggregate market value of which equals or exceeds the product of the current index value and the index multipler, computed at the time the put or call option contract was written. Under the rule, no single qualified security may represent more that 15 percent of the total collateral. In addition, the letter of guarantee must include a commitment by the bank or trust company that it will promptly pay the member organization the exercise settlement amount in the event of exercise.

A put option contract on a broad-based stock index option would require the guarantor to certify that it is holding for the account of the customer, as security for each such contract, cash or cash equivalents which have an aggregate market value equal to or in excess of the exercise settlement amount of the put. The guarantor's commitment promptly to pay the member organization the appropriate amount in the event of exercise is applicable to all types of option contracts.

The proposed rule does not specifically require the value of the securities deposited with the bank issuing the letter of guarantee to track changes in the index value with any degree of precision. This deviates somewhat from traditional concepts of cover, in which the instrument deposited as cover is required to be deliverable upon exercise of the options contact, thereby ensuring that the cover will always be adequate to satisfy the option writer's obligations under the options contract. The Commission does not believe, however, that this should impede approval of the proposal primarily because traditional forms of cover were not intended to apply to financial instruments settled in cash. With respect to instruments subject to cash settlement, the securities deposited with the guarantor, as collateral for the letter of guarantee, would in no event be deliverable. Moreover, a covering deposit which included each stock represented by a market index would be infeasible.[2] In addition, particularly with respect to broad-based stock index options, to the extent the index tracks market performance and the securities deposited as collateral are representative of the market, in general, these securities will generally fluctuate in correspondence to the index. Under these circumstances, the cover would be adequate to satisfy the writer's obligations under the options contracts.

Furthermore, since the proposal requires that the deposited securities be equal to the current index value times the index multiplier, except in the most unusual circumstances this should assure that their value will remain far greater than the obligation of a call

[1] Essentially, a "qualified security" is one (i) traded on a national securities exchange and substantially meeting the listing requirements of the New York Stock Exchange, Inc. ("NYSE") or Amex; or (ii) one enumerated in the current list of Over-the-Counter Margin Stocks published by the Board of Governors of the Federal Reserve System. *See* File No. SR-Amex-84-5.

[2] One of the Amex broad-based contracts is based on and with only 20 securities, the "Major Market Index." It is arguable that it would not be impossible for a call writer to establish positions in each of those 20 stocks; however, it would limit the investor's flexibility substantially and, in the Commission's view, unnecessarily. Data assembled by the Amex demonstrated that, for the 12 months preceding the start-up of trading in options on the Major Market Index, the index had a correlation of well over 90 percent with other broad-based market indicators, such as the Dow Jones Industrial Average, the S&P 500 Index and the NYSE Composite Index. Hence, it would appear that the Major Market Index option could be usefully employed as a hedge against a variety of diversified securities portfolios that need not be limited in their composition to the 20 stocks in the index. The other Amex broad-based contract is based on the Amex Market Value Index, which consists of over 800 securities. Obviously, the posting of each of those securities as a deposit for a short call position would be unfeasible.

option writer to deliver upon exercise the difference between the current index value (times the index multiplier) and the exercise price of the option. The proposal also requires that securities of 10 different issuers be deposited, with none of those securities representing more than 15 percent of the collateral. This should assure that even substantial decreases in the price of one or two of the deposited securities should not endanger the sufficiency of the collateral. In any event, since the deposited securities must equal the underlying index value at the time the option is written, the proposal should ensure that letters of guarantee are not used to obtain increased leverage or to otherwise evade exchange and Federal Reserve Board margin requirements.

Second, the guarantor, like the member firm who is responsible for paying the exercise settlement amount to the Options Clearing Corporation, has a financial interest of its own in assuring that the securities deposited are adequate to secure that obligation. In the absence of experience to the contrary, it appears preferable to rely on the oversight of the pledging bank rather than to impose on the industry a rigid set of guidelines that might insure adequate cover but only at substantial expense and inconvenience to the industry. Practical experience with a system of index cover will provide indications of what, if any, further refinements are necessary to assure the adequacy of the securities deposited as collateral under the letter of guarantee. In this regard, the Commission expects to work with the NYSE and the other exchanges adopting similar index cover rules to monitor the functioning of the rule in the months ahead.[3]

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR–Amex–84–5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposd rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in that similar rule filings have been submitted by CBOE and NYSE and already approved by the Commission.[4] No member of the public submitted a comment on the rule proposals of the other exchanges. Under these circumstances, additional delay in implementing the concept of cover for cash-settled index call options would not be justified.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the approved rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-6869 Filed 3-13-84; 8:45 am]

BILLING CODE 8010-01-M

[3] We note that the staff of the Federal Reserve Board considered a substantially similar rule proposed by the Chicago Board Options Exchange, Incorporated ("CBOE"). In their view, the escrow agreement, in the form provided for in the CBOE proposal, could be used as cover in a cash account under Section 220.8(a)(4)(i) of Regulation T, 12 CFR 220.8(a)(4)(i). *See* letter of January 27, 1984, from Laura Homer, Securities Credit Officer, Board of Governors of the Federal Reserve System, to Richard Ketchum, Associate Director, Division of Market Regulation.

We believe that all of the critical terms of the Amex escrow agreement are substantially the same as those approved in the CBOE escrow arrangement. Accordingly, we also believe that the escrow receipt or Amex letter of guarantee, in the form provided for in the Amex proposal, could also be used as cover in a cash account under § 220.8(a)(4)(i) of Regulation T.

[4] The NYSE and CBOE submitted on September 12, 1983 and November 7, 1983 (as amended on February 8, 1984 and November 29, 1983), respectively, proposed rule changes substantially similar to this Amex proposal. The Commission approved the NYSE and CBOE rule changes on February 23, 1984 and February 6, 1984, respectively.

[Rel. No. 20738; SR-Amex-83-35]

American Stock Exchange; Order Approving Proposed Rule Change

March 8, 1984.

The American Stock Exchange, Inc. ("Amex") 86 Trinity Place, New York, NY 10006, submitted on September 30, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to provide certain technical amendments to Amex Rules 131 and 154 with regard to the handling of percentage orders on the Amex trading floor. The proposal would eliminate "last sale," "buy minus," and "buy plus" percentage orders, and it would revise floor procedures relating to the execution of "elected" percentage orders and the conversion of percentage orders into regular orders.

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. 20611, January 31, 1983) and by publication in the **Federal Register** (49 FR 4579, February 7, 1984). 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. 84-6867 Filed 3-13-84; 8:45 am]

BILLING CODE 8010-10-M

[Rel. No. 20739; SR-Amex-84-2 et al.]

American Stock Exchange, Inc., et al.; Order Approving Proposed Rule Change and Order Granting Accelerated Approval of Proposed Rule Changes

March 8, 1984.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, NY 10006; Chicago Board Options Exchange, Incorporated, LaSalle at Van Buren, Chicago, IL 60604; Pacific Stock Exchange, Inc., 618

South Spring Street, Los Angeles, CA 90014; Philadelphia Stock Exchange, Inc., 1900 Market Street, Philadelphia, PA 19104; (SR-Amex-84-2; (SR-CBOE-84-7; (SR-PSE-84-3; (SR-Phlx-84-3).

The American Stock Exchange, Inc. ("Amex"), Philadelphia Stock Exchange, Inc. ("Phlx"), Pacific Stock Exchange, Inc. ("PSE"), and Chicago Board Options Exchange, Incorporated ("CBOE"), submitted on January 16, February 1, 2, and 6, 1984, respectively, copies of proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to modify the procedure for allocation of the right to trade options on individual stocks.[1] The proposed rule changes amend the agreement previously entered into by the four exchanges in 1980 concerning procedures for the selection and replacement of underlying securities for options trading (the "Allocation Plan").[2] The rule amendment also deletes language referring to the manner in which stocks might become available for options trading. These matters are already dealt with elsewhere in the Allocation Plan.[3]

Before the amendment, the Allocation Plan permitted an unlimited number of selection rounds in each allocation. Within a particular allocation, the order of priority according to which the exchanges selected eligible underlying stocks for options trading was fixed on a rotational basis, and the exchange entitled to the first selection in the allocation is based on the point in the rotation at which the previous allocation was concluded. Thus, under the current allocation procedures, an exchange may shift its priority in the next allocation by seeking to modify the number of rounds on the previous allocation. This gives the exchange an incentive virtually to ignore the number of stocks that may be appropriate for options trading.

Under the proposed rule changes, the Allocation Plan would be amended to establish a random order for making stock selections during an allocation, and exchange priorities would vary randomly from allocation to allocation. As a result, an increase or decrease in the number of selection rounds in one allocation would have no bearing on an exchange's position in the next allocation.

The Commission finds that the proposed rule changes, by establishing a fair and equitable formula according to which the limited number of eligible underlying securities may be allocated to the option exchanges for options trading, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities exchanges. In particular, the Commission believes that the proposed rules are consistent with Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade. For the same reasons, the Commission finds good cause for approving the proposed rule changes submitted by CBOE, PSE and Phlx prior to the thirtieth day after the date of publication of notice of filing thereof.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-6866 Filed 3-13-84; 8:45 am]

BILLING CODE 8010-01-M

[1] Notice of Amex's proposal was given in Securities Exchange Act Release No. 20599, January 26, 1984, 49 FR 4174. February 2, 1984; notice of CBOE's proposal was given in Securities Exchange Act Release No. 20642, February 10, 1984, 49 FR 6193, February 17, 1984; notice of PSE's proposal was given in Securities Exchange Act Release No. 20645, February 10, 1984, 49 FR 6425, February 21, 1984; and notice of Phlx's proposal was given in Securities Exchange Act Release No. 20643, February 10, 1984, 49 FR 6426, February 21, 1984).

[2] The Commission approved the original agreement in Securities Exchange Act Release No. 16863 (May 30, 1980). Subsequent amendments were also approved. *See* Securities Exchange Act Release Nos. 17833 and 18464, dated June 1, 1981 and February 2, 1982, respectively.

[3] The option exchanges have agreed to put this rule change into effect after the first allocation to take place after December 16, 1983. *See, e.g.*, File No. SR-Amex-84-2, at p. 5.

[Rel. No. 20733; File No. SR-PCC-84-04]

Pacific Clearing Corp. ("PCC"); Filing and Immediate Effectiveness of Proposed Rule Change

March 7, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 21, 1984, PCC filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change amends PCC's guidelines for approving foreign and domestic banks and trust companies as issuers of letters of credit for PCC participants fund purposes.[1] First, PCC proposed to amend its procedures under Rule XXX, Section 1(b), relating to the approval of issuers. PCC proposes to require that any domestic issuer be regulated and examined by federal or state authorities having regulatory authority over banks or trust companies. This amendment should ensure that financial institutions eligible to be issuers include only those which are regulated and examined for safety and soundness by bank regulatory authorities, regardless of whether those institutions are considered to be "banks" under federal or state law.

Second, the proposal amends PCC's Application for Approval and Agreement of Issuers of Letter(s) of Credit by expanding the classes of eligible foreign issuers. Previously, a non-U.S. institution had to have a "P-1" rating from Moody's Investor Service ("Moody's") or an "A-1" rating by Standard & Poor's Corporation ("S&P") letters of credit issued to support commercial paper or other short-term obligations. If it did not satisfy this requirement, it nonetheless could apply to be an issuer, subject to limiting terms imposed by the PCC board. Under the proposal, a non-U.S. financial institution additionally may qualify as a letter of credit issuer if: (1) any commercial paper or short-term obligations issued by the foreign institution's parent or an affiliated entity has a "P-1" Moody's rating or an "A-1" S&P rating; (2) any such commercial paper or short-term obligations issued by non-affiliated entities and supported or guaranteed by the non-U.S. institution has such a rating; or (3) the institution, its parent or an affiliated entity has an "AAA" Moody's rating or a "AAA" S&P rating on its long-term obligations.[2] PCC states that without the proposal's modifications, many large, well-capitalized foreign financial institutions

[1] In making these amendments, PCC is responding to a January 19, 1984 letter from the Institute of Foreign Bankers, Inc., commenting on certain PCC standards for approving letter of credit issuers. *See* File No. SR-PCC-83-6, which was approved by the Commission in Securities Exchange Act Release No. 20515 (February 1, 1984), 49 FR 4574 (February 7, 1984).

[2] These additional PCC standards are based on those discussed in Securities Exchange Act Release No. 19954 (July 18, 1983), 48 FR 33578 (July 22, 1983) (File No. SR-OCC-83-13).

would be unable to qualify as letter of credit issuers.

PCC states that the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended. In particular, PCC believes that the proposed rule change furthers Sections 17A(b)(3)(A) and (F) of the Act, in that it assures the safeguarding of securities and funds in the custody or control of PCC or for which PCC is responsible, by improving the standards for acceptance of letters of credit.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the 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 Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-6868 Filed 3-13-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 155—User Requirements for Future Communications, Navigation and Surveillance Systems, Including Space Technology Applications; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 155 on User Requirements for Future Communications, Navigation and Surveillances System, Including Space Technology Applications to be held on March 29, 1984 in the Third Floor Auditorium, Federal Aviation Administration Building, 800 Independence Avenue SW., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of First Meeting Held on January 17-18, 1984; (3) Activity Reports and Consideration of Recommended Actions by the Operational, Technology, and Transitional/Economics Working Groups; (4) Review of Task Assignments and Endorsement of Working Group Programs; and (5) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on March 4, 1984

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-6748 Filed 3-13-84; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Baltimore City, Maryland

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that FHWA has assumed the lead agency role for the North Corridor—Metro Center transportation alternatives analysis in Baltimore City/Baltimore County, Maryland. A Final Environmental Impact Statement will be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., District Engineer, Federal Highway Administration, The Rotunda—Suite 220, 711 West 40th Street, Baltimore, Maryland 21211-2187, Telephone: (301) 962-4010, and/or Mr. Robert Douglass, Chief, Environmental Section, Interstate Division for Baltimore City, 2225 North Charles Street, Baltimore, Maryland 21218, telephone: (301) 396-7299.

SUPPLEMENTARY INFORMATION: The Urban Mass Transportation Administration (UMTA), in conjunction with the Maryland DOT Mass Transit Administration, issued a Draft EIS on September 10, 1982 for various mass transit alternatives located mainly along the Conrail railroad corridor. A public hearing was held November 9 and 10, 1982. Subsequently, the Maryland Department of Transportation selected the short busway altenative, with the acquisition of the Conrail right of way to Cockeysville. After consideration of comments received at the public hearing and on the DEIS, the FHWA has adopted the UMTA document. Additional coordination will be performed with the appropriate agencies involved. The FHWA, in cooperation with the State Highway Administration, the Interstate Division for Baltimore City, will prepare a Final Environmental Impact Statement (FEIS) discussing substantive public comments on the DEIS and documenting the selection of the short busway alternative to be built along Conrail right of way. The busway will be funded with Interstate substitution monies and will be constructed so as not to preclude the use of light rail in the future. In addition, the FEIS will discuss the impacts of the acquisition of the Conrail right of way from north of the City/county line to Cockeysville. Transportation improvements in this area, north of the short busway, will be selected as a result of future studies.

To ensure that the full range of issues related to this proposal are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and fedreally assisted programs and projects apply to this program)

Issued on: March 1, 1984.

Emil Elinsky,

Division Administrator, Baltimore, Maryland.

[FR Doc. 84-6766 Filed 3-13-84; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Renton, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Paul C. Gregson, Federal Highway Administration, Evergreen Plaza Building, Suite 501, 711 South Capitol Way, Olympia, Washington 98501, Telephone: (206) 753-2120;

Clyde L. Slemmer, P.E., Project Development Engineer, Department of Transportation, Highway Administration Building, Olympia, Washington 98504, Telephone: (206) 753-6135;

R. E. Bockstruck, P.E., District Administrator, District One, Washington State Department of Transportation, 6431 Corson Avenue South, Seattle, Washington 98108, Telephone: (206) 764-4020.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Washington State Department of Transportation (WSDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to construct High Occupancy Vehicle (HOV) lanes on a two mile section of Interstate 405 between the South Renton Interchange at State Route 167 and the Sunset Boulevard Interchange at State Route 900. It is anticipated that the proposal would require modifications to local streets for the construction of HOV lanes through the Renton "S-curves". Improvements within the corridor are considered necessary to increase the people carrying capacity of the existing highway and to help alleviate peak period congestion which commonly occurs on this section of Interstate 405. The proposed project would also improve the quality of transit service, improve air quality and reduce energy consumption as HOV use increases.

Alternatives generated as a result of comments received during early coordination with governmental agencies, private organizations and the public will be studied in the draft EIS. Preliminary study alternatives, generated from design analyses on adjacent sections of Interstate 405, will include: (1) Taking no action, (2) constructing HOV lanes to full design standards where possible through the widening of the existing "S-curve" structures, and (3) constructing HOV lanes to full design standards through the realignment of the Renton "S-curves". Design variations of grade, alignment, roadway prism and ramp configurations will be incorporated into and studied with the various build alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies as well as citizens and organizations that have expressed interest in this project. A series of meetings with the public, interested community groups and governmental agencies will be held between March 1984 and October 1985. In addition, a public hearing will be held subsequent to publication of the Draft Environmental Impact Statement. Public notice of actions related to the proposal which identify the date, time, place of meetings and note the length of review periods will be published when appropriate. A formal scoping meeting will be held in March/April 1984.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding state and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on: March 5, 1984.

Richard C. Kay,

Area Engineer, Federal Highway Administration, Olympia, Washington.

[FR Doc. 84-6814 Filed 3-13-84; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. IP84-3; Notice 1]

Ford Motor Co.; Petition for Exemption From Notice and Remedy for Inconsequential Noncompliance

Ford Motor Company of Dearborn, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 471.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

In pertinent part, paragraph S4.1.1.36(d)(3) of Standard No. 108 requires a replaceable bulb headlamp to show no surface deterioration, coating delamination, fractures, or deterioration of bonding materials when tested to the chemical resistance test established in paragraph S6.4. Pursuant to the relevant portion of this paragraph, the entire lens surface and top surface of the lens-reflector joint is to be wiped once to the left and once to the right by a 6-square inch cotton cloth saturated once in a container with 2 ounces of unleaded gasoline "89 octane or above". The lamp is then stored for 48 hours and examined afterwards. The National Highway Traffic Safety Administration conducted chemical resistance tests of six replaceable bulb headlamps in December 1983 used in 1984 Continental Mark VII passenger cars, using premium unleaded gasoline. All units tested failed, manifesting cracks at the bottom of the lamps at the end of the 48-hour period, which, in subsequent days propagated in number and extent and thus compromised the structural integrity of the headlamp. The agency's investigation is File CIR 2726.

When apprised of NHTSA's test results, Ford conducted tests with the identical type of gasoline, replicating the NHTSA-type failures. Initial certification of the lamp by Ford appears to have been based upon a single test success in which a lamp was exposed to 89-octane fuel. After notification by NHTSA, Ford and Sylvania, the lamp fabricator, conducted various tests using regular unleaded 87 to 89 octane gasoline, gasohol, and 100 octane leaded aviation fuel. The 39 headlamps that were tested all passed. However, tests on 22 other lamps using unleaded 91.5 octane gas (including the tests conducted immediately following NHTSA's notification of test failure) produced 11 failures in 22 lamps tested. Ford thus estimates that up to 50% of the lamps produced before December 20, 1983, may fail to comply. The 23,000 lamps had been installed on 11,500 vehicles. Ford believes that a change it

instituted on December 20, 1983, precludes the condition's reoccurrence on cars manufactured after that date.

Ford argues that the noncompliance is inconsequential. It states that such cracking as a result of exposure to gasoline is highly unlikely to occur on vehicles in service, for two major reasons: (1) As a practical matter, the weld joint is rendered inaccessible to a wiping cloth by a rubber seal and by vehicle sheet metal, and (2) as a practical matter, it is highly unlikely that headlamps in service will be wiped with rags so thoroughly soaked with gasoline as to permit runoff of the gasoline into the weld joint area. Ford beleives that the precise cause of the noncompliance was "rapid stress relief of the polycarbonate lens and reflector induced by the gasoline test fluid". A urethane coating is intended to prevent exposure of the weld joint area to chemicals which might induce cracking but on the Ford lamps in question the coating was thinner than expected; further, not all of the linear weld flash had been removed from the weld joint area. As a consequence, the remaining flash projected through the urethane coating and the gasoline, when applied to the lamp, wicked through the coating via the projecting flash to the weld joint area. Ford believes that its tests show that the potentially affected lamps are sensitive only to premium unleaded gas, which itself provides only 12.4 percent of the market. Ford's previous experience with plastic lamps on the 1980 Lincoln, which did not have the protective coating in the weld joint area, has shown a low number of problems with cracking. Its examination of 65 such headlamps uncovered no failures, while complaints from the field on other plastic headlamps in service over the years show a breakage/cracked repair rate of 0.73 percent. Ford also believes that because of the annealing process, the weld joint area becomes less susceptible to gasoline-induced cracking as the lamp grows older.

In summary Ford's position is (assuming that only 50% of the lamps produced before December 20, 1983, are affected, that an estimated 12.4 percent of Mark VII owners use premium unleaded gas, and that an estimated 0.73 percent of the lamps may be wiped with a cloth sufficiently saturated for gas to flow to the weld joint area) that only an estimated 10 of the 23,000 lamps may be noncompliant discounting a reduction factor due to annealing.

In conclusion, Ford states that the risk to motor vehicle safety introduced by this very low estimated number of headlamps which might crack in in-service cars owing to contact with unleaded gasoline is inconsequential.

Interested persons are invited to submit written data, views and arguments on the petition of Ford Motor Company described above. Comments should refer to the docket number and be submitted to Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered.

The application and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney principally responsible for this notice are respectively Jere Medlin and Taylor Vinson.

Comment closing date: April 13, 1984.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 9, 1984.

Barry Felrice,

Acting Associate Administrator for Rulemaking.

[FR Doc. 84-6789 Filed 3-14-84; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP84-2; Notice 1]

General Motors Corp.; Petition for Exemption From Notice and Remedy for Inconsequential Noncompliance

General Motors Corp., of Warren, Michigan (GM) has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

The noncompliance is found on 1287 1984 model Buick LeSabre, Regal, and Electra passenger cars. The Type 2A1 headlamps installed on these vehicles may contain a halogen bulb in which the upper beam filament of 45 watts exceeds the maximum design wattage of 43 watts specified in paragraph S4.1.1.33 of Standard No. 108. The noncompliance results from a manufacturing error in which the upper (40 watts) and lower beam filaments (45 watts) were reversed. The noncompliance affects all the left hand headlamps of the 1287 vehicles, but only 657 of the right hand ones.

GM argues that the noncompliance is inconsequential because the headlamps otherwise meet all requirements of Standard No. 108. Operation of headlamps on upper beam "will result in a nominal increase in load of 10 watts, which is well within the load carrying capacity of the headlamp circuits of the vehices."

Interested persons are invited to submit written data, views and arguments on the petition of General Motors Corp., described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered.

The application and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney principally responsible for this notice are Jere Medlin and Taylor Vinson, respectively.

Comment closing date: April 13, 1984.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 9, 1984.

Barry Felrice,

Acting Associate Administrator for Rulemaking.

[FR Doc. 84-6790 Filed 3-13-84; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Cultural Property Advisory Committee; Meeting

The Cultural Property Advisory Committee will conduct a meeting at

Room 800, 301 4th Street SW., Washington, D.C., on March 29 and 30, 1984.

Agenda for the two day session is as follows:

Thursday, March 29

9:30 a.m.—Introduction of members to USIA Director Charles Z. Wick and Dr. Ronald L. Trowbridge, Associate Director of the Bureau of Educational and Cultural Affairs, and other USIA staff.
10:00 a.m.—Swearing-in Ceremony.
10:20 a.m.—Meeting is convened.
10:30 a.m.—Presentation by Paul Bator, Deputy Solicitor General of the United States and author of "The International Trade in Art".
11:00 a.m.—Presentation by Paul N. Perrot, Director of Virginia Museum of Fine Arts; former Assistant Secretary for Museum Programs, Smithsonian Institution; former Vice-President, International Council of Museums and currently member of the Executive Council of ICOM. Discussion.
12:00 p.m.—Break for lunch.
1:00 p.m.—Review of Cultural Property Advisory Convention on Cultural Property Implementation Act (Public Law 97-446, Title III) by R. Wallace Stuart, Assistant General Counsel of USIA, and discussion.
3:00 p.m.—Break.
3:15 p.m.—Presentation by Stuart P. Seidel, Assistant Chief Counsel (Enforcement and Operations), and Ellen M. Young, Staff Attorney, of the U.S. Customs Service. Discussion of Customs restrictions and present U.S. agreements and treaties.
5:15 p.m.—Election of Committee Officers.
5:30 p.m.—Adjournment.

Friday, March 30

9:00 a.m.—Review of by-laws and committee procedures and operations.
1:00 p.m.—Adjournment. (Time approximate.)

The Friday morning session will be closed to the public in accordance with the provisions of the Government in the Sunshine Act (5 U.S.C. 552b(c)(7)(E)). Discussion will involve investigative techniques and procedures. The session will also be closed because the discussion will involve internal personnel rules and practices (5 U.S.C. 552b(c)(2)), and information the premature disclosure of which would be likely to frustrate significantly by implementation of proposed actions (5 U.S.C. 552b(c)(9)B)).

Members of the public wishing to attend the open session on Thursday, March 29, should contact Ms. Vicki Rose on 485-8609, for the exact location of committee activities. Public attendance will be limited due to the size of the meeting room, and must be arranged in advance because of controlled access to the USIA Building.

Dated: March 8, 1984.

Charles Z. Wick,

Director.

[FR Doc. 84-6758 Filed 3-13-84; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Veterans Administration Medical Center; 30-Bed Spinal Cord Injury Unit; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the development of a 30-Bed Spinal Cord Injury Unit at the VA Medical Center in Salt Lake City, Utah. The assessmnent concludes that there are no known significant adverse impacts associated with this project. The project evaluated includes new construction of approximately 68,000 gross square feet (GSF) total. Of this total, 35,000 GSF will house 30 spinal cord injury beds and support services; 19,000 GSF will house a replacement canteen; and a 14,000 GSF second level will house research functions related to spinal cord injury.

The assessment did not identify any anticipated long-term adverse impacts that will occur as a result of this project. There will be short-term impacts associated with the construction process: air pollution (dust and fumes), construction noise, solid waste disposal, and parking. These temporary impacts will be mitigated to reduce or eliminate adverse impacts on the environment through proper planning/design and the application of the best available engineering technology. The VA will comply with all applicable Federal, State, and local environmental regulations.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality, (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, sections 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389-3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: March 6, 1984.

Harry N. Walters,

Administrator.

[FR Doc. 84-6611 Filed 3-13-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 51
Wednesday, March 14, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 3-84]

Announcement in Regard to Commission Meetings and Hearings; Notice of Meetings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Tuesday, March 20, 1984 at 10:30 a.m.

SUBJECT MATTER: Consideration of Proposed Decisions in the Second Czechoslovakian Claims Program and Final Decisions on objections on the Record.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111—20th Street NW., Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street NW., Room 409, Washington, D.C. 20579. Telephone: (202) 653-6155.

Dated at Washington, D.C. on March 6, 1984.

Judith H. Lock,

Administrative Officer.

[FR Doc. 84-6896 Filed 3-12-84; 10:39 am]

BILLING CODE 4410-01-M

2

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-15]

TIME AND PLACE: 10 a.m., Tuesday, March 20, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
   a. Certain fluidized support apparatus for human patients (Docket No. 1035).
5. Investigations 701-TA-212 and 731-TA-169 through -182 [Preliminary] (Carbon Steel Products from Argentina, Australia, Finland, South Africa, and Spain)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-6864 Filed 3-12-84; 9:12 am]

BILLING CODE 7020-02-M

3

NUCLEAR REGULATORY COMMISSION

DATE: Friday, March 16, 1984 and Week of March 19, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED:

Friday, March 16

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Earthquakes—Diablo Canyon (Tentative) (Postponed from March 8)
b. License Fee (Tentative)
c. Hydrogen Control (Tentative)

Week of March 19

Monday, March 19

10:00 a.m.
Status of Pending Investigation on Diablo Canyon (Open/Closed—Ex. 5 & 7)
1:30 p.m.
Discussion/Possible Vote on Full Power Operating License for LaSalle-2 (Public Meeting)

Tuesday, March 20

10:00 a.m.
Briefing on Steam Generator Generic Requirements (Public Meeting)

Thursday, March 22

2:00 p.m.
Briefing on Public Comments on ANPR—Role of the Staff (Public Meeting)

Friday, March 23

10:00 a.m.
Briefing on Status of Utility and NRC Compliance with TMI Action Plan (Public Meeting)
2:00 p.m.
Discussion of Pending Investigation (Closed—Ex. 5 & 7)

ADDITIONAL INFORMATION: Discussion of Interaction of Earthquakes and Emergency Planning scheduled for March 8 was *cancelled.*

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: John C. Hoyle, (202) 634-1410.

John C. Hoyle,

Office of the Secretary.

March 9, 1984.

[FR Doc. 84-6949 Filed 3-12-84; 3:32 pm]

BILLING CODE 7590-01-M

4

POSTAL RATE COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, March 15, 1984.

PLACE: Conference Room, Room 500, 2000 L Street, NW., Washington, DC 20268-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Discussion of Motions for Certification in Docket No. R84-1. (Closed pursuant to 5 U.S.C. 552B(c)(10).)

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, Telephone (202) 254-3880.

Charles L. Clapp,

Secretary.

[FR Doc. 84-6806 Filed 3-12-84; 8:45 am]

BILLING CODE 7715-01-M

5

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the

Securities and Exchange Commission will hold the following meetings during the week of March 19, 1984, at 450 Fifth Street, NW., Washington, D.C.

An open meeting will be held on Thursday, March 22, 1984, at 2:30 p.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway and Cox voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Thursday, March 22, 1984, at 2:30 p.m., will be:

1. Consideration of whether to adopt revised rules under the Public Utility Holding Company Act of 1935 governing the Preservation of Records of registered holding companies and their mutual or subsidiary service companies. For further information, please contact Grant G. Guthrie at (202) 272–7677.

2. Consideration of whether to issue a release adopting revisions to Rule 12h–3 under the Securities Exchange Act of 1934. The proposals are designed to permit immediate suspension of Section 15(d) periodic reporting requirement whenever the number of record holders of a class of securities subject to that section falls below 300 persons or, for certain small businesses, 500 persons. For further information, please contact William E. Toomey at (202) 272–2573.

3. Consideration of whether to issue a release adopting amendments to Rule 134a under the Securities Act of 1933 relating to options material not deemed a prospectus. The amendments would expand the scope of the rule to permit offerors of options products to include certain explanatory information in advertisements of those products and would modify certain of the conditions of the rule's availability. For further information, please contact Ann M. Glickman at (202) 272–2573.

4. Consideration of whether to issue a release adopting a revision of Rule 406 under the Securities Act of 1933. The revised rule would expand the information eligible for confidential treatment and would make the procedures for processing applications essentially identical to those used in processing confidential treatment requests under the Securities Exchange Act of 1934. For further information, please contact Barry Mehlman at (202) 272–2573.

5. Consideration of whether to issue a release adopting new Rule 29 under the Commission's Rules of Practice concerning applications by individuals, barred by Commission order, who seek the consent of the Commission to associate with a registered broker, dealer, municipal securities dealer, investment adviser or investment company, and delegating to the Director of the Division of Enforcement authority to grant or deny applications made pursuant to Rule 29. For further information, please contact Mary A. Binno at (202) 272–2318.

6. Consideration of whether to adopt proposed Rule 205–3, with changes, under the Investment Advisers Act of 1940 to permit registered investment advisers to enter into contracts with certain clients providing for compensation based on a share of capital gains or capital appreciation in the client's account. For further information, please contact Forrest R. Foss at (202) 272–3038.

7. Consideration of whether to issue a release requesting indications of interest in participating in a pilot Electronic Data Gathering, Analyzing and Retrieval System ("EDGAR") from filers of Commission documents and soliciting comment on the system from potential users. For further information, please contact Herbert D. Scholl at (202) 272–7629.

The subject matter of the closed meeting scheduled for Thursday, March 22, 1984, following the 2:30 p.m. open meeting, will be:

Formal orders of investigation.
Institution and settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Chapter 11 proceedings.
Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: JoAnn Zuercher at (202) 272–2014.

George A. Fitzsimmons,

Secretary.

March 9, 1984.

[FR Doc. 84–6863 Filed 3–12–84; 9:12 am]

BILLING CODE 8010–01–M

6

SYNTHETIC FUELS CORPORATION

Board of Directors; Meeting

ACTION: Amendment of Notice of Meeting.

SUMMARY: Interested members of the public are advised that the following item of business has been added to the agenda of the meeting of the Board of Directors of the United States Synthetic Fuels Corporation to be held by telephone conference call at 11:00 a.m. on March 15, 1984.

ADDITIONAL MATTER TO BE CONSIDERED:

Open Session

Amendment of Fourth General Solicitation for Synthetic Fuel Projects.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Mr. Owen J. Malone, Assistant Secretary, at (202) 822–6336.

Synthetic Fuels Corporation.

Robert W. Gambino,

Group Vice President-Corporate.

March 9, 1984.

[FR Doc. 84–6865 Filed 3–12–84; 9:12 am]

BILLING CODE 0000–00–M

federal register

Wednesday
March 14, 1984

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Addition of Appendix F, Quality Assurance Procedures, Procedure 1; Proposed Rule and Notice of Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2512-2]

Standards of Performance for New Stationary Sources; Addition of Appendix F, Quality Assurance Procedures, Procedure 1

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This proposed rule would add quality assurance requirements to gas continuous emission monitoring systems (CEMS) when the CEMS are used as the method for showing compliance with emission limits on a continuous basis. Source owners or operators would be required to assess periodically the precision and accuracy of environmental measurements from gas CEMS. The proposed rule would define and improve data quality and strengthen decisions made with regard to compliance.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before May 14, 1984.

Public Hearing. A public hearing will be held on April 9, 1984, beginning at 9:00 a.m.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by April 2, 1984 (1 week before hearing).

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket Number A-80-29, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public Hearing. The public hearing will be held at U.S. EPA, Admin. Bldg., Alexander Dr., RTP, NC. Auditorium (Rm 150). Persons wishing to present oral testimony should notify Ms. Vivian Phares, Emission Measurement Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5543.

Docket. Docket Number A-80-29, containing supporting information used in developing the proposed rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl J. von Lehmden, Quality Assurance Division, Environmental Monitoring Systems Laboratory (MD-77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2415.

SUPPLEMENTARY INFORMATION:

Proposed Regulation

The proposed rule requires the source owner or operator to: (1) Develop and implement a quality control program that includes written procedures for key CEMS operations; (2) calculate monthly data precision for each CEMS monitor from results of daily span checks; and (3) perform a quarterly accuracy assessment on each CEMS.

As a minimum, the quality control program must include written procedures for CEMS calibration, CEMS calibration drift determination and adjustment, CEMS preventive maintenance, CEMS data recording and reporting, and a corrective action program for malfunctioning CEMS.

The CEMS data precision is determined from a one-point precision check once each day at the span level (50 to 100 percent of the span value) on each pollutant and diluent monitor in a CEMS. The precision check results are used to calculate a monthly precision for each monitor. The calculated monthly precisions are reported for each quarter along with the quarterly report of emissions already required in the applicable subpart (e.g., § 60.49a(i)).

The CEMS data accuracy is determined once during the first 2 months of each calendar quarter by either: (1) A relative accuracy audit; or (2) alternating semiannual cylinder gas audits and semiannual relative accuracy audits. The relative accuracy audit consists of six sets of measurements rather than the nine required by the initial performance specification test, so all test runs can be conducted in 1 day. Also, when a relative accuracy audit is performed, EPA performance audit samples must be analyzed concurrently with the relative accuracy audit samples to demonstrate analytical system proficiency and document analytical system accuracy. The calculated quarterly accuracy assessment and the results of the EPA performance audit samples are reported each quarter along with the quarterly report of emission.

Corrective action is required for a monitor when the results of five consecutive span checks exceed the applicable span drift limit or when the CEMS exceeds the limits for a relative accuracy audit or a cylinder gas audit. In addition, criteria for unacceptable data are defined based upon excessive single span drift results.

The proposed rule is designed to provide a fixed frequency for the assessment of CEMS data precision and accuracy. The proposed rule is further designed to adjust the degree of quality control burden to the source owner or operator depending on the quality of the CEMS data. If the data quality becomes poor, the source owner or operator is required to take CEMS corrective action that will improve the data quality.

It is the source owner's or operator's responsibility, and not that of the control agency, to acquire CEMS data of known and sufficient quality as described in this proposed rule.

There are no adverse environmental, energy, or economic impacts associated with the proposed rule.

Applicability

The proposed regulation applies to all CEMS installed under a subpart that designates CEMS as the method for showing compliance with emission limits on a continuous basis. The regulation would apply to Subpart Da, 40 CFR Part 60 (electric utility steam generating units for which construction is commenced after September 18, 1978). It would also apply to other subparts which may be proposed before or after proposal of Procedure 1, if the subpart requires the use of gas CEMS as the performance test method on a continuous basis. This may occur under Subpart D (fossil-fuel-fired steam generators for which construction commenced after August 17, 1971).

Revisions to Subpart D have been proposed for public comment. The revisions include the use of gas CEMS as a performance test method to show compliance with emission limits on a continuous basis. Procedure 1 would apply to facilities subject to the revisions of Subpart D.

The proposed Procedure 1 regulation does not apply where the CEMS is designated as the performance test method to be used on an intermittent basis, as in Subparts P, Q, and R; and it does not apply when the CEMS is required to monitor operation and maintenance, as is the case with most subparts in 40 CFR Part 60.

A commitment to publish these quality assurance requirements was made in the preamble to the final rulemaking for Subpart Da. The proposed regulation would become

effective 6 months after the promulgation date.

Need for Quality Assurance

In order to make decisions on compliance, the quality of the measurement data used to make these decisions must be known. The principal parameters in assessing and describing data quality are accuracy (closeness of the measurement to the true values) and precision (variability of the measurement values). The proposed Appendix F, Procedure 1, adds requirements to assess and document accuracy and precision on those CEMS measurements used to show compliance to emission limits on a continuous basis. Currently, no data quality assessment requirements of this type exist on CEMS measurements used for this purpose.

Once the CEMS is determined to be out-of-control, prompt corrective action is required so that valid data are generated as soon as possible. Criteria are included in the proposed Appendix F, Procedure 1 that defines when a CEMS is out-of-control based on data quality assessment measurements. Criteria are also included that define valid data that satisfy the minimum daily emission monitoring requirement as specified in § 60.47a of 40 CFR Part 60. Currently, no requirements of this type exist on CEMS measurements used to show compliance to emission limits on a continuous basis.

Assessment of Data Precision

In the preamble to the final rulemaking for Subpart Da, a statement was included that for long-averaging times (e.g., 30-day rolling average) the criterion of importance is CEMS bias (i.e., inaccuracy) and not precision. This is true. However, monthly precision estimates for each CEMS monitor are both inexpensive and provides a history on the performance of individual monitors in the CEMS. Review of the monthly precision results may lead to corrective action before an out-of-control condition occurs. The out-of-control condition renders the CEMS measurement data not acceptable to satisfy the minimum daily monitoring requirement as specified in § 60.47a. The cost of obtaining precision data is minimum. Monthly precision is calculated from the daily span drift check. The daily span drift check is a current requirement in Appendix B to 40 CFR Part 60. Therefore, only the calculation of monthly precision based on currently available daily span drifts is needed.

Information Requirements Impact

An estimated 77 Subpart Da boilers are expected to be subject to the proposed rule through the 5-year period of 1984 through 1988. Start up of the first boiler under Subpart Da is scheduled for calendar year 1983.

The proposed rule will require no reports in addition to those already required under Subpart Da, § 60.49a. Section 60.49a requires the source owner or operator to submit a report of emissions for every calendar quarter. The proposed rule would require data on CEMS accuracy and precision, as well as the results from the EPA performance audit samples, to be included with each quarterly report. The proposed reporting requirements assist both the source owner or operator and the control agency by strengthening decisions made with regard to compliance. Analysis of the proposed reporting requirements indicates that they are both necessary and reasonable considering the savings in Agency time and resources required for effective enforcement.

The resources needed by the industry for Subpart Da sources to maintain records and to collect, prepare, and submit quality assurance information through the first 5 years (1984 through 1988) would be 80 person-years. The resources required by EPA and State agencies to process the reports and to maintain records for Subpart Da sources through the first 5 years (1984 through 1988) would be about 10 person-years. Subpart Da is the only regulation affected by Appendix F at this time.

The following is a summary of the procedure used to calculate resources needed by industry for Subpart Da sources. The resources needed by industry to implement Appendix F, Procedure 1, and to report quarterly assessments of CEMS accuracy and precision would be between 450 to 620 person-hours annually. This annual estimate is for a boiler having one SO_2 CEMS and one NO_x CEMS. The lower person-hour estimate represents the quarterly assessment for accuracy by alternating semiannual cylinder gas audits and semiannual relative accuracy audits. The higher person-hour estimate represents the quarterly assessment for accuracy using only the relative accuracy audit.

Using the higher estimate (i.e., using the relative accurancy audits for all quarterly accuracy assessments), the resources required by the industry for Subpart Da boilers for the 5-year period of 1984 through 1988 will be about 80 person-years.

Potentially, Subpart D (fossil-fuel-fired steam generators for which construction is commenced after August 17, 1971) may be revised to require compliance with emission standards on a continuous basis. If Subpart D is revised to require continuous compliance, it is assumed that the estimated 100 coal-fired steam generators equipped with flue gas desulfurization (FGD) will use CEMS for continuous compliance. It is further estimated that 100 of the 200 coal-fired steam generators burning compliance coal will select CEMS with the other 100 units choosing fuel sampling or Method 6B for continuous compliance. The estimated total State and EPA regional resources to implement the proposed Appendix F regulation would be about 50 person-years for Subpart D sources. This resource estimate is for the 5-year period of 1984 through 1988.

Using the higher estimate (i.e., 620 person-hours annually), the resources required by industry for Subpart D boilers for the 5-year period of 1984 through 1988 will be 300 person-years.

The preceding estimate of resources needed by industry for Subpart Da and D sources is based upon a report prepared for EPA by Entropy Environmentalists, Inc. titled "Required Level of Effort to Implement Appendix F, 40 CFR Part 60, Proposed Procedure 1." A copy of this report is in the docket.

Issues for Comment

When EPA promulgated Appendix B to 40 CFR Part 60 in October 1975, specifications were included for maximum allowable 24-hour calibration drift. These specifications in Appendix B of SO_2 and NO_x monitors were based on research data calculated at the 95 percent confidence level (i.e., two standard deviations). Recommended quality assurance practice is to select three standard deviations (i.e., 99.7 confidence level) as the control limit to determine when a measurement system is "out-of-control" and needs corrective action. In Section 5.3 of the proposed rules, monitor "out-of-control" is defined as the span drift exceeding twice the specification in Appendix B for each of five successive span checks. The EPA's evaluation of actual CEMS data for the 24-hour drift demonstrates that the selected limit is consistent with recommended quality assurance practice. Comments are specifically invited on whether criteria other than the proposed rule should be used to define monitor out-to-control in Section 5.3.

In Section 5.4.2 of the proposed rule, criteria for unacceptable data are given. The criteria state that when the span drift exceeds four times the specification in Appendix B, data since the last span check may not be included as part of the minimum daily emission monitoring requirement as specified in § 60.47a of 40 CFR Part 60. The EPA's evaluation of actual CEMS data for the 24-hour drift demonstrates that the selected limit is consistent with recommended quality assurance practice. Comments are specifically invited on whether criteria other than the proposed rule should be used to invalidate 1 day monitoring data as described in Section 5.4.2.

Public Hearing

A public hearing will be held to discuss the proposed rule in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a writtten statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see **ADDRESSES** section of the preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to indentify and locate documents readily so that they can intelligently and effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review.

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This rule is not major because it will not cause:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are availalbe for public inspection at the docket listed under the **ADDRESSES** section of this preamble.

Pursuant to the provisions of 5 U.S.C. 605(b) of the Regulatory Flexibility Act, I hereby certify that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action only makes minor changes in the standard, and these changes do not add significant costs to compliance with the standard.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Moter vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by Reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators.

Dated: March 1, 1984.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

It is proposed that 40 CFR Part 60 be amended as follows:

1. By revising § 60.13(a) as follows:

§ 60.13 Monitoring requirements.

(a) For the purposes of this section, all continuous monitoring systems required under applicable subparts shall be subject to the provisions of this section upon promulgation of performance specifications for continuous monitoring systems under Appendix B to this part and, if the continuous monitoring system is used to show compliance with emission limits on a continuous basis, Appendix F to this part, unless otherwise specified in an applicable subpart or by the Administrator. Appendix F is applicable 6 months after Appendix F is promulgated.

* * * * *

(Secs. 111, 114 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7414, and 7601(a)))

2. By adding a new Appendix F as follows:

Appendix F—Quality Assurance Procedures

Procedure 1—Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems (CEMS) for Compliance

1. *Applicability and Principle.*

1.1 Applicability. Procedure 1 applies to any CEMS that is used for determining compliance with the emission standards on a continuous basis, e.g., monitors for SO_2, NO_2, O_2, and CO_2.

This procedure specifies the minimum quality assurance requirements necessary for the control and assessment of the quality of CEMS data submitted to EPA. Source owners and operators responsible for one or more CEMS must meet these minimum requirements and are encouraged to develop and implement a more extensive quality assurance program or to continue such programs where they already exist.

1.2 Principle. Quality assurance consists of two distinct and equally important functions. One function is the assessment of the quality of the CEMS data by estimating precision and accuracy. The other function is the control and improvement of the quality of the CEMS data by implementing quality control policies and corrective actions. These two functions form a control loop: When the assessment function indicates that the data quality is inadequate, the control effort must be increased until the data quality is acceptable.

In order to provide uniformity in the assessment and reporting of data quality, this procedure explicitly specifies the assessment methods for precision and accuracy. This procedure also requires the analysis of Environmental Protection Agency (EPA) audit samples concurrent with certain reference method analyses.

Because the control and corrective action function encompasses a variety of policies, specifications, standards, and corrective measures, this procedure treats quality control requirements in general terms to allow each source owner or operator to develop a quality control system that is most effective and efficient for his own circumstances.

2. *Definitions.*

2.1 Continuous Emission Monitoring system. The total equipment required for the determination of a gas concentration or emission rate.

2.2 Diluent Gas. A major gaseous constituent in a gaseous pollutant mixture. For combination sources CO_2 and O_2 are the major gaseous constitutents of interest.

2.3 Span Value. The upper limit of a gas concentration measurement range that is specified for affected source categories in the applicable subpart of the regulation.

2.4 Span Level. The span level is a concentration range that is 50 to 100 percent of the span value.

2.5 Calibration Drift. The difference in the CEMS output reading from a reference value after a period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.6 Relative Accuracy (RA). The absolute mean difference between the gas concentration or emission rate determined by the CEMS and the value determined by the reference method(s) plus the 2.5 percent error confidence coefficient of a series of tests divided by the mean of the reference method (RM) tests or the applicable emission limit.

2.7 Precision. The degree of variability of a gas concentration as determined by the gas monitor in a CEMS for each pollutant and diluent gas. Precision is expressed as the 95 percent probability limit calculated from daily precision check data for a calendar month interval.

3. *Quality Control Requirements.*

Each source owner or operator must develop and implement a quality control program. As a minimum, each quality control program must include written procedures for each of the following activities:

(1) Calibration of CEMS.

(2) Calibration drift determination and adjustment of CEMS.

(3) Preventive maintenance of CEMS (including spare parts inventory).

(4) Data recording and reporting.

(5) Program of corrective action for malfunctioning CEMS.

As described in Section 6.2, whenever excessive inaccuracies occur for two consecutive quarters, the current written procedures must be revised to correct the deficiency causing the excessive inaccuracies.

These written procedures must be kept on record and available for inspection by the enforcement agency.

4. *Assessment of Data Precision.*

4.1 Precision Assessment Procedure. Conduct a one-point precision check once each day on each pollutant and diluent monitor in a CEMS as follows: (1) Challenge each monitor with a calibration standard (cylinder gas, gas cell, or optical filter) of known concentration value at the span level; (2) use a calibration standard that meets the specifications of Section 4.2; (3) operate each monitor in its normal sampling mode during the precision check; and (4) perform the check immediately before any adjustments are made to the monitor for zero and span drift. The check for span drift described in Section 5.1 may be used for the precision check provided all the conditions just described are met. It is recommended, but not required, that the precision check be conducted at the lower end of the span level (i.e., near 50 percent of the span value) because this normally corresponds to the average concentration of the emission standard.

The difference between the actual concentration of the calibration standard and the concentration indicated by the monitor is used to assess the calibration drift and the precision of the monitoring data as described in Section 8.

4.2 Calibration Standard Specification. The calibration standard used for the precision check must meet the following specifications:

4.2.1 Cylinder Gas. For a cylinder gas, assign a concentration to the cylinder gas that is determined from the CEMS monitor provided that the CEMS has successfully completed the performance specification test. Assign this concentration the first day the calibration standard is used with the CEMS. As an alternative, the cylinder gas concentration may be assigned by the gas manufacturer, source owner, or operator by analyses following EPA Traceability Protocol No. 1 (see Citation 1), or with Method 3, 6, or 7. If Method 3, 6, or 7 is used, do the following:

Within 2 weeks prior to use on a CEMS, perform triplicate analyses of the cylinder gas with the applicable reference method until the results of the three consecutive individual runs agree within 10 percent of the average. Then use this average for the cylinder gas concentration.

4.2.2 Gas Cell or Optical Filter. Assign a concentration to a sealed gas cell or optical filter that is determined from the CEMS monitor, provided that the CEMS has successfully completed the performance specification test. Assign this concentration the first day the calibration standard is used with the CEMS following the performance specification test. The gas cell or optical filter concentration may also be assigned by the manufacturer; this step is recommended, but not required, instead of assigning a concentration from the CEMS monitor.

5. *Zero and Span Drift Adjustment and Corrective Action for Excessive Span Drift.*

5.1 Span and Zero Drift Requirement. As described in 40 CFR Part 60.13(d) source owners and operators of CEMS must check the zero and span drift at least once daily in accordance with the method prescribed by the manufacturer. The zero and span must, as a minimum, be adjusted whenever the 24-hour zero drift or the 24-hour span drift exceeds two times the limits of the applicable performance specifications in Appendix B of this regulation.

5.2 Recording Requirement for Automatic Span Drift Adjusting Monitors. Monitors that automatically adjust the data to the span value, e.g., microprocessor control, must be programmed to record the unadjusted concentration measured in the span check prior to resetting the calibration or record the amount of adjustment.

5.3 Corrective Action for Excessive Span Drift. If the span drift exceeds twice the applicable performance specification in Appendix B for five consecutive span checks, the monitor is "out-of-control." Take necessary corrective action to eliminate the problem. Within 2 weeks following a corrective action, the source owner must audit the CEMS accuracy with either a relative accuracy audit (RAA) or cylinder gas audit (CGA) and record the CEMS accuracy. This special audit after corrective action does not require analysis of EPA performance audit samples (described in Section 7) if the RAA is used. A description of the RAA and CGA for assessing accuracy of CEMS data is provided in Section 6.

The end of the "out-of-control" period is the time corresponding to the completion of corrective action which is subsequently demonstrated to be successful by either the RAA or CGA. When the monitor is "out-of-control," the source owner or operator must use another method of obtaining the minimum emission data as required and described in the applicable subpart (e.g., § 60.47a(f)).

5.4 Criteria for Unacceptable Data. As required in Section 60.7(d) of this regulation, all measurements from the continuous monitoring system must be retained on file by the source owner for at least 2 years. However, measurement data that are collected under either of the following two criteria may not be included as part of the minimum daily requirement of of the applicable subpart of this regulation.

5.4.1 Out-of-Control Criteria. All data obtained on each successive day while the monitor is out-of-control will be considered data collected under a monitoring system breakdown and may not be included as part of the minimum daily requirement of Section 60.47a(f), or other applicable subpart.

5.4.2 Excessive Single Span Check Criteria. When the span drift exceeds four times the applicable performance specification in Appendix B, all emission data collected since the last span check are considered data collected under a monitoring system breakdown and may not be included as part of the minimum daily requirement of § 60.47a(f), or other applicable subpart. However, data collected during a monitoring system breakdown must be retained for inspection by the EPA.

6. *Assessment of Data Accuracy and Corrective Action for Excessive Inaccuracy.*

6.1 Accuracy Assessment Procedure. Within the first 2 months of each calendar quarter, audit each CEMS at least once using a RAA, CGA, or EPA approved alternative as follows:

6.1.1 Relative Accuracy Audit. The procedure for the RAA is the same as for the relative accuracy test described in the applicable performance specification (e.g., Performance Specification 2 for SO_2 and NO_x and Performance Specification 3 for O_2 and CO_2), except six rather than nine sets of measurements are required. In addition, analyze the appropriate performance audit samples received from EPA as described in Section 7.

6.1.2 Cylinder Gas Audit. Every other calendar quarter (i.e., semiannually), perform the audit either by using cylinder gases or by using an EPA approved alternative method instead of the RAA. However, use the RAA at least every other calendar quarter (semiannually).

Conduct a CGA as follows: (1) Challenge each monitor (both pollutant and diluent, if applicable) with an audit gas of known concentration at two points within the following ranges:

Audit point	Audit range		
	Pollutant monitors	Diluent monitors for—	
		CO_2	O_2
1	20 to 30% of monitor calibration full scale.	5 to 8% by volume.	4 to 6% by volume.

Audit point	Audit range		
	Pollutant monitors	Diluent monitors for—	
		CO_2	O_2
2	50 to 60% of monitor calibration full scale.	10 to 14% by volume.	6 to 12% by volume.

Use a separate audit gas cylinder for audit points 1 and 2. Do not dilute gas from the audit cylinder when challenging the monitor.

The monitor should be challenged at each audit point for a sufficient period of time to assure adsorption-desorption of the monitoring system surfaces has stabilized.

(2) Operate each monitor in its normal sampling mode, i.e., pass the audit gas through all filters, scrubbers, conditioners, and other monitor components used during normal sampling and as much of the sampling probe as is practical.

(3) Use audit gases that have been certified by comparison to National Bureau of Standards (NBS) gaseous Standard Reference Materials (SRM) or NBS/EPA approved gas manufacturer's Certified Reference Materials (CRM) (See Citation 1) following EPA Traceability Protocol No. 1 (See Citation 2). As an alternative to Protocol No. 1 audit gases, CRM may be used directly as audit gases. A list of gas manufacturers that have prepared approved CRM's is available from EPA at the address shown in Citation 1. Procedures for preparation of CRM are described in Citation 2.

The difference between the actual concentration of the audit gas and the concentration indicated by the monitor is used to assess the accuracy of the monitoring data.

6.2 Corrective Action for Excessive Inaccuracy. If the RA exceeds 25 percent using the RAA or 10 percent of the applicable standard, whichever is greater, the CEMS is "out-of-control". For SO_2 emission standards between 130 and 86 ng/J (0.30 and 0.20 lb/million Btu) use 15 percent of the applicable standard; below 86 ng/J (0.20 lb/million Btu), use 20 percent of emission standard. If the inaccuracy exceeds ±15 percent using the CGA, the CEMS is "out-of-control." Take necessary corrective action to eliminate the problem. Within 2 weeks following a corrective action, the source owner or operator must audit the CEMS accuracy with either a RAA or CGA to determine whether the CEMS is operating properly. Record the CEMS accuracy from the audit when it is determined the CEMS is operating properly. This special audit after corrective action does not require analysis of EPA performance audit samples (described in Section 7) if the RAA is used.

The end of the "out-of-control" period is the time corresponding to the completion of the corrective action which is subsequently demonstrated to be successful by either the RAA or CGA.

During the period the monitor is "out-of-control," the source owner or operator must use another method of obtaining emission data as required and described in the applicable subpart (e.g., § 60.47a(f)).

Repeated excessive inaccuracies indicates the quality control procedures required in Section 3 are inadequate. Therefore, whenever excessive inaccuracies occur for two consecutive quarters, the source owner or operator must revise the quality control procedures in Section 3.

7. EPA Performance Audit Program.

7.1 Applicability and Acceptable Audit Limits. When the RAA is performed for the purpose of assessing quarterly data accuracy, as described in Section 6, EPA performance audit samples must be analyzed. However, EPA performance audit samples are not required during a RAA following a corrective action as described in Sections 5.3 and 6.2. Analyze concurrently both EPA performance audit samples and RAA samples to demonstrate and document the analytical system proficiency and accuracy. The same person, the same reagents, and the same analytical system must be used for both the RAA samples and the EPA performance audit samples. Include results of all EPA performance audit samples in the Data Assessment Report as described in Section 10.

7.2 Performance Audit Samples Description and Availability. EPA performance audit samples for SO_2 and NO_x are liquid samples in sealed glass ampoules that are compatible with the EPA reference methods for SO_2 and NO_x. Each audit consists of two ampoules at different concentrations. The two ampoules are audit samples (unknowns) used to assess and document the analytical system accuracy during the analysis of the RAA samples.

The performance audit samples are prepared by EPA's Environmental Monitoring Systems Laboratory at the Research Triangle Park, North Carolina, but must be obtained from the Quality Assurance Management Office at each EPA Regional Office. Requests must be submitted to the respective EPA Regional Office at least 6 weeks prior to the date planned for the RAA.

8. Calculations for Monitoring Data Precision.

8.1 Equations for Calculation of Precision. At the end of each calendar quarter, calculate a precision probability interval for each monitor in the CEMS for each calendar month as follows:

8.1.1 Calculate the percentage difference (d_i) for each precision check using Equation 1.

$$d_i = \frac{Y_i - X_i}{X_i} \qquad \text{Eq. 1}$$

where:

(Y_i) = Monitor indicated concentration from the i-th precision check.

(X_i) = Known concentration of the precision check referfence used for the i-th precision check.

When CEM data for a 24-hour period are invalidated, the precision check result for that 24-hour period must be excluded from the calculations.

8.1.2 For each monitor, calculate the monthly average percent difference ($\bar{d}_j$) using Equation 2 and the standard deviation of the percent difference (S_j) using Equation 3.

$$\bar{d}_j = \frac{1}{n}\sum_{i=1}^{n} d_i \qquad \text{Eq. 2}$$

$$S_j = \sqrt{\frac{1}{n-1}\left[\sum_{i=1}^{n} d_i^2 - \frac{1}{n}\left(\sum_{i=1}^{n} d_i\right)^2\right]} \qquad \text{Eq. 3}$$

where n is the number of valid precision checks on the monitor made during the calendar month j.

8.1.3 Calculate the upper and lower 95 percent probability limits (UPL and LPL) for precision using Equations 4 and 5 for each month.

$$UPL = \bar{d}_j + 1.96\, S_j \qquad \text{Eq. 4}$$

$$LPL = \bar{d}_j - 1.96\, S_j \qquad \text{Eq. 5}$$

8.2 Example Calculation for Precision. The precision check data for an (SO_2) CEMS during the month of February are shown in Table 1-1. In this example, the daily percentage differences d_i (Equation 1) are shown in Table 1-1, $\Sigma d_i = -17.3$, and n = 28 (i.e., number of precision checks). The monthly average, $\bar{d}_j$ (Equation 2), and the standard deviation, S_j (Equation 3), are:

$$\bar{d}_j = -17.3/28 = -0.6\%$$

$$S_j = \sqrt{\frac{1}{27}\left[76.49 - \frac{1}{28}(-17.3)^2\right]} = 1.56$$

The 95 percent probability limits for precision (Equations 4 and 5) are:

UPL = +2.5 or +3%

LPL = −3.7 or −4%

9. Calculations for Monitoring Data Accuracy

9.1 Equations for Calculation of Accuracy. Follow the equations described in Section 8 of Performance Specification 2 to calculate the Relative Accuracy (RA) for the CEMS. For simplicity, these equations are also shown in Section 9.2 in the example calculation for accuracy for a SO_2 CEMS.

When a Cylinder Gas Audit is performed, calculate the percentage difference (d_i) for each audit concentration using Equation 1 where Y_i is the monitor's indicated concentration from the i-th audit check, and X_i is the known concentration of the audit gas used for the i-th audit check.

9.2 Relative Accuracy Audit Calculation. Example data from a Relative Accuracy Audit on a SO_2/O_2 CEMS is shown in Table 1-2.

TABLE 1-1. PRECISION CHECK DATA FOR SO_2 MONITORS

Day	CEMS measured conc. (Y_i), ppm	Precision check conc. (X_i), ppm	Difference (d_i), percent
1	1,350	1,350	0
2	1,330	1,350	−1.5
3	1,335	1,350	−1.1
4	1,345	1,350	−0.4

TABLE 1-1. PRECISION CHECK DATA FOR SO_2 Monitors—Continued

Day	CEMS measured conc. (Y_i), ppm	Precision check conc. (X_i), ppm	Difference (d_i), percent
5	1,330	1,350	−1.5
6	1,355	1,350	+0.4
7	1,360	1,350	+0.7
8	1,340	1,350	−0.7
9	1,300	1,350	−3.7
10	1,350	1,350	0
11	1,365	1,350	+1.1
12	1,380	1,350	+2.2
13	1,370	1,350	+1.5
14	1,355	1,350	+0.4
15	1,335	1,350	−1.1
16	1,320	1,350	−2.2
17	1,290	1,350	−4.4
18	1,350	1,350	0
19	1,365	1,350	+1.1
20	1,355	1,350	+0.4
21	1,335	1,350	−1.1
22	1,300	1,350	−3.7
23	1,350	1,350	0
24	1,360	1,350	+0.7
25	1,340	1,350	−0.7
26	1,335	1,350	−1.1
27	1,335	1,350	−1.1
28	1,330	1,350	−1.5
			$\Sigma d_i = -17.3$

TABLE 1-2. RELATIVE ACCURACY AUDIT DATA FOR SO_2 and O_2 CEMS

Run No.	SO_2 RM_d, ppm	SO_2 $CEMS_d$, ppm	O_2 RM_d, %	O_2 $CEMS_d$, %	SO_2 RM_d, ng/J	SO_2 $CEMS_d$, ng/J	SO_2 Diff. ng/J
1	500	475	3.0	3.1	422.4	403.5	18.9
2	505	480	3.0	3.1	426.6	407.7	18.9
3	510	480	3.0	3.0	430.8	405.4	25.4
4	510	480	2.9	2.9	428.4	403.2	25.2
5	500	480	2.9	3.0	420.0	405.4	14.6
6	500	500	3.0	3.1	422.4	424.7	−2.3

where:
RM_d = reference method data, dry basis.
$CEMS_d$ = monitor data, dry basis.

The SO_2 and O_2 CEMS data shown in Table 1-2 were corrected to a dry basis using Equation 6:

$$CEMS_{ppm,\ dry} = \frac{CEMS_{ppm,\ wet}}{1 - B_{ws}} \qquad \text{Eq. 6}$$

where:
B_{ws} = Moisture fraction of the CEMS gas.

The SO_2 and O_2 CEMS and RAA data were converted to the units of the applicable standard using Equation 7:

$$E = CF\frac{20.9}{20.9 - \text{percent } O_2} \qquad \text{Eq. 7}$$

where:
E = Pollutant emission, ng/J (lb/million Btu).
C = Pollutant concentration, ng/dscm (lb/dscf).
F = Factor representing a ratio of the volume of dry flue gas generated to the calorific value of the fuel, dscm/J (dscf/million Btu).
Percent O_2 = Oxygen content by volume (expressed as percent), dry basis.

For complete explanation of the equation and calculation, see 40 CFR 60.45 Subpart D, Subsections e and f.

After the data are converted to the units of the standard, the RA is calculated by using the equations in Section 8 of Performance Specification 2. For convenience in illustrating the calculation, these equations are also shown here.

9.2.1 The arithmetic mean of the differences, $\bar{d}$, is calculated for the SO_2 monitor using Equation 8:

$$\bar{d} = \frac{1}{n}\sum_{i=1}^{n}(X_i - Y_i) = \frac{1}{n}\sum_{i=1}^{n} d_i \qquad \text{Eq. 8}$$

$$= \frac{1}{6}(100.7) = 16.78 \text{ ng/J}$$

where:
d_i = difference between individual pairs, X_i and Y_i
Σd_i = algebraic sum of the individual differences, d_i

9.2.2 The standard deviation S_d is calculated using Equation 9:

$$S_d = \sqrt{\frac{1}{n-1}\left[\sum_{i}^{n} d_i^2 - \frac{1}{n}\left(\sum_{i}^{n} d_i\right)^2\right]}$$

$$= \sqrt{\frac{1}{5}\left[2213 - \frac{1}{6}(100.7)^2\right]} = 10.2 \qquad \text{Eq. 9}$$

9.2.3 The 2.5 percent error confidence coefficient, CC, is calculated using Equation 10:

$$CC = t_{0.975}\frac{S_d}{\sqrt{n}}$$

$$= 2.571\frac{10.2}{\sqrt{6}} = 10.71 \qquad \text{Eq. 10}$$

where:
$t_{0.975}$ = t-values in Table 1-3.

TABLE 1-3. T = VALUES

n*	$t_{0.975}$	n*	$t_{0.975}$	n*	$t_{0.975}$
2	12.706	7	2.447	12	2.201
3	4.303	8	2.365	13	2.179
4	3.182	9	2.306	14	2.160
5	2.776	10	2.262	15	2.145
6	2.571	11	2.228	16	2.131

* The values in this table are already corrected for n−1 degrees of freedom. Use n equal to the number of individual values.

9.2.4 The RA is calculated using Equation 11:

$$RA = \frac{|\bar{d}| + |CC|}{\overline{RM}} \times 100 \qquad \text{Eq. 11}$$

$$= \frac{|16.78| + |10.71|}{425.1} \times 100 = 6.47$$

where:
$\bar{d}$ = Absolute value of the mean differences from Equation 8.
CC = Absolute value of the confidence coefficient from Equation 10.
$\overline{RM}$ = Average reference method value or applicable standard.

9.3 Cylinder Gas Audit Calculation. Example data from a Cylinder Gas Audit of a SO_2 CEMS as described in Section 6.1 follows:

Audit point	SO_2 monitor conc. (Y_i), ppm	Audit gas conc. (X_i), ppm
1	355	375
2	700	750

Using Equation 1, the percentage difference for audit point 1 is −5.3 percent and audit point 2 is −6.7 percent.

10. *Reporting Requirements.*

After the completion of every calendar quarter, report the following data quality assessment for each CEMS: (1) Precision probability limits for each calendar month in the quarter from Section 8, and (2) accuracy from Section 9. Report precision and accuracy information as a data Assessment Report (DAR), and include one copy of this DAR with the quarterly report of emissions required under the applicable subpart of this part.

As a minimum, the DAR must contain the following information:

(1) Source owner or operator name and address.

(2) Identification and location of monitors in the CEMS.

(3) Manufacturer and model number of each monitor in the CEMS.

(4) Assessment of each monitor data precision (reported as 95 percent probability limits) in the CEMS for each calendar month.

(5) Assessment of CEMS data accuracy and date of assessment as determined by a Relative Accuracy Audit described in Section 6.1 including: Relative Accuracy (RA), absolute value of the mean of differences $|\bar{d}|$, absolute value of the confidence coefficient $|CC|$ and average reference method value or applicable standard ($\overline{RM}$).

(6) Or assessment of each monitor data accuracy in the CEMS and date of

assessment as determined by a Cylinder Gas Audit described in Section 6.1.

(7) Results from EPA performance audit samples described in Section 7.1.

(8) Summary of all corrective actions taken when monitor was determined out-of-control, as described in Section 5.3 and 6.2.

An example of a DAR format is shown in Figure 1.

A guideline on the interpretation and application of the precision and accuracy data, reported in the DAR, with respect to the emissions data is available in Reference 3.

Bibliography

1. "A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards Standard Reference Materials." Joint publication by NBS and EPA. EPA–600/7–81–010. Available from U.S. Environmental Protection Agency, Quality Assurance Division (MD–77), Research Triangle Park, North Carolina 27711.

2. "Traceability Protocol for Establishing True Concentrations of Gases Used for Calibration and Audits of Continuous Source Emission Monitors. (Protocol No. 1)," June 1978. Protocol No. 1 is included in the Quality Assurance Handbook for Air Pollution Measurement Systems. Volume III. Stationary Source Specific Methods. EPA–600/4–77–027b, August 1977. Volume III is available from U.S. Environmental Protection Agency, Office of Research and Development Publications, 26 West St. Clair Street, Cincinnati, Ohio 45268.

3. Interpretation and Application of Precision and Accuracy Data. This guideline is currently under development. It will be available by the promulgation date of this regulation as Section 3.0.7 of the Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III, Stationary Source Specific Methods. EPA–600/4–77–027b, August 1977. Volume III is available from the address shown in Citation 2.

(Secs. 111, 114 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7414, and 7601(a))

FIGURE 1. EXAMPLE FORMAT FOR DATA ASSESSMENT REPORT (DAR) (FRONT)

Period Ending Date..... Year 19.....
Company Name.....
Plant Name..... Source Unit No.....
Monitor Type/Model No..... Sampling/ Monitoring Location.....
Monitor Serial No.....

I. *Precision* (for each month in the quarter)
A. Month of the Quarter..... 1 2 3
B. 95 percent probability limit
a. Upper—UPL.....
b. Lower—LPL.....

II. *Accuracy Assessment Results* (Fill in either A or B)*
A. Relative Accuracy Audit (RAA) for..... (Pollutant)
1. Reference Methods (RM) used (specify).....
2. Date of audit.....
3. Average RM value, ppm or % volume.....
4. Absolute value of the mean difference |d|.....
5. Absolute value of the confidence coefficient, |cc|.....
6. % relative accuracy (RA).....

7. EPA performance audit samples 1 2
—audit lot number.....
—audit sample number.....
—results (mg/dscm).....
—actual value (mg/dscm)**.....
—percentage difference**.....

B. Cylinder Gas Audit (CGA) for..... (Pollutant) Audit Point 1 (Low conc.) Audit Point 2 (High conc.)
1. Date of audit.....
2. Cylinder DOT/ID number.....
3. Certified cylinder audit value.....
4. Type of audit gas used (check either a or b).....
a. Protocol No. 1 gas.....
b. CRM gas.....
5. Date of certification of audit gas.....
6. Value reported by monitor (ppm).....
7. Percentage difference.....

*Items 1–7 must be completed for each pollutant or diluent monitor, or CEMS system.
**To be completed by Agency.

FIGURE 1. EXAMPLE FORMAT FOR DATA ASSESSMENT REPORT (DAR) (BACK)

III. *Corrective Action for Excessive Span Drift*
A. Number of times monitor was "out-of-control"
B. Type of corrective action taken.....
C. Results of audit after corrective action. (Use format from Section II and attach to DAR).

IV. *Corrective Action for Excessive Inaccuracy*
A. Type of corrective action taken.....
B. Results of audit after corrective aciton. (Use format from Section II and attach to DAR).

[FR Doc. 84–6249 Filed 3–13–84; 8:45 am]
BILLING CODE 6560–50–M

Federal Register

Wednesday
March 14, 1984

Part III

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Methods 6A and 6B for the Determination of SO_2, Moisture and CO_2 Emissions From Fossil Fuel Combustion Sources; Corrections and Additions; Appendix A—Reference Methods; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2507-7]

Standards of Performance for New Stationary Sources; Methods 6A and 6B for the Determination of SO_2, Moisture, and CO_2 Emissions From Fossil Fuel Combustion Sources; Corrections and Additions; Appendix A—Reference Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections and additions.

SUMMARY: Methods 6A and 6B, Appendix A of Part 60, concerning determination of SO_2, moisture, and CO_2 emissions from fossil fuel combustion sources were published in the December 1, 1982, **Federal Register** (47 FR 54073). Since that time, EPA has completed a collaborative test of Method 6B that identified areas in the promulgated methods that needed clarification and some equipment and reagent modifications that would make the methods more flexible or reliable. The purpose of this action is to make the clarifications and additions which were derived from the collaborative test.

EFFECTIVE DATE: March 14, 1984.

ADDRESSES: *Docket.* A docket, number A-84-02, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Peter R. Westlin or Mr. Roger Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-2237.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Miscellaneous

This rulemaking does not impose any additional testing requirements on facilities affected by this rulemaking. Rather, this rulemaking adds alternative procedures and clarifications to an existing method that would apply irrespective of this rulemaking.

This rule is exempt from Executive Order 12291.

This rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.*

Pursuant to the provisions of U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on small entities because it does not impose additional costs in tests.

The Agency finds that notice and public procedure on this rule are unnecessary, because the rule is technical and noncontroversial. The changes to the methods are in the form of clarification of the applicability section and addition of alternative equipment and reagents. There are no substantial changes to the methods.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference; Can surface coating; Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators.

(Secs. 111, 114 and 301(a), Clean Air Act, as amended (42 U.S.C. 7411, 7414 and 7601(a)))

Dated: March 1, 1984.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

Methods 6A and 6B of 40 CFR Part 60, Appendix A, are amended as follows:

Appendix A—[Amended]

1. In Method 6A, Sections 2.1.1, 2.1.2, 3.1.1, 3.1.2, 4.1.1, 4.2.1, 4.2.3, 6.1, 6.6, 7.2, and 7.4 are revised to read as follows:

Method 6A—Determination of Sulfur Dioxide, Moisture, and Carbon Dioxide Emissions From Fossil-Fuel Combustion Sources

* * * * *

2. *Apparatus.*

2.1 * * *

2.1.1 SO_2 Absorbers. Two 30-ml midget impingers with a 1-mm restricted tip and two 30-ml midget bubblers with an unrestricted tip. Other types of impingers and bubblers, such as Mae West for SO_2 collection and rigid cylinders for moisture absorbers containing Drierite, may be used with proper attention to reagent volumes and levels, subject to the Administrator's approval.

2.1.2 CO_2 Absorber. A sealable rigid cylinder or bottle with an inside diameter between 30 and 90 mm and a length between 125 and 250 mm and with appropriate connections at both ends.

Note.—For applications downstream of wet scrubbers, a heated out-of-stack filter (either borosilicate glass wool or glass fiber mat) is necessary. The filter may be a separate heated unit or may be within the heated portion of the probe. If the filter is within the sampling probe, the filter should not be within 15 cm of the probe inlet or any unheated section of the probe, such as the connection to the first SO_2 absorber. The probe and filter should be heated to at least 20° C above the source temperature, but not greater than 120° C. The filter temperature (i.e., the sample gas temperature) should be monitored to assure the desired temperature is maintained. A heated Teflon connector may be used to connect the filter holder or probe to the first impinger.

Note.—Mention of a brand name does not constitute endorsement by the Environmental Protection Agency.

* * * * *

3. *Reagents.*

3.1 * * *

3.1.1 Drierite. Anhydrous calcium sulfate ($CaSO_4$) desiccant, 8 mesh, indicating type is recommended. (Do not use silica gel or similar desiccant in the application.)

3.1.2 CO_2 Absorbing Material. Ascarite II. Sodium hydroxide coated silica, 8 to 20 mesh.

* * * * *

4. *Procedure.*

4.1 * * *

4.1.1 Preparation of Collection Train. Measure 15 ml of 80 percent isopropanol into the first midget bubbler and 15 ml of 3 percent hydrogen peroxide into each of the first two midget impingers as described in Method 6. Insert the glass wool into the top of the isopropanol bubbler as shown in Figure 6A-1. Into the fourth vessel in the train, the second midget bubbler, place about 25 g of Drierite. Clean the outsides of the bubblers and impingers, and weigh at room temperature (≈20° C) to the nearest 0.1 g. Weigh the four vessels simultaneously, and record this initial mass.

With one end of the CO_2 absorber sealed, place glass wool in the cylinder to a depth of

about 1 cm. Place about 150 g of CO_2 absorbing material in the cylinder on top of the glass wool, and fill the remaining space in the cylinder with glass wool. Assemble the cylinder as shown in Figure 6A–2. With the cylinder in a horizontal position, rotate it around the horizontal axis. The CO_2 absorbing material should remain in position during the rotation, and no open spaces or channels should be formed. If necessary, pack more glass wool into the cylinder to make the CO_2 absorbing material stable. Clean the outside of the cylinder of loose dirt and moisture and weigh at room temperature to the nearest 0.1 g. Record this initial mass.

Assemble the train as shown in Figure 6A–1. Adjust the probe heater to a temperature sufficient to prevent condensation (see Note in paragraph 2.1.1). Place crushed ice and water around the impingers and bubblers. Mount the CO_2 absorber outside the water bath in a vertical flow position with the sample gas inlet at the bottom. Flexible tubing, e.g., Tygon, may be used to connect the last SO_2 absorbing bubbler to the Drierite absorber and to connect the Drierite absorber to the CO_2 absorber. A second, smaller CO_2 absorber containing Ascarite II may be added in line downstream of the primary CO_2 absorber as a breakthrough indicator. Ascarite II turns white when CO_2 is absorbed.

* * * * *

4.2 * * *

4.2.1 Moisture Measurement. Disconnect the isopropanol bubbler, the SO_2 impingers, and the moisture absorber from the sample train. Allow about 10 minutes for them to reach room temperature, clean the outsides of loose dirt and moisture, and weigh them simultaneously in the same manner as in Section 4.1.1. Record this final mass.

4.2.2 * * *

4.2.3 CO_2 Absorber. Allow the CO_2 absorber to warm to room temperature (about 10 minutes), clean the outside of loose dirt and moisture, and weigh to the nearest 0.1 g in the same manner as in Section 4.1.1. Record this final mass. Discard used Ascarite II material.

* * * * *

6. *Calculations.* * * *

6.1 Nomenclature.

C_w = Concentration of moisture, percent.
C_{CO2} = Concentration of CO_2, dry basis, percent.
M_{wi} = Initial mass of impingers, bubblers, and moisture absorber, g.
m_{wf} = Final mass of impingers, bubblers, and moisture absorber, g.
m_{ai} = Initial mass of CO_2 absorber, g.
m_{af} = Final mass of CO_2 absorber, g.
$V_{CO2(std)}$ = Equivalent volume of CO_2 collected at standard conditions, dsm^3.
$V_{w(std)}$ = Equivalent volume of moisture collected at standard conditions, sm^3.
5.467×10^{-4} = Equivalent volume of gaseous CO_2 at standard conditions per gram, sm^3/g.
1.336×10^{-3} = Equivalent volume of water vapor at standard conditions per gram, sm^3/g.

* * * * *

6.6 Moisture Concentration.

(Eq. 6A–5)

$$C_w = \frac{V_{w(std)}}{V_{m(std)} + V_{w(std)} + V_{CO_2(std)}}$$

* * * * *

7. *Emission Rate Procedure.*

If the only emission measurement desired is in terms of emission rate of SO_2 (ng/J), an abbreviated procedure may be used. The differences between the above procedure and the abbreviated procedure are described below.

7.1 * * *

7.2 Preparation of the Collection Train. Follow the same procedure as in Section 4.1.1, except do not weigh the isopropanol bubbler, the SO_2 absorbing impingers or the moisture absorber.

7.3 * * *

7.4 Sample Recovery. Follow the procedure in Section 4.2, except do not weigh the isopropanol bubbler, the SO_2 absorbing impingers, or the moisture absorber.

* * * * *

2. In Method 6A, replace Figures 6A–1 and 6A–2 with revised figures as shown below.

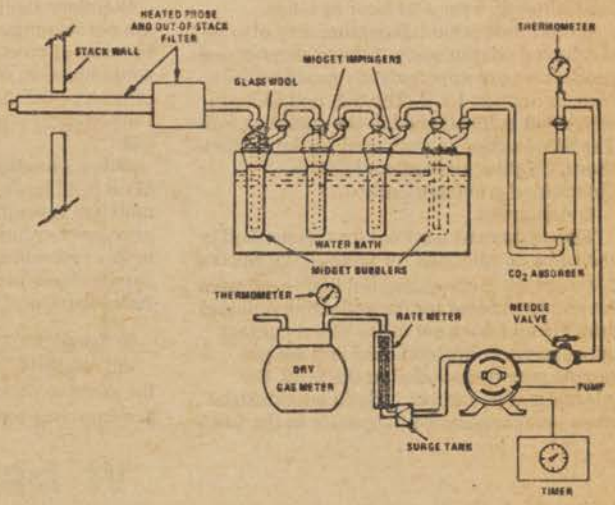

Figure 6A-1. Sampling train.

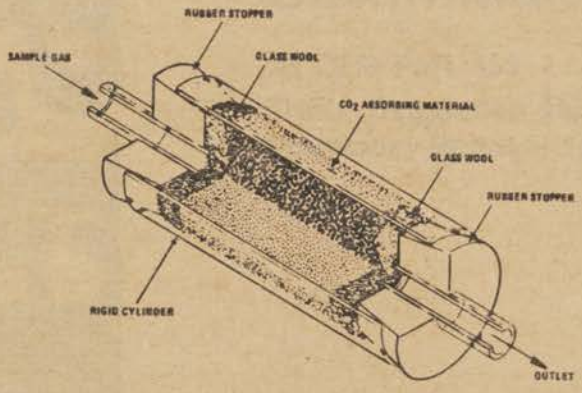

Figure 6A-2. CO_2 absorber.

3. In Method 6B, Sections 1.1, 1.2, 2, 3, and 8 are revised to read as follows:

Method 6B—Determination of Sulfur Dioxide and Carbon Dioxide Daily Average Emissions From Fossil Fuel Combustion Sources

1. *Applicability and Principle.*

1.1 Applicability. This method applies to the determination of sulfur dioxide (SO_2) emissions from combustion sources in terms of concentration (ng/m^3) and emission rate (ng/J), and for the determination of carbon dioxide (CO_2) concentration (percent) on a daily (24 hours) basis.

The minimum detectable limits, upper limit, and the interferences for SO_2 measurements

are the same as for Method 6. EPA-sponsored collaborative studies were undertaken to determine the magnitude of repeatability and reproducibility achievable by qualified testers following the procedures in this method. The results of the studies evolve from 145 field tests including comparisons with Methods 3 and 6. For measurements of emission rates from wet, flue gas desulfurization units in (ng/J), the repeatability (within laboratory precision) is 8.0 percent and the reproducibility (between laboratory precision) is 11.1 percent.

1.2 Principle. A gas sample is extracted from the sampling point in the stack intermittently over a 24-hour or other specified time period. Sampling may also be conducted continuously if the apparatus and procedures are appropriately modified (see Note in Section 4.1.1). The SO_2 and CO_2 are separated and collected in the sampling train. The SO_2 fraction is measured by the barium-thorin titration method, and CO_2 is determined gravimetrically.

2. *Apparatus.*

The equipment required for this method is the same as specified for Method 6A, Section 2, except the isopropanol bubbler is not used. An empty bubbler for the collection of liquid droplets and does not allow direct contact between the collected liquid and the gas sample may be included in the train. For intermittent operation, include an industrial timer-switch designed to operate in the "on" position at least 2 minutes continuously and "off" the remaining period over a repeating cycle. The cycle of operation in designated in the applicable regulation. At a minimum, the sampling operation should include at least 12, equal, evenly-spaced periods per 24 hours.

For applications downstream of wet scrubbers, a heated out-of-stack filter (either borosilicate glass wool or glass fiber mat) is necessary. The probe and filter should be heated continuously to at least 20° C above the sourced temperature, but not greater than 120° C. The filter (i.e., sample gas) temperature should be monitored to assure the desired temperature is maintained.

Stainless steel sampling probes, type 316, are not recommended for use with Method 6B because of potential corrosion and contamination of sample. Glass probes or other types of stainless steel, e.g., Hasteloy or Carpenter 20 are recommended for long-term use.

Other sampling equipment, such as Mae West bubblers and rigid cylinders for moisture absorption, which requires sample or reagent volumes other than those specified in this procedure for full effectiveness may be used, subject to the approval of the Administrator.

3. *Reagents.*

All reagents for sampling and analysis are the same as described in Method 6A, Section 3, except isopropanol is not used for sampling. The hydrogen peroxide absorbing solution shall be diluted to no less than 6 percent by volume, instead of 3 percent as specified in Method 6. If Method 6B is to be operated in a low sample flow condition (less than 100 ml/min), molecular sieve material may be substituted for Ascarite II as the CO_2 absorbing material. The recommended molecular sieve material is Union Carbide 1/16 inch pellets, 5A, or equivalent. Molecular sieve material need not be discarded following the sampling run provided it is regenerated as per the manufacturer's instruction. Use of molecular sieve material at flow rates higher than 100 ml/min may cause erroneous CO_2 results.

* * * * *

8. *Bibliography.*

The bibliography is the same as described in Method 6A, Section 8, with the addition of the following:

8.1 Butler, Frank E; J.E. Knoll, J.C. Suggs, M.R. Midgett, and W. Mason. The Collaborative Test of Method 6B: Twenty-Four-Hour Analysis of SO_2 and CO_2. JAPCA. Vol. 33, No. 10, October 1983.

[FR Doc. 84-6089 Filed 3-13-84; 8:45 am]

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Federal Register

Wednesday
March 14, 1984

Part IV

Federal Trade Commission

16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices; Request for Public Comments

FEDERAL TRADE COMMISSION

16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices; Request for Public Comment

AGENCY: Federal Trade Commission.

ACTION: Request for public comment.

SUMMARY: The staff of the Federal Trade Commission publishes its staff compliance guidelines for the Funeral Rule so that interested members of the public may comment on them. The purpose of the guidelines is to provide assistance to industry members regarding areas in which the staff believes that guidance should prove most helpful. The views expressed in the guidelines are those of the staff only. They have not been approved or adopted by the Commission and are not binding on the Commission. However, the guidelines will serve as enforcement criteria for the staff in assessing compliance with the trade regulation rule.

DATE: Written comments regarding the staff compliance guidelines will be accepted until April 13, 1984.

ADDRESS: Written comments should be addressed to the Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, D.C. 20580. All comments should be captioned: "Comment on Staff Compliance Guidelines—Funeral Rule—FTC File 215–46."

FOR FURTHER INFORMATION CONTACT: Lewis Rose, 202–376–2863, Attorney, Federal Trade Commission, Division of Enforcement, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

Compliance Guidelines

I. Introduction

These compliance guidelines describe certain provisions of the Federal Trade Commission's Trade Regulation Rule on Funeral Industry Practices (referred to hereafter as the "Funeral Rule" or "Rule")[1] which was promulgated on September 24, 1982.[2] The Funeral Rule has two different effective dates. Those portions of the Funeral Rule which prohibit certain oral or written misrepresentations became effective on January 1, 1984.[3] Those portions of the Funeral Rule which impose an affirmative obligation upon funeral providers (i.e., price lists, itemization, telephone disclosures, written disclosures) will take effect on April 30, 1984.[4]

These compliance guidelines cover the entire Funeral Rule and incorporate the guidelines released on December 30, 1983 for those provisions of the Rule which became effective on January 1, 1984.[5] These guidelines neither amend nor modify the Funeral Rule. The staff is publishing these guidelines to provide assistance to industry members in understanding the Commission's Rule and complying with its obligations.

The views expressed in the guidelines are those of the staff only; they have not been approved or adopted by the Commission and they are not binding on the Commission. However, the guidelines will serve as enforcement criteria for staff in assessing compliance with the Commission's Funeral Rule.

The Funeral Rule requires that funeral providers disclose detailed information about prices and legal requirements to persons arranging funerals. The Rule requires disclosures of itemized price information both over the telephone and in writing. It also prohibits misrepresentations about legal, crematory, and cemetery requirements pertaining to the disposition of human remains. Certain unfair practices are also prohibited, such as embalming for a fee without prior permission; requiring consumers to purchase caskets for direct cremation; or conditioning the purchase of any funeral good or service on the purchase of any other funeral good or service.

These guidelines explain, section by section, the provisions of the Rule which become effective on April 30, 1984 and incorporate the guidelines issued earlier explaining the provisions which became effective on January 1, 1984. Included in the discussion of each Rule provision are illustrations of how the Rule will operate in specific fact situations which may arise in the ordinary course of business of many funeral providers. The guidelines cover those areas on which guidance should prove most helpful to industry members. If you have further questions regarding the Rule, they will be handled informally by the staff, or if appropriate by the Commission, as provided for in §§ 1.1 through 1.4 of the Commission's Rules of Practice.

II. Who Must Comply With the Rule?

A. Generally

Anyone who is a "funeral provider" is covered by the Funeral Rule and must comply with all of its requirements. The Rule defines a "funeral provider" as "any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public." Only those who sell or offer to sell *both* funeral goods *and* funeral services are covered.

Funeral goods and funeral services are separately defined by the Rule. Funeral goods consist of all products sold to the public for use in connection with funeral services. Funeral services consist of two types of functions.

1. Those services used to care for and prepare human bodies for burial or other disposition; and

2. Those services used to arrange, supervise or conduct the funeral or disposition.

Both types of services must be performed in order to come within the definition of "funeral services."

Thus, in order to be classified as a funeral provider and therefore covered by the Rule, you must sell funeral goods *and* provide services to care and prepare remains for disposition *and* provide services to arrange, supervise or conduct the final disposition.

Illustration #1: You operate a traditional funeral home selling various caskets, burial clothes and/or alternative containers. In addition, you consult with the family and clergy, arrange and direct the ceremony, prepare and file required notices, and/or coordinate with the cemetery or crematory. Other services you provide include embalming, facilities for viewing, and/or preparation of the body for disposition. Are you covered by the Rule?

Yes. You are a funeral provider as defined by the Rule. The sale or offering for sale of caskets, burial clothes and/or alternative containers meets the definition of funeral goods. In addition, the professional services you offer include both care for and preparation of human bodies for burial or other disposition, and also arrangement, supervision or conducting of the funeral and/or disposition.

Illustration #2: You have a traditional funeral practice in that you sell various funeral goods, prepare remains and arrange for final dispositions. However, you have separately incorporated the sale of funeral goods from the provision of funeral services. Are you covered by the Rule?

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[1] 16 CFR Part 453.

[2] 47 FR 42260.

[3] 48 FR 45537 (October 6, 1983). The Rule provisions which became effective on January 1, 1984 are: §§ 453.1, 453.3(a)(1)(i), 453.3(a)(2)(i), 453.3(b)(1)(i), 453.3(c)(1)(i), 453.3(d)(1)(i), 453.3(e), 453.3(f)(1)(i), 453.8 and 453.9.

[4] The Rule provisions which are scheduled to become effective on April 30, 1984 are: §§ 453.2, 453.3(a)(1)(ii), 453.3(a)(2)(ii), 453.3(b)(1)(ii), 453.3(b)(2), 453.3(c)(1)(ii), 453.3(c)(2), 453.3(d)(2), 453.3(f)(1)(ii), 453.3(f)(2), 453.4, 453.5, 453.6, 453.7, and 453.10.

[5] 49 FR 559 (January 5, 1984).

Yes. Under these circumstances, you must comply with the Rule because as a person who sells funeral goods and funeral services you meet the definition of a funeral provider.

Illustration #3: You have a traditional funeral practice in that you sell various funeral goods, prepare remains and arrange for final dispositions. A consumer wants you to arrange a funeral but is providing his own casket and does not want to purchase any other funeral goods from you. Is this transaction covered by the Rule even though you are not selling funeral goods to this particular consumer?

Yes. If you sell or offer to sell funeral goods and funeral services you must comply with the Rule's provisions for every consumer, even for those consumers who wish to purchase only goods or only services.

Illustration #4: You have a traditional funeral practice in that you sell various funeral goods, prepare remains and arrange for final dispositions. Rather than maintaining your own casket selection room, you use a manufacturer's showroom to sell caskets. Are you covered by the Rule?

Yes. You are selling or offering to sell funeral goods and funeral services and therefore must comply with the Rule's provisions. This is true even though you are utilizing a manufacturer's showroom to sell caskets. Although the casket manufacturer is not covered by the Rule, as discussed in Illustration No. 5 below, you still meet the definition of a funeral provider and must comply with the Rule.

Illustration #5: You are a casket salesman or a person selling caskets or coffins or kits to make caskets. Are you covered by the Rule?

No. Casket salesmen and others, if they only sell caskets, coffins or casket kits and provide no services relating to disposition, are not covered under the Rule. They are only providing funeral goods. They must also provide funeral services in order to be covered.

Illustration #6: You operate a cemetery and want to know if you must comply with the Rule. Your cemetery sells outer burial containers and grave liners. Are you covered by the Rule?

No. Under the Rule's definitions, although you sell funeral goods, you would *not* be considered a funeral provider since you only arrange or conduct final dispositions and do not prepare remains for final dispositions. Thus, a cemetery generally only performs one of the functions included in "funeral services." It would have to provide *both* in order to be covered under the Rule.

Illustration #7: Is a cemetery which also operates a funeral home covered under the Rule?

Yes. All funeral providers are covered by the Rule, including those which are operated by a cemetery. As long as you provide funeral goods and services, you must comply with the Rule's requirements.

Illustration #8: You operate a direct disposition company which arranges for direct cremations and sells urns for cremated remains. Are you covered by the Rule?

Yes. In this situation, the Rule would cover the direct disposition company. The company is selling funeral goods (i.e., urns) and provides funeral services in that it cares for and prepares the bodies for the direct cremation *and* arranges the final disposition.

Illustration #9: Same situation as above except that your direct disposition company does not sell urns or any other funeral goods. Are you still covered?

No. In this situation, the direct disposition company would not be covered since it provides *only* mortuary and disposition services. To be covered by the Rule, you must provide both funeral goods *and* funeral services.

Illustration #10: Are crematories which sell urns and provide services to care for and prepare human bodies for final disposition covered by the Rule?

Yes. In this situation the crematory meets the definition of a funeral provider. It sells funeral goods and conducts the disposition, thereby satisfying the supervisory prong of the definition of a funeral provider. In addition, the crematory in this illustration provides those services used to care for and prepare human bodies for final disposition. However if the crematory did not provide services to care for and prepare human bodies for final disposition, it would not be covered by the Rule. In the case of a crematory, final disposition would be the cremation.

B. Pre-Need Contracts Negotiated After the Effective Date of Rule

The Rule's coverage does extend to funeral providers who sell pre-need contracts after the effective date of the Rule. That means that you must comply with all the relevant portions of the Rule when you discuss pre-need arrangements with consumers.

Illustration #1: You operate a traditional funeral home. After the Rule becomes effective, a family enters your establishment to pre-plan their funeral arrangements. Does the Rule apply?

Yes. The Rule applies in both pre-need and at-need circumstances. Therefore, you must comply with all of the relevant portions of the Rule when you discuss funeral arrangements.

Illustration #2: Same circumstances as above, but you sell pre-need contracts door to door, rather than solely in your establishment. Does the Rule apply?

Yes. The Rule requires funeral providers to comply whenever consumers inquire about funeral goods and services. Thus, the obligation of a funeral provider to comply with the Rule is not limited to discussions within the funeral home. If you visit a consumer, knowing that you are going to discuss pre-need arrangements, you should be prepared to comply with the Rule.

Illustration #3: You sell pre-need contracts to consumers at their residences on behalf of several funeral homes. You do not yourself, however, operate an establishment that provides funeral goods and services. Does the Rule apply?

Yes. In such a situation, you are an agent of a funeral provider. Therefore, you should be prepared to comply with the Rule.

C. Pre-Need Contracts Negotiated Prior to Effective Date of Rule

The Funeral Rule's coverage does not extend to pre-existing contracts such as pre-need arrangements or burial insurance policies payable in funeral goods and services.

Illustration #1: Before the Rule becomes effective, a consumer makes a pre-need arrangement with your funeral home for specific funeral goods and services. The consumer dies after the Rule goes into effect and the consumer's spouse comes to you to have you provide exactly those goods and services specified in the pre-need contract. Under these circumstances, is the transaction covered by the Rule?

No. In this situation, if you are fulfilling the obligations under a pre-existing contract, the provisions of the Rule would not apply.

Illustration #2: Same situation as Illustration #1 except that the spouse wants to upgrade the funeral arrangements specified in the pre-need contract. Does the Rule apply?

Yes. In this situation the spouse presumably intends to spend additional money for the additional funeral arrangements and has asked about funeral arrangements. Therefore, the provisions of the Rule would apply because the funeral provider is offering funeral goods and services.

III. What Price Disclosures Must Be Made? Section 453.2

A. Generally

The price disclosure provisions of the Rule contain six different parts: (1) Telephone Price Disclosures, (2) Casket Price List, (3) Outer Burial Container Price List, (4) General Price List, (5) Statement of Funeral Goods and Services Selected, and (6) a provision allowing the use of additional methods of pricing.

To assist you in understanding what the Rule requires, these compliance guides will discuss each part of the price disclosure provisions section by section. In addition, sample price lists have been appended to illustrate the Rule provisions. It is not necessary for you to adopt the sample price lists. They are only examples. In addition, the fact that the FTC's staff developed these particular price lists in no way implies that this format is the only appropriate one. In fact, there may be a variety of formats which would meet the Rule's requirements. But the model forms provide guidance on what the Rule requires and may help to answer questions you may have.

This section deals with price disclosures, but other portions of the Rule prohibit misrepresentations and require that you include certain disclosures on the General Price List. While those requirements will be discussed here, other portions of these guides should be consulted for a more extensive discussion of those parts of the Rule.

B. Price Disclosures Over the Telephone: Section 453.2(b)(1)

The Funeral Rule requires that under certain circumstances funeral providers are to make price information available over the telephone. The reason for this requirement is to enable consumers who are under obvious time pressures to do some price comparison before selecting a funeral home.

This section of the Rule has two steps. First, anyone who calls and asks about the "terms, conditions, or prices" of funeral arrangements must be told that price information is available over the telephone. Second, the Rule requires that you provide two types of information in response to questions about prices or offerings by these callers. First, the caller must be given responsive information about offerings or prices from the Outer Burial Container Price List, Casket Price List and General Price List. Second, any other questions about offerings or prices must be answered with any other information that is readily available.

Illustration #1: You are a funeral provider. At your establishment, you receive a telephone call from someone who wants to know if you sell metal caskets for under $500.00. Do you need to disclose information about prices?

Yes. The caller has asked about the "terms, conditions, or prices" of a funeral good. Therefore, you should tell the caller that price information is available over the phone, and answer the question from the information listed on your Casket Price List. No specific wording is required. You are free to respond in your own language, and can adapt your answer to the needs of each particular conversation.

Illustration #2: You are a funeral provider who receives a telephone call from a consumer who wants to know if you perform funerals for a particular religion. Do you have to inform the caller that price information is available over the telephone?

Yes. The caller has asked about the "terms or conditions" at which funeral goods or funeral services are offered.

Illustration #3: You are a funeral provider who receives a telephone call from a consumer who wants to know about the business hours of your establishment. Do you have to inform the caller that price information is available over the telephone?

No. Again, the only time funeral providers need to tell callers that price information is available over the telephone is when they ask about "terms, conditions or prices." Business hours do not trigger the disclosure of price information. However, the caller's questions should be answered because the information is readily available.

Illustration #4: Can a telephone answering machine be used to disclose the required information?

Yes. You may use any method you prefer to provide the required disclosures. You may use an answering service to record incoming calls. If you prefer to use a machine which lists the goods and services from the price lists, you may. You will need, though, to have a method to respond to callers' questions on an individual basis. This method may be just notifying consumers that if they need additional information they may call a specified number and the hours available for such information.

Illustration #5: Can a funeral provider require that callers provide their name, address, and/or phone number as a condition of providing the required disclosures?

No. While you may request such information, if the consumer refuses to provide it you must still supply accurate information from the price lists and any other information which reasonably answers the questions and which is readily available.

Illustration #6: You are a funeral provider who receives a phone call asking you to pick up a body from the place of death and transfer it to your establishment. Do you need to make the required price disclosures?

No. The caller did not ask about the "terms, conditions, or prices" and therefore, the telephone price disclosure provisions of the Rule are not triggered.

Illustration #7: Does the Rule require specific price information to be disclosed by the first person who answers the phone?

No. While the Rule does cover funeral providers, their employees and agents, if some of your employees do not posses the substantive knowledge to respond to phone inquiries, the uninformed employees could simply refer calls to someone who was familiar with prices. However, because the information would almost always be available on the price lists themselves, part-time or untrained employees should be able to simply tell persons that price information is available over the telephone and answer questions about prices from the preprinted lists. Should you desire, you are free to have these questions referred to a funeral director. However, if no funeral director is available, the person answering should tell callers who ask about the "terms, conditions, or prices" of funeral goods or services that price information is available over the telephone, and answer questions from information on the price lists. If there are questions which cannot be properly answered by referring to the price lists, and funeral director is not available, it is permissible to take a message and have a funeral director call the consumer later. However, calls requesting price information cannot be made wholly subject to the availability to a funeral director.

Illustration #8: You are a funeral provider who does not use a telephone answering service or machine during non-business hours. At midnight, a consumer dials your business phone number and the call is automatically transferred to your residence. The consumer requests price information in order to pre-plan a funeral. Does the Rule require you to provide price information to callers in such a situation?

No. In such a situation, you may inform the caller that you will provide information about the prices of the funeral goods and services you offer during the normal business hours of your establishment. However, if the

caller was inquiring about an *at-need* situation, then the Rule would require you to make the required price disclosures at that time.

Illustration #9: You are a funeral provider who uses a telephone answering service during non-business hours. Is that service subject to the Rule and therefore required to make price information available to callers?

No. To the extent that a funeral home uses a telephone answering service during non-business hours, that service is not subject to the provisions of the Rule. Therefore, the service would not be required to provide price information.

C. Price Disclosures for Caskets: Section 453.2(b)(2)

This provision of the Rule requires funeral providers who sell or offer to sell caskets or alternative containers to prepare a Casket Price List. The list is to be shown to persons who inquire in person about caskets or alternative containers. Thus, you should show consumers the casket price information when the subject is raised. You do not have to force consumers to read the information, but you should allow them to read it if they desire. You do not have to give consumers the list to keep, though you can if you wish. The list must disclose at least the following information:

(1) The name of the funeral provider's place of business;

(2) A caption describing the list as a "casket price list;"

(3) The retail prices of all caskets and alternative containers offered which do not require special ordering;

(4) The effective date of the price list; and

(5) Enough descriptive information to identify each offering.

Illustration #1: Do funeral providers have to list any descriptive information about the caskets and alternative containers they offer in addition to the price?

Yes. In addition to prices, funeral providers must supply a certain amount of descriptive information about each casket offered, including alternative containers if direct cremations are offered. Enough information should be provided to enable consumers to identify the specific casket or container. Thus, the price list may include a photograph; model number; or a description of the exterior appearance, including the gauge of metal or type of wood, the exterior trimming, and the type of interior fabrics or other material. Any other information you desire can be disclosed as well. The descriptions in the model casket price list should prove helpful to you. (See Attachment 1.)

Illustration #2: Does the Rule require that caskets be listed in any particular order?

No. Any arrangement of the caskets that you prefer is allowed. There is no requirement that caskets be listed in any particular order, either least to most expensive or vice versa. However, all disclosures must be made in a clear and conspicuous manner.

Illustration #3: Does the Rule require caskets which must be specially ordered to be listed on the casket price list?

No. This provision only applies to caskets that are usually offered for sale and do not require special ordering. Thus, all caskets which are in stock and available need to be on the list. In addition, the alternative containers offered for direct cremation, if that is a service you provide, need to be listed on the casket price list. However, if caskets or alternative containers must be ordered specially you need not include them on your price list.

Illustration #4: Are there a variety of formats allowed to provide casket and alternative container price information to consumers?

Yes. Funeral providers may choose among a variety of different disclosure formats: a separate price list for caskets and alternative containers; notebooks, brochures, or charts; inclusion of this information on the General Price List; or any other format desired, as long as the information required by the Rule is disclosed. The first of the methods is to provide a separate price list for caskets and alternative containers. This must be typewritten or printed and must contain all of the disclosures explained above. The second method is to use notebooks, brochures, or charts, which may be more convenient for some funeral providers, particularly those with low inventory levels. Using this method, for example, the funeral provider could prepare a three ring binder with inserts for each type of offering. As the supply of a particular item on the list was exhausted, the page would be removed. Similarly, if new stock arrives, the funeral provider would simply add an insert about that product with the required information. Additionally, some funeral providers may prefer to place the required information onto the General Price List. Finally, funeral providers are permitted to use any other format they desire if the information required by the Rule is disclosed.

Illustration #5: You are a funeral provider who does not have caskets on display in your establishment. Instead, you use a local manufacturer's casket showroom. Do you need to prepare a casket price list?

Yes. Funeral providers who use manufacturers' or suppliers' casket showrooms in lieu of their own casket selection room must still prepare casket price lists. This does not mean that all of the manufacturers' or suppliers' caskets have to be listed. Rather, you should list those caskets which are part of the regular offerings you provide to your customers. The casket price list should be offered to the consumer upon beginning discussion of, but in any event, before the consumer is shown the offerings.

Illustration #6: Does the Rule require you to print a new casket price list each time you sell a casket if the sale means that one of the caskets on the list will not be available for a short period of time?

No. The Rule does not require funeral providers to prepare a new price list each time a casket is sold. If a casket is temporarily out of stock, the funeral provider can simply inform the consumer of this fact when the price list is given to the consumer.

Illustration #7: Does the casket price list have to be given to consumers for their retention?

No. The funeral provider merely has to make it available to consumers who inquire in person about the offerings or prices of caskets or alternative containers. You do not have to give a copy of the casket price list to a consumer to keep. The consumer simply must have the opportunity to look at the list before discussing your offerings or seeing the caskets or alternative containers.

Illustration #8: Can a funeral provider put the information required for the casket price list on the General Price List rather than having a separate document, notebook, chart, or brochure?

Yes. Funeral providers do not have to make a casket price list available if they prefer to place the required information on the General Price List. Of course, if this option is chosen, the information must be in a form that consumers can retain after they leave your establishment.

D. Price Disclosures for Outer Burial Containers: Section 453.2(b)(3)

This provision of the Rule requires funeral providers who sell or offer to sell outer burial containers to prepare a price list for these particular funeral goods. The list is to be shown to persons who inquire in person about burial container offerings or prices upon beginning discussion of, but in any event, before showing the containers. The list must disclose at least the following information:

(1) The name of the funeral provider's place of business;

(2) A caption describing the list as an "outer burial container price list;"

(3) The effective date of the price list;

(4) The retail prices of all outer burial containers offered which do not require special ordering; and

(5) Enough information to identify each container.

In addition, a separate section of the Rule requires the following disclosure to be placed in immediate conjunction with the price disclosures:

In most areas of the country no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements.

Illustration #1: You are a funeral provider who does not sell or offer to sell outer burial containers. Do you have to prepare an outer burial container price list?

No. Only those funeral providers who sell or offer to sell outer burial containers need to prepare a price list for these products. Moreover, the Rule does not require these goods to be offered for sale.

Illustration #2: Does the Rule require the containers to be listed in any particular order?

No. Any arrangement of the containers that you prefer is allowed. There is no requirement that containers be listed in any particular order, either least to most expensive, or vice versa. However, all disclosures must be made in a clear and conspicuous manner.

Illustration #3: Does the Rule require containers which must be specially ordered to be listed on the price list?

No. This provision only applies to containers that are usually offered for sale and do not require special ordering. Thus, all containers which you keep in inventory and are available should be listed. However, any containers that need to be ordered specially do not need to appear on the list.

Illustration #4: Are there a variety of formats allowed to provide outer burial container price information to consumers?

Yes. Funeral providers may choose among a variety of different disclosure formats: a separate price list for outer burial containers; notebooks, brochures, or charts; inclusion of this information on the General Price List; or any other format, as long as the information required by the Rule is disclosed. The first of the three methods is to provide a separate price list for outer burial containers. This must be typed or printed and must contain all of the disclosures explained above. The second method, using notebooks, brochures or charts may be more convenient for some funeral providers. Additionally, some funeral providers may perfer to place the required information onto the General Price List. Finally, funeral providers are permitted to use any other format which discloses the required information.

Illustration #5: Does the Outer Burial Container Price Light have to be given to the consumer for their retention?

No. Funeral providers who prepare either a separate container price list or who use notebooks, brochures, or charts merely need to show it to consumers who inquire in person about the offering or prices or containers. If these formats are used, you do not have to give a copy to the consumer to keep. However, if the funeral provider decides to place the required disclosures on the General Price List rather than use a separate list, or notebooks, brochures, or charts, the list must be given to consumers for their retention, if they desire.

E. Price Disclosure for Funeral Goods and Services: Section 453.2(b)(4)

(1) *A word on itemization.* The keystone of the Funeral Rule is the General Price List. It requires that you itemize certain prices for the various funeral goods and services that you offer so that consumers who wish to can compare prices or choose those elements of a funeral that they desire. In order to do this the Rule requires that at a minimum you itemize prices for sixteen specified goods and services, if you offer those goods and services. You must also itemize prices for other goods and services you offer. Note that the Rule does not prohibit you from offering package funerals as long as itemization is an option for consumers who arrange funerals at your establishment. (See Part III G of these guidelines for a discussion of package pricing under the Rule.)

A separate price should be assigned to each of the funeral goods and services which you regularly offer to your customers. The Rule requires, for example, that you itemize the price for use of a hearse, if that is a funeral good you offer to customers. That price does not have to be further broken down into separate costs for loading and unloading, gasoline, washing the hearse, paying the driver, etc.

This example applies to other items as well. As long as you provide a separate price for each basic part of the funeral that you offer to consumers, you will be in compliance.

(2) *Information on the General Price List.* The General Price List must contain a caption at the top of the page calling it a "General Price List." This caption must also contain the date the prices on the General Price List become effective and the funeral provider's name, address and telephone number. The list must be typed or printed and consumers must be given copies to keep.

There are several distinct parts of the General Price List. The rule provides some flexibility in the manner in which you choose to design the General Price List. The following guides point out those areas of the Rule which allow you flexibility in preparing your price lists.

To assist you in understanding what the Rule requires, sample price lists have been appended to illustrate the Rule provisions. These model forms provide guidance on what the Rule requires and may help to answer questions you may have.

a. Basic Information. This first section of the General Price List must contain two general disclosures. The first disclosure is a general statement on itemization which must precede the list of prices. The statement must read:

The goods or services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

If you choose to require a separate charge for your services that a consumer may not decline, an additional sentence must be inserted between the second and third sentences of the above disclosure. That extra sentence reads:

However, any funeral arrangements you select will include a charge for our services.

A second disclosure that must be included on this part of the General Price List deals with cash advance items. The required disclosure must read as follows:

This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected.

The Rule does not prohibit you from charging consumers for arranging these items but if you charge consumers more than the actual cost, or "receive and retain a rebate, commission or trade or volume discount" which is not passed on to the consumer, an additional sentence must be added at the end of the above disclosure, stating: "We charge you for our services in buying these items." The cash advance disclosures must be positioned in

immediate conjunction with the main group of price disclosures; that is, it precede them, be at the end, or be included among them.

b. Forwarding and Receiving Remains, Direct Cremations and Immediate Burials; Sections 453.2(b)(4)(ii)(A)–(D). The Rule requires funeral providers to disclose their prices for fowarding and receiving remains, direct cremations and immediate burials. Unlike the remainder of the goods and services which must be disclosed on the General Price List, these four disclosures should inlcude the charge for the professional services of the funeral provider in the price of the offerings. In addition, a brief description of the services provided must also be disclosed.

(i) *Forwarding of Remains to Another Funeral Home.* If you provide this service for consumers who request it, you must disclose the price you charge. Again, in setting a charge for this you are free to choose any pricing method that suits your needs, no long as a consumer is able to obtain an accurate indication of the price from this segment of the General Price List. The Rule requires that you include any charge for your professional services in the prices for forwarding remains. In addition, you must include a brief list of the services you provide in conjunction with this item. Note that the disclosure required in the section dealing with charges for your services includes a brief notice that your fee for professional services does not apply to the services involved in forwarding remains.
(§§ 453.2(b)(4)(ii)(A) and 453.2(b)(4)(ii)(C)(aa)).

(ii) *Receiving Remains from another Funeral Home.* This is treated basically the same way as the requirement on forwarding remains. It only needs to be included on your General Price List if you provide it, and you must include a list of the services you provide. The Rule requires that you include any charge for your professional services in the price you charge for receiving remains (§ 453.2(b)(4)(ii)(B)).

(iii) *Direct Cremations.* You only need to include this on your price list if it is a service that you provide. This is another area in which the fee for your professional service must be included in the quoted price.

The Rule requires you to list the price range for direct cremations if you offer more than one basic type of direct cremation.

First, you must give a price for a direct cremation if the consumer provides the container. This, of course, means that you must allow consumers to provide their own container if they desire, as long as the container is suitable in meeting any state or crematory requirement.

Second, you must provide a price for each direct cremation that occurs with an unfinished wood box or alternative container. This means that if you offer direct cremations you must make either an unfinished wood box or alternative container available for consumers who request them. The Rule also requires that you provide a disclosure about unfinished wood boxes or alternative containers. It must be placed in immediate conjunction with the prices for direct cremations and it must read as follows:

> If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or pouches of canvas.

Finally, you must include a description of the professional services you include in each price and a description of the container, if the consumer does not provide one, for any quoted price. The description of the container need not be extensive. It serves the same purpose as the descriptive provision for caskets—informing consumers about what they are buying §§ 453.2(b)(4)(ii)(C), 453.3(b)(2)).

(iv) *Immediate Burial.* This provision is similar to the one for direct cremations. There is only one difference. You are not required to make an alternative container or unfinished wood box available for immediate burials. Therefore, if you offer immediate burials but not direct cremations, the rule does not require that you make alternative containers available. You may, however, whish to provide such containers, and if you do so you need to note a price for this and include a list of the basic services that you provide that are included in that fee § 453.2(b)(4)(ii)(D)).

c. Other Items Which Must Be Itemized If Offered. (i) *Transfer of Remains to Funeral Home.* Your charges for the transfer of the remains to the funeral home must be disclosed. You may choose any pricing method you desire, such as by mileage, an hourly rate or a flat fee. You need not list the services associated with the charge, as the Rule allows you to include any service charges in your charge for services of the funeral director and staff. This holds true for each of the other price disclosure portions of the Rule following in this section
§§ 453.2(b)(4)(ii)(E), 453.2(b)(4)(iii)(C)(aa)).

(ii) *Embalming.* You must disclose what you charge for embalming on the General Price List. In addition, the Rule requires that you include an affirmative disclosure in this part your General Price List that must read:

> Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as direct cremation or immediate burial §§ 453.2(b)(4)(ii)(F), 453.3(a)(2)(ii)).

(iii) *Other Preparation of the Body.* If you perform other preparations of the body you should provide a price for that service. If you wish you may also provide a brief note on what this includes, such as cosmetic touches, clothing, etc. But you do not have to break down the cost for each of these preparation services unless you want to § 453.2(b)(4)(ii)(G)).

(iv) *Use of Facilities for Viewing.* You may use whatever method you prefer to disclose your charge for this service. For example, one workable method may be to list the different viewing locations within the funeral home and provide charges by day, half day, or hour, depending upon the local customs in your area § 453.2(b)(4)(ii)(H)).

(v) *Use of Facilities for Funeral Ceremony.* If you provide facilities for the funeral ceremony you must provide a price. Again, the method of doing this is up to each funeral provider § 453.2(b)(4)(ii)(I)).

(vi) *Other Use of Facilities.* If you offer the use of other facilities in the funeral home you need to list them on the General Price List. Thus if you provide other facilities, such as a tent and chairs for a graveside service, those prices should be disclosed in this part of your General Price List § 453.2(b)(4)(ii)(J)).

(vii) *Hearse.* You must disclose the price you charge for use of a hearse. You may use any method of setting the price that you choose § 453.2(b)(4)(ii)(K)).

(viii) *Limousine.* If you provide the use of a limousine for family, clergy, etc. you must disclose this price on the General Price List § 453.2(b)(4)(ii)(L)).

(ix) *Other Automotive Equipment.* If you provide other automotive equipment, such as a flower car, family sedan or pall bearers car, you must disclose the price and include a general description § 453.2(b)(4)(ii)(M))

(x) *Acknowledgement Cards.* If you sell those items or if you perform the service of filling out and sending these for consumers you must quote a price on

the General Price List § 453.2(b)(4)(ii)(N)).

d. Casket Prices. Disclosure of prices for caskets may be handled in one of two ways; either on the General Price List or on a separate Casket Price List. If a separate Casket Price List is provided the General Price List must still briefly discuss casket prices. All that is required is that the range of casket prices be disclosed and an accompanying statement be included that says: "A complete price list will be provided at the funeral home" § 453.2(b)(4)(iii)(A)(aa)).

The second option is to put all casket prices on the General Price List. The explanation for doing this is contained in the section on casket prices dealt with earlier. Basically this simply requires that you provide a description and price for each type of casket you provide § 453.2(b)(4)(iii)(A)(bb)).

e. Outer Burial Container Prices. The next part of the Rule deals with Outer Burial Container prices on the General Price List. If you offer Outer Burial Containers you can either provide a separate price list or include these prices on the General Price List. If you provide a separate price list the General Price List must contain a brief statement of the price range for Outer Burial Containers and be accompanied by the statement: "A complete price list will be provided at the funeral home." If you choose to put these prices on the General Price List you must comply with the Outer Burial Container price list requirements of describing the types and prices of the Outer Burial Containers you offer § 453.2(b)(4)(iii)(B)).

f. Charges For Professional Services of the Funeral Director. The final item that must be discussed on the General Price List is a provision for the cost of the professional services provided by the funeral director and staff. The charges for services entailed in forwarding and receiving remains, direct cremations and immediate burials will not be involved here, as the Rule requires that you include service costs in the prices for those particular items.

The charges for your other services, however, can be presented on the General Price List in one of two different ways. The first is to set these out separately and the second is to include your service charges in the price of caskets. Alternative 1 of the appended sample General Price Lists is designed to deal with charges for services set out separately and alternative 2 of the appended sample General Price Lists includes those charges in casket prices. The choice of method is one that each funeral provider will want to make after considering what will be best for their establishment.

The first method is to disclose these service charges separately. If you price your services in this manner you must include a brief statement of the principal services you provide and the cost. If a charge for your services is something consumers may not decline you must also provide the following disclosure:

> This fee for our services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)

The statement in parentheses simply lets consumers know that you are not charging them twice for your services for direct cremations, immediate burials, and forwarding or receiving remains.

The second method you can employ in charging for your services is to include the price of your services in the cost of caskets you offer for sale. If you choose this method of pricing you must include a disclosure stating:

> Please note that a fee for the use of our services is included in the price of our caskets. Our services include (specify).

You should include a brief list of the principal services you provide in this disclosure where it says "specify." You do not have to provide separate prices for these services.

This disclosure must be placed in the part of the General Price List dealing with casket prices. If you have a separate Casket Price List this should be included in conjunction with the statement of casket price ranges on the General Price List. If you include casket prices on the General Price List this disclosure must appear in conjunction with your list of those prices (§ 453.2(b)(4)(iii)(C)).

(3) *Distribution of the General Price List.* The Rule requires the General Price List to be given to consumers who inquire in person about funeral arrangements or the price of funeral goods or services. The list must be offered to consumers upon beginning discussion either of funeral arrangements or of the selction of any funeral goods or funeral services.

Illustration #1: A family enters your establishment to discuss funeral arrangements for a relative. When the subject is raised, you offer them a copy of your General Price list. Are you in compliance with the Rule?

Yes. The family has inquired in person about funeral arrangements. Therefore, the list must be offered to them.

Illustration #2: You are a funeral provider who receives a phone call from a consumer who asks you about the price of a direct cremation. In compliance with the telephone price disclosure provisions of the Rule, you inform them of the price you charge for this service. The caller then asks you to send them a copy of your General Price List. Does the Rule require you to send them a copy?

No. The Rule requires that the General Price list be given only to consumers who inquire in person about funeral arrangements or the prices of funeral goods or services. It does not require funeral providers to send price lists to consumers who telephone and request a copy.

Illustration #3: You are a funeral provider who arranges for tours of your establishment by students. During one such tour, a student asks you about the price of embalming. Does the Rule require you to give the student a copy of your General Price List?

No. Although the student asked about the price of a funeral service, the Rule does not require funeral providers to distribute price lists to persons who are touring the establishment for funeral providers for educational purposes.

Ilustration #4: A family enters your establishment to discuss the funeral arrangements for a relative. During the conference, the family asks about the selection of various services such as embalming or refrigeration. At the time the subject is raised, you tell the family that a General Price List of the goods and services you offer is located just inside of the front door of your establishment. Are you in compliance with the Rule?

No. The Rule requires that the list be given to consumers. Merely indicating that the price list is available at some location in your establishment is not enough.

Illustration #5: A family enters your estasblishment to discuss funeral arangements for a relative. At that time you offer them your General Price List but the family refuses to accept it. Does the Rule require you to take any further steps to force the family to accept the list?

No. The Rule merely requires that you offer it to consumers. If they do not wish to accept it or look at it, you are not required to take any further action.

Illustration #6: You are a funeral provider who makes funeral arrangements for children or infants available at a different price than your regular offerings. Does the Rule prohibit you from setting a different price for children's and infant's funerals?

No. Funeral providers are free to set their prices in any manner desired so long as they comply with the disclosure requirements of the Rule. Thus, funeral

providers may establish a different fee for their professional services for children's or infant's funerals. To comply with the Rule in this situation, the funeral provider may simply place a second disclosure for professional services on the General Price List, indicate that the fee applies only to children's and infant's funerals, and describe the services provided for the fee. Funeral providers who are reluctant to itemize the price of a children's or infant's funeral on their General Price List may prepare a separate General Price List for children's and infant's funerals. This separate price list could be given only to those consumers who want to discuss funeral arrangements for a child or an infant. Persons who call your place of business to inquire about your offerings or prices for the funeral of a child or infant should be provided information from your General Price List or a separate General Price List pertaining to such funerals.

In addition, funeral providers may either disclose the prices of the caskets or outer burial containers they offer for children or infants on either the Casket Price List or Outer Burial Container Price List, or they may prepare a separate price list for these items.

Illustration #7: You are a funeral provider who makes funeral arrangements for indigent persons in your community, pursuant to an agreement between you and a government entity. Must you offer a price list to the government when this agreement is arranged?

Yes. The Rule requires funeral providers to comply with the Rule when they discuss funeral arrangement with governmental entities. However, funeral providers are free to set their prices in any manner desired so long as the disclosure requirements of the Rule are met. To comply with the Rule in this situation, funeral providers may simply add their price for funeral arrangements for indigents to their General Price List, or prepare a separate price list for these arrangements.

F. Price Disclosures at the Conclusion of the Arrangements Discussion: Section 453.3(b)(5)

This provision of the Rule requires funeral providers to prepare a document which lists the funeral goods and services selected by the consumer. This document must be given to consumers at the conclusion of the arrangement discussion. The list must disclose at least the following information:

(1) The goods and services selected and the price to be paid for each item;

(2) The price of each cash advance item requested; and

(3) The total cost of the goods and services selected.

In addition, the following disclosure must be placed on the statement:

Charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below.

To comply with this disclosure, you must identify and disclose in writing any legal, cemetery or crematory requirement which mandates that the consumer purchase a specific funeral good or service.

Illustration #1: You are a funeral provider who already includes the information required by the Statement of Funeral Goods and Services Selected on a document that you regularly provide to consumers at the conclusion of the arrangements conference. Does the Rule require you to prepare another document to comply with this provision?

No. Funeral providers who already provide the disclosures required by the Rule on any other statement, contract or other document given to consumers at the conclusion of the arrangements conference need not prepare a second document to comply with the Rule. However, the statement given to consumers at the time must include the required disclosure regarding legal requirements, above, and funeral providers are required to explain any such requirement on the statement.

Illustration #2: Does the statement required by the Rule mean that consumers are to pay in advance?

No. The Rule does not require that consumers pay in advance. It simply means that funeral providers and consumers are to agree on the type of funeral and the costs, in advance of beginning the arrangements.

Illustration #3: You are a funeral provider who purchases cash advance items on behalf of consumers who arrange funerals through your establishment. At the time of the arrangements conference you often do not know the exact price of the cash advance items. Do you have to disclose the exact price of cash advance items on the statement?

No. The prices of cash advance items need only be given to the extent known or reasonably ascertainable at the time of the arrangements conference. If the prices are not known or are not reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.

Illustration #4: Is it permissible to simply lump all of the cash advance items into one general disclosure marked "Cash Advances" with one price?

No. Each cash advance item must be separately itemized. Thus, the Statement of Funeral Goods and Services Selected must have a separate itemized price for each type of cash advance item requested by the consumer.

Illustration #5: You are a funeral provider who wants to use the Statement of Funeral Goods and Services Selected as the final bill. Are there any other disclosures required by the Rule which must appear on the final bill?

Yes. If you use the Statement of Funeral Goods and Services Selected as a final bill, the following disclosures must be added:

If you selected a funeral which requires embalming, such as a funeral with a viewing, you may have to pay for embalming.

You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial.

If we charged for embalming, we will explain why below.

In accordance with this disclosure, you should explain, in writing, the reason why a fee for embalming has been included on the final bill, if the consumer has been charged for embalming.

Illustration #6: You are a funeral provider who offers package funerals in addition to itemized funerals. A consumer arranges for you to provide a package funeral. Do you still need to prepare a Statement of Funeral Goods and Services Selected?

Yes. If a consumer selects a package funeral, the funeral provider must still prepare a Statement of Funeral Goods and Services Selected. The statement, in such an instance, would simply list the package chosen (with the goods and services comprising the package), the price of any cash advance items requested by the consumer but not included in the package, and the total price of the arrangements requested.

G. Other Pricing Information: Section 453.2(b)(6)

This provision of the Rule allows funeral providers to offer any other pricing information formats to persons arranging funerals, so long as the funeral provider complies with the Rule requirements for price lists and Statement of Funeral Goods and Services Selected. While the Rule must be followed, funeral providers can provide additonal information if desired.

Illustration #1: Can a funeral provider offer package pricing?

Yes. Funeral providers may offer package funerals so long as consumers are given the option of making funeral arrangements on an itemized basis. Thus, funeral providers can, in addition to offering funerals on an itemized basis, also provide package prices for various types of funerals, if desired. This option of including package prices does not allow you to disregard the itemized prices and disclosures required by the Rule. Beyond this, however, you may put the package and itemized prices in any order. In addition, the general itemization provisions of the Rule do not require funeral providers to itemize prices within any packages offered. In addition, the Rule does not require that the total price of any package offered be equal to the total cost of the same components offered on an itemized basis on the General Price List.

IV. What Representations Are Prohibited? Section 453.3

The requirements of this section fall into two basic categories. The first set of provisions state that you cannot make any misrepresentations to consumers in six specific areas which are described below. The second category of provisions requires you to affirmatively disclose certain information to consumers *in writing.* The Rule specifies where to put these disclosures. The Rule also requires that the disclosures be clear and conspicuous.

A. Representations Concerning Embalming: Section 453.3(a)

This provision prohibits you from telling consumers that state or local law requires you to embalm the remains whenever that is not true. Consequently, you may not tell a consumer that you are required to embalm under any of the following circumstances, *unless state or local law requires it:*

(1) When the consumer wishes to have a *direct cremation;*

(2) When the consumer wishes to have an *immediate burial;*

(3) When the remains are placed in a *sealed casket;*

(4) If refrigeration is available *and* there is to be a funeral with no viewing or visitation *and,* there is to be a closed casket.

This provision also requires you to inform consumers in writing that, except in certain special cases, the law does not require embalming. You must place a disclosure to this effect on your General Price List, *next to the price for embalming.* The precise disclosure that you must make is as follows:

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as direct cremation or immediate burial.

Illustration #1: A family wants you to arrange for a funeral involving an immediate burial, with no viewing. Can you tell the family that embalming is required?

No. Unless there is some state or local law that requires it, you may not make any representation to this family that embalming is required. The Rule also requires you to place the specified written disclosure on your General Price List that embalming is not usually required by law. The precise language of this disclosure appears above.

Illustration #2: Your establishment has refrigeration facilities available. The law in your jurisdiction states that if there is no burial or cremation within two days of the date of death, the remains must be either embalmed or refrigerated. A family comes to your funeral home and wants you to plan a funeral for them. There is to be no viewing, but the burial will not take place until three days after the person died. Can you tell the family that embalming is required?

Yes, but only if you told them that refrigeration is an option. However, if the state law referred to embalming only, and did not list refrigeration as an option, the Rule would not be violated if you told the family that embalming was required by law. Your price list must also make the specified written disclosures regarding embalming.

Illustration #3: A family comes to your funeral home and wants you to plan a funeral for them. The family requests that there be no viewing, that the remains be placed in a sealed casket, and requests two days of visitation. Under the particular circumstances, the law does not require that the body be embalmed. Can you represent to the family that embalming is required?

No. Under these circumstances, you may not represent to the family that embalming is required because the remains have been placed in a sealed casket. Also, you must place the specified written disclosure regarding embalming on your price list.

Illustration #4: Your state law provides that whenever a person has died of certain highly contagious diseases, such as diphtheria, smallpox or malaria, the remains must be embalmed. A family comes to your establishment to arrange a funeral service for someone who died of smallpox. Can you represent to the family that embalming is required?

Yes. In this situation, you may inform the family that because of the precise circumstances, embalming is required by law. However, you must still include the disclosure on your price list that embalming is not *usually* required by law. (*Also* you must put a disclosure on your Statement of Funeral Goods and Services Selected that briefly describes the state law requirement. This provision is discussed earlier in Part IV F.)

Illustration #5: A family enters your establishment and wants to arrange for a funeral with a formal viewing. The funeral is to occur two days after the death has occurred on a hot summer day. In your jurisdiction, there is no law or regulation that requires embalming. You do not have refrigeration facilities and the family does not want a sealed casket. Can you tell the family that embalming is required?

Yes. In this situation, even though there is no *legal* requirement that the body be embalmed, the Rule allows you to tell the family that embalming is a *practical* necessity to delay decomposition of the remains and to preserve them for viewing. However, you may *not* tell the family that the law requires embalming since that is not the case. In addition, you must include the written disclosure on your General Price List that embalming is not usually required by law.

Illustration #6: A family enters your establishment and wants to arrange an immediate burial with no viewing. However, before burial, a family member wants to look at the body by lifting the lid of the unsealed casket. In your jurisdiction, there is no law or regulation that requires embalming. Can you tell the family that embalming is required?

No. You may not tell the family that the law requires embalming since that is not true. In addition the fact that a family member wants to look at the remains does not constitute a formal viewing which would enable you to tell the family that embalming is required. Finally, you must include the written disclosure on your General Price List regarding embalming.

Illustration #7: Can a funeral provider choose to orally inform consumers that embalming is not generally required by law and that depending on the funeral chosen, they may not need to have embalming performed rather than placing a written disclosure on the Price List?

No. The Rule requires funeral providers to make the disclosures in

writing on the Price List. However, funeral providers may in addition to making the written disclosures inform consumers orally that embalming is not generally required by law.

Cross-Reference: This provision operates in tandem with a related provision that sets forth the guidelines that govern when you may embalm the remins for a fee. We discuss that provision below. (See Part VI.)

B. Representations Concerning Caskets for Cremations: Section 453.3(b)

This provision prohibits you from telling consumers that state or local law requires them to purchase a casket when they wish to arrange for a direct cremation. The Rule defines a "direct cremation" as one that occurs without any formal viewing of the remains or any visitation or ceremony with the body present.

This provision also states that you may not tell a consumer that a casket is required for a direct cremation unless you make clear that you are only referring to an unfinished wood box. The Rule defines "unfinished wood box" as an unornamented casket which is made of wood and which does not have a fixed interior lining.

If you arrange direct cremations for your clients you must disclose certain information to them. You must make the disclosure in writing, and it must appear on your General Price List next to the place where you list the price range for direct cremations. The disclosure is as follows:

> If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or pouches of canvas.

Illustration #1: A family enters your establishment and wants to arrange for a funeral involving a direct cremation. This is one of the services that your establishment provides. Can you represent that a casket is required by law?

No. You may not make any representation to the family that either state or local law requires them to purchase a casket. In addition, you may not inform the family that they are required to buy any sort of casket, other than an unfinished wood box, for a direct cremation. Finally, you must place a written disclosure on your General Price List that either unfinished wood boxes or alternative containers are available for direct cremations. The precise language of this disclosure appears above.

Illustration #2: A family wants to arrange for a funeral involving a direct cremation. This is not a service that your establishment provides. Can you tell them that the law requires them to buy a casket in such a circumstance?

No. You may *not* make any statement that caskets are required for direct cremations. However, in this instance, you are not required to make any written disclosures about the availability of alternative containers for immediate burials since the Rule requires you to do so only when you offer direct cremations.

Illustration #3: A family requests that you arrange for an immediate burial. Must you tell the family that they have the option of buying an alternative container or unfinished wooden box?

No. In this instance, you are not required to inform the family that they can use an unfinished wood box or an alternative container since that requirement only applies when you are furnishing a direct cremation.

Illustration #4: A family enters your establishment and asks you to arrange a funeral involving cremation. However, they also want a service with viewing of the remains and the cremation afterwards. Do you have to tell the family that alternative containers or unfinished wooden boxes are available?

Yes. If your establishment offers direct cremations, the Rule still requires you to make the written disclosure that unfinished wood boxes or alternative containers are available. However, you may explain to the family that those items apply for *direct* cremations and that they are not necessarily available for cremations that occur after a viewing. The Rule does not prevent you from selling a casket in this situation.

Cross Reference: This provision operates in tandem with a related provision that sets forth the guidelines governing the sale of receptacles for remains that are to be cremated. We discuss that provision below. (See Part V.)

C. Representations Concerning Outer Burial Containers: Section 453.3(c)

This provision states that you may not tell consumers that state or local laws or regulations require the purchase of an outer burial container if that is not true; or that a particular cemetery requires an outer burial container, if that is not true.

The provision also requires you to inform consumers that state law does not require them to purchase an outer burial container. This information must appear on your General Price List next to the prices for outer burial containers or on the separate price list for outer burial containers if you use one. The precise language is as follows:

> In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements.

In essence, therefore, the Rule states that you must make it clear to consumers that the *law* does not require an outer burial container. However, if the *cemetery* imposes such a requirement, you may explain this fact to the family. You must also inform consumers that grave liners are suitable for meeting the cemetery requirement. The Rule does not require you to have extensive legal knowledge. However, if you tell the family that the law requires an outer burial container, you must be prepared to verify that statement. You also need not be aware of the requirements of every cemetery. However, as before, if you make any statement that a cemetery requires an outer burial container, that statement must be accurate.

Illustration #1: A family wants you to arrange a funeral involving a ground burial. No state or local laws or regulations require the purchase of an outer burial container. Moreover, there is no cemetery requirement that an outer burial container be used. Can you represent that an outer burial container is required?

No. In this instance, you may not tell the family that an outer burial container is required by any state or local law or regulation, or by the cemetery in question. In addition, you must place the specified disclosure regarding outer burial containers on your price list. The precise language of this disclosure appears above.

Illustration #2: A family wishes to arrange a funeral with a ground burial. No state or local law or regulation requires outer burial containers. However, the cemetery that the family has chosen requires that the casket be placed in a rigid outer container. Can you represent that an outer burial container is required?

Yes. In this instance, you may tell the family that the cemetery requires the outer burial container. You may not, however, make any statement that the law requires the purchase of an outer burial container since that is not true in this particular case. You must also place the written disclosure on your price list.

D. Representations Concerning Legal and Cemetery Requirements: Section 453.3(d)

This provision states that you may not tell consumers that federal, state or local law requires them to buy a particular funeral good or funeral service if that is not true. You also may not tell consumers that a particular crematory or cemetery requires them to buy a particular good or service if in fact there are no such requirements.

If you tell a consumer that he or she must purchase a particular funeral good or funeral service because of any legal, cemetery or crematory requirement, you must do the following:.

—Identify the particular requirement in writing on the Statement of Funeral Goods and Services Selected; and

—Briefly describe the requirement in writing on that same document.

The Rule requires you to make this written disclosure *whenever* you tell a family that they must purchase a good or service because of a legal, cemetery or crematory requirement.

Illustration #1: The law in your state requires that if you are going to ship the remains into another state, you must place those remains in a sealed casket. A family asks you to arrange a funeral and requests that you ship the remains to another state for burial. Can you inform them that they must buy a sealed casket under these circumstances?

Yes. In this instance, the law requires you to use a sealed casket. Because of these legal requirements, you may inform the family that there are certain purchases that they must make. You must also disclose the laws that require the purchase of these items on the Statement of Funeral Goods and Services Selected. This means that you should generally indicate that state law requires this purchase and also provide a brief description of the requirement. For example, if you write "state law requires a sealed casket when remains are transported into another state," you would comply with the Rule.

Illustration #2: A family enters your establishment and asks you to arrange a burial in a local cemetery. The cemetery does not require any particular funeral goods for burial. Can you inform the family the cemetery requires them to buy a specific type of sealed casket under those circumstances?

No. You may not tell a consumer that a particular good or service is required if in fact there are no such requirements.

E. Representations Concerning Preservative and Protective Value Claims: Section 453.3(e).

This provision states that you may not tell consumers that any funeral goods or funeral services will delay the natural decomposition of the deceased for a long-term or indefinite time. You also may not state that funeral goods will protect the deceased from gravesite substances when that is not the case.

While the Rule flatly prohibits the representation that any funeral goods or services will delay the decomposition of the deceased for a long-term or indefinite time, the Commission recognizes that it is possible that some funeral goods or services may delay decomposition for a short period of time. However, a funeral provider can not say that any goods or services will delay natural decomposition after burial when such is not the case.

Illustration #1: A family asks you to arrange a funeral with a full service and a viewing of the remains. After the service, there is to be ground burial. Can you tell the family that embalming will temporarily preserve the body to make it suitable for viewing?

Yes. In this situation, you may, if you want, explain to the family that embalming will temporarily preserve the body to make it suitable for viewing. However, you may not make any statement to them that embalming has any preservative effect other than a temporary one.

Illustration #2: Same situation as above, except that the family now wants to discuss the purchase of a casket or outer burial container. Can you tell the family that these goods will delay the natural decomposition of the deceased for a long-term or indefinite time?

No. In explaining the properties of either of these items you may not tell the family that they can delay the natural decomposition of the remains for a long-term or indefinite period of time. You also may not state that either the casket or the vault will protect the body from air, dirt, water or other gravesite substances when that is not true.

Illustration #3: Same situation as above. The manufacturer of the casket or burial vault states in the warranty that it will preserve the body for a period longer than five years. Must you make the warranty available to the family?

Yes. Existing federal law requires you to make all warranty information available to the consumer. This means that you must allow the family to read any of the manufacturer's warranties. However, you must disclose the warranty information, without adopting as your own any statement that you know to be a violation of the Rule. You may, if you wish, inform the family that while the manufacturer has made certain statements about the product that you are requiired to disclose, you do not have personal knowledge of the preservative value of the merchandise that enables you to state that it has preservative effect after burial.

F. Representations Concerning Cash Advances: Section 453.3(f)

This provision states that you may not tell consumers that the price that you charge them for a cash advance item is the same price that you paid for it, when such is not the case. A cash advance item is any item which you describe to purchasers as a cash advance, accommodation, cash disbursement or any similar terms.

The section also provides that if there is a markup on a cash advance item, you must disclose that fact to consumers in writing. To do so, you must place the following sentence on your General Price List at the end of the cash advance disclosure that is required by a previous section [§ 453.2(b)(4)(i)(D)]:

> We charge you for our service in buying these items.

You must make this written disclosure whenever you charge for obtaining cash advance items or receive and retain a rebate, commission or trade or volume discount on them. The Rule does *not* prevent you from adding a service charge nor does it require you to disclose the amount of that charge. Moreover, there is no restriction on how much you may charge. The Rule merely states that if you add a service charge to the cost of a cash advance item, you must disclose this fact to the consumer on your General Price List.

Illustration #1: A family asks you to arrange a funeral and asks for flowers as part of the service. You obtain the flowers from the florist, pay $50.00 for them, and charge the family $75.00. Can you tell the family that the amount you are charging them is the same amount that you paid for the flowers?

No. You may not represent to the family in any way that the cost to you for obtaining the flowers is the same as the amount that you are charging them. In addition, when you bill the family for $75.00, you must disclose that you are adding a service charge to the cost of the flowers. The precise language of this disclosure appears in the earlier discussion of the cash advances provision.

Illustration #2: Same situation as in Illustration #1, above, except that,

instead of adding a service charge to the cost of the flowers, you charge the same amount that you paid for them but receive a trade or volume discount at the end of the year. Can you tell the family that the amount you are charging them for the flowers is the same amount that you paid?

No. You may not represent to the family in any way that the cost to you for obtaining the flowers is the same as the amount you are charging them. There is no requirement that you disclose the *amount* of that discount or rebate to the consumer. However, you must inform the consumer of the fact that you receive such a discount. You do this in the same manner as above, by making a disclosure in writing on your General Price List.

V. Can the Sale of Any Funeral Goods or Funeral Services be Conditioned Upon the Purchase of Any Other Funeral Goods or Services? Section 453.4

This section prohibits funeral providers from requiring consumers to purchase unwanted and unneeded goods and services as a condition of obtaining those goods and services which consumers do want. It provides that consumers be informed of the option to select only those goods or services they want with certain exceptions. The section also indicates situations when certain goods or services may be required by the provider.

A. Casket for Cremation Provisions: Section 453.4(a)

This provision prohibits funeral providers from requiring consumers to purchase a casket, other than an unfinished wood box, for direct cremation. Thus, funeral providers who arrange direct cremations for consumers need to offer consumers something other than a casket, such as an unfinished wood box or alternative container. A direct cremation is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present. An unfinished wood box is an unornamented casket made of wood which does not have a fixed interior lining. An alternative container is a non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, pressed-wood, composition materials, (with or without an outside covering) or pouches of canvas or other materials.

Illustration #1: A consumer enters your establishment and wants you to arrange a direct cremation for a deceased relative. For direct cremation you offer, in addition to your regular casket selection, unfinished wood boxes. May the consumer demand that you sell alternative containers when all you offer are unfinished wood boxes?

No. The Rule requires you to make either an unfinished wood box or an alternative container available if you offer direct cremations. The funeral provider can choose to offer either alternative containers or unfinished wood boxes or offer both of them. If you offer unfinished wood boxes for direct cremations you need not offer alternative containers. Similarly, if you offer alternative containers, you need not offer unfinished wood boxes. The choice of offering either an alternative container or unfinished wood box is wholly within the business judgment of the funeral provider.

Illustration #2: A consumer wants to purchase a direct cremation from a provider who does not offer direct cremations. Must the provider offer the service to comply with the Rule?

No. The Rule does not require providers to offer direct cremations. However, once the provider decides to offer direct cremations, the Rule requirements are applicable.

Illustration #3: You are a funeral provider who offers direct cremations. Do you need to stock unfinished wood boxes or alternative containers in inventory to comply with the Rule?

No. The Rule does not require funeral providers to maintain an inventory of unfinished wood boxes or alternative containers. All that is needed is for you to be able to secure such a container, on request, and make it available for use in a direct cremation. If you can obtain the container from a supplier when needed, you will be in compliance with the Rule.

Illustration #4: A consumer enters your establishment and wants to arrange an immediate burial for a deceased relative. You are a funeral provider who also offers direct cremations and who has alternative containers in inventory. May the consumer insist that you sell an alternative container or unfinished wood box for the immediate burial?

No. The rule requires the funeral provider to offer unfinished wood boxes or alternative containers for direct cremations only. It does not require funeral providers to sell unfinished wood boxes or alternative containers to consumers who wish to arrange immediate burials.

B. Other Required Purchase of Funeral Goods or Funeral Services: Section 453.4(b)

This provision prohibits a funeral provider from requiring consumers to buy unwanted goods and services in order to buy other requested goods and services. In addition, the following disclosure must appear on the General Price List before the list of your prices:

> [T]he goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

There are three exceptions to the general right to select goods and services. First, the funeral provider has the right to make the charges for the profeesional services of funeral director and staff non-declinable. If you choose to make your services non-declinable the following disclosure must be added to the above statement, between the second and the third sentence: "[h]owever, any funeral arrangements you select will include a charge for our services." The second exception allows the funeral provider to require consumers to purchase goods or services which are required by law. The third exception allows a funeral provider to refuse a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide. This provision is designed to protect the funeral provider from unreasonable consumer requests. It does not allow the funeral provider to refuse a request simply because the funeral provider does not like it. The request must be impossible, impractical or execessively burdensome to provide in order for the funeral provider to refuse to provide it.

Illustration #1: You are a funeral provider who itemizes the goods and services you offer in compliance with the Rule, but who also offers a range of predetermined package plans. Does this violate the Rule?

No. As long as the consumer may exercise his right to choose only the goods and services wanted and as long as the funeral provider complies with the price list requirements of the Rule, funeral providers are not prohibited from, in addition, offering predetermined packages for sale. Thus, you may, in addition to offering funerals on an itemized basis, continue to offer package funeral for sale. Consumers may continue to select these packages if they desire to do so. The Rule simply

prohibits the imposition of packages on consumers by funeral providers.

Illustration #2. The funeral provider has elected to make the service charge non-declinable and has added the service charge to the cost of a casket. The consumer lawfully declines to purchase a casket. May the funeral provider charge separately for the service charge?

Yes. Because the funeral provider has made the service charge non-declinable the consumer cannot avoid paying the charge. Therefore, the funeral provider can charge the consumer a fee for the professional services of the funeral director and staff.

Illustration #3: The funeral provider has made the service charge non-declinable. Included in the services are embalming, dressing, cosmetology, restoration, along with consultations, preparation and obituary notices. Can all of these services be declared non-declinable?

No. The Rule does not allow funeral providers to include in the service charge those items which the Rule sepcifically requires you to list separately on the General Price List. Consequently, embalming, cosmetology and other preparation of the body may *not* be included. Thus, the fee for professional services may not include a charge for the following items: forwarding of remains to another funeral home, receiving remains from another funeral home, direct cremation, immediate burial, transfer of remains to funeral home, embalming, other preparation of the doby, use of facilities for viewing, use of facilities for funeral ceremony, other use of facilities, hearse, limousine, other automotive equipment, or achnowledgment cards. Among the services which may be included in the list of services of funeral, director and staff are: arranging and supervising a funeral, conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices. Of course, this list is not exhaustive.

Illustration #4: You are a funeral provider who has not included the disclosure on the General Price LIst informing the consumer that the fee for the professional services of the funeral director and staff is non-declinable. May the consumer decline to purchase that service?

Yes. Unless the consumer requests the service, the consumer may decline to pay the fee, if the funeral provider has not taken the steps outlined in the Rule to make the charge non-declinable.

Illustration #5: The state requires all victims of tuberculosis to be embalmed. May the funeral provider require consumers to purchase embalming for victims of tuberculosis?

Yes. This requirement is imposed by law and thus it is an exception to the general right of consumers to select only those goods and services wanted.

Illustration #6: The consumer selects an arrangement which includes viewing for four days, but the consumer does not want to purchase embalming and no other preservative measures such as refrigeration are available. May the funeral provider require the consumer to purchase embalming?

Yes. The Rule allows a funeral provider to condition the furnishing of funeral goods and services on the purchase of embalming when embalming is a practical necessity. Usually, a funeral with viewing makes embalming a practical necessity if no refrigeration is available.

Illustration #7: A consumer wants to use a viewing room for two hours but does not want to purchase any other services from the funeral provider. May the consumer insist on such a contract?

No. The Rule allows the funeral provider to refuse to offer a combination of goods and services which would be impossible, impractical or excessively burdensome to provide. As a result, the provider may refuse to render the service.

Illustration #8: During a hot summer month, a family requests a funeral to take place 5 days after death. They do not want embalming or a sealed casket and you have no refrigeration facilities. Can you refuse to comply with their wishes unless they purchase a sealed casket or embalming?

Yes. This situation falls into the exception that allows you to refuse requests which are impractical, impossible or unduly burdensome. This type of request could be considered either impractical or burdensome and you can refuse to comply with the request.

Illustration #9: Same situation as in Illustration #8 except that the funeral will take place the next day and there is to be no visitation or viewing. The laws in your state do not require embalming unless the body is not buried for 48 hours or more. You strongly believe, however, that embalming is appropriate for all bodies. Can you require the consumer to purchase embalming?

No. The Rule will not allow you to require consumers to pay for embalming in this instance. There is no reason, from the facts stated, why the arrangements requested would be impractical, impossible, or unduly burdensome to provide. The fact that you believe that embalming is appropriate for all bodies does not mean that you can require the family to purchase embalming.

VI. Can a Fee be Charged for Services Provided Without Prior Approval? Section 453.5

This provision prohibits you from charging a fee to embalm unless:

(1) State or local law requires embalming; or

(2) The family gives you express permission to embalm prior to embalming; or

(3) You meet the following requirements if there are *exigent circumstances*:

(a) You are unable to contact a family member or other authorized person after exercising due diligence; *and*

(b) You have no reason to believe that the family does not want embalming; *and*

(c) After embalming the body, you contact the family telling them that if they choose a funeral which does not require embalming no fee will be charged, but that a fee will be charged if they select a funeral requiring embalming, and they then approve the embalming, either expressly or impliedly.

The Rule also requires you to place a written disclosure on the final bill or agreement given to customers informing them of their right not to pay for embalming performed without prior approval unless they select a type of funeral which would require embalming. Moreover, the disclosure must state that if a fee is charged for embalming, a written explanation will appear on the final bill or agreement given to the customer.

The exact language of the disclosure is:

- If you selected a funeral which requires embalming, such as a funeral with viewing, you may have to pay for embalming.
- You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial.
- If we charged for embalming, we will explain why below.

Illustration #1: A family enters your establishment and wants to arrange for a funeral service for someone for whom the cause of death was smallpox. The law in your state provides that whenever the deceased has died of certain highly contagious diseases, such as diphtheria, malaria, or smallpox, the remains must be embalmed. Can you charge a fee for embalming?

Yes. The Rule clearly provides that a fee for embalming may be charged if

state or local law requires embalming. In addition, you must explain to the consumer on the final bill or agreement that a charge was made for embalming because of the state law requirement.

Illustration #2: You get a telephone call requesting that you pick up a body and transfer it to your establishment. As soon as the body arrives, you embalm it even though there was no legal requirement to do so. Can you charge a fee for embalming?

No. You may not charge a fee for this service because you did not attempt to obtain the family's permission prior to embalming the body. In addition, state law did not require embalming.

Illustration #3: You get a telephone call requesting that you pick up a body at the deceased's home and transfer it to your establishment. While at the family's home you tell them that "we will proceed immediately with arrangements for the funeral." When the body arrives at the funeral home, you embalm it. There is no state law requiring embalming. Can a fee for embalming be charged to the family in such a circumstance?

No. The family has not given you express permission to embalm prior to embalming in this situation. The same result would be reached if you told the family that you were "taking the body to the funeral home and proceeding with its preparation." In order to charge a fee for embalming when you are able to contact a family prior to embalming you must obtain express permission to do so. The Rule is flexible so that the exact language to be used is up to you. However, the permission must be express; indirect or implied permission is not sufficient. Additionally, because you were able to contact the family prior to embalming, the provisions permitting you to embalm under exigent circumstances are inapplicable.

Illustration #4: A family enters your establishment and wants to arrange for a funeral for their relative. During the arrangements conference, you ask for and receive their consent to embalm the body. Can you charge a fee for embalming?

Yes. The family has given you express permission to embalm prior to embalming. On the final bill or agreement given to the family, you must explain that a fee for embalming was charged because the family approved the service.

Illustration #5: You receive a phone call requesting that you pick up a body and transfer it to your establishment. When the body arrives, you attempt to contact a family member to make arrangements for disposition but are unable to do so. After exhausting all means known to you and failing to contact the family, you embalm the body. Thereafter, the family comes in to discuss arrangements. During the conference, you explain that if they select a funeral which does not require embalming, such as a direct burial or direct cremation, no fee will be charged for embalming. You also inform them that a fee will be charged, however, if they select a funeral requiring embalming. The family then decides to select a traditional funeral with three days of viewing. Can you charge a fee for embalming?

Yes. Although you were unable to obtain prior permission to embalm the body, you were able to comply with the exigent circumstances exception to the Rule, enabling you to charge a fee for embalming under these circumstances. On the final bill you give to the family, you must explain that a fee is included for embalming because they chose a funeral which required embalming.

Illustration #6: Same facts as No. 5 above, but after you explain to the family that if they select a funeral which does not require embalming no fee will be charged for embalming, the family selects a direct cremation. Can you charge a fee for embalming?

No. You may not charge a fee for embalming because the family did not approve the embalming. This is true even though you already provided the service of embalming. By selecting a direct cremation, the family has impliedly informed you that they do not wish to pay for embalming. Because the rule prohibits you from charging consumers for services which are not approved, you may not charge a fee for embalming.

VII. Disclosures to be Clear and Conspicuous: Section 453.7

The Commission has included a requirement in the Rule that the disclosures which funeral providers must furnish to consumers are to be made in a manner which is clear and conspicuous. The goal is to ensure that the information provided under the Rule will be presented in a manner readily discernable by consumers. Although no minimum type size is mandated, the disclosures must be legible, whether typewritten, handwritten, or printed. The standard simply requires that disclosures be made in a reasonably understandable form.

VIII. What Are the State Exemption Provisions of the Rule? Section 453.9.

The Rule provides that it will not be in effect in a state to the extent specified by the Commission where:

(1) Application for an exemption is made by a state;

(2) There is a state requirement in effect which applies to any transaction to which the Rule applies; and

(3) The state requirement provides an overall level of protection which is as great as, or greater than, the protection afforded by the Rule.

If an exemption is granted, it shall be in effect only for so long as the state administers and enforces effectively the state requirement. During the exemption proceeding, the FTC Rule will remain in effect.

The Commission will issue guidelines regarding procedures for exemption proceedings at a later date. However, in the interim, the Commission will accept petitions from those states wishing to apply for an exemption.

Illustration #1: You are a funeral provider in a state which has a state requirement in effect which applies to the same transactions to which the Rule applies. The state requirement provides an overall level of protection which is as great as, or greater than the protection afforded by the Rule. Can you file a state exemption petition?

No. The Rule provides that applications for exemption be made by state governmental agencies. Therefore, funeral providers or trade associations may not file for statewide exemption.

List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

Dated: March 7, 1984.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

BILLING CODE 6750-01-M

Alternative 1

ANY NAME FUNERAL HOME

100 Main Street
Yourtown, USA
(123) 456-7891

GENERAL PRICE LIST

(These Prices are Effective as of Month, Day, Year)

The goods and services shown below are those we can provide to our customers. You may choose only those items you desire. [However, any funeral arrangements you select will include a charge for our services.]* If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected. [We charge you for our services in buying these items.]**

****

FORWARDING OF REMAINS TO ANOTHER FUNERAL HOME: $_____

This charge includes:
* removal of remains
* services of staff
* necessary authorizations
* embalming
* local transportation (but not shipping charges)

RECEIVING OF REMAINS FROM ANOTHER FUNERAL HOME: $_____

This charge includes:
* services of staff
* care of remains
* transportation of remains to cemetery or crematory

DIRECT CREMATIONS: $_____ to $_____

Our charge for a direct cremation (without ceremony) includes
* removal of remains and transportation to crematory
* cremations
* necessary services of staff and authorizations

If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without outside covering), or pouches of canvas.

1. Direct Cremation with container provided by purchaser.....$_____
2. Direct Cremation with alternative container.....$_____
3. Direct Cremation with unfinished pine box.....$_____

---

* If a consumer may not decline a charge for the services of funeral director and staff this sentence must be included here. Please see the compliance guides for a further explanation.

** This sentence should be omitted if the funeral director does not make a service charge or does not receive and retain a rebate, commission or trade or volume discount upon a cash advance item.

IMMEDIATE BURIALS: $_____ to $_____

Our charge for an immediate burial (without ceremony) includes:
* removal of body
* local transportation to cemetery
* necessary services of staff and authorizations

1. Immediate burial with container provided by purchaser.....$_____
2. Immediate burial with unfinished pine box.....$_____
3. Immediate burial with beige cloth-covered soft wood casket with beige interior.....$_____

FUNERAL ARRANGEMENTS:

Transfer of Remains to Funeral Home (within 50 mile radius).....$_____

Embalming.....$_____

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as a direct cremation or immediate burial.

Other Preparation of Body.....$_____

Use of Facilities for Viewing

Main Stateroom (per day).....$_____
Smaller Stateroom (per day).....$_____

Use of Facilities for Funeral Ceremony

Chapel.....$_____
Smaller Stateroom.....$_____

Other Use of Facilities

Tent and chairs for graveside service.....$_____

Hearse.....$_____

Limousine.....$_____

Other Automotive Equipment

Flower car.....$_____
Family car.....$_____

Acknowledgement Cards.....$_____

Caskets.....$_____ to $_____

(A complete price list will be provided at the funeral home.)

Outer Burial Containers.....$_____ to $_____

(A complete price list will be provided at the funeral home.)

Other:

Pallbearers (6).....$_____
Burial clothing.....$_____ to $_____

Services of Funeral Director and Staff.....$_____

Our charge includes arrangement of funeral and consultation with the family and clergy, direction of the visitation and funeral, preparation and filing of necessary notices, and authorizations and consents. This fee for our services will be added to the total cost of the funeral arrangements you select. (Such a fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)

ANY NAME FUNERAL HOME

CASKET PRICE LIST

(These prices are Effective as of Month, Day, Year)

Simple Casket or Other Containers

1. Canvas Pouch $_____
2. Cardboard Box $_____
3. Plywood Box $_____
4. Composition Box $_____
5. Unfinished Pine Box $_____

Caskets

1. Beige cloth-covered softwood with beige interior $_____
2. Taupe embossed cloth-covered soft-wood with pleated beige crepe interior $_____
3. 22 gauge bronze colored metal with white interior $_____
4. 22 gauge silver tone metal with blue crepe interior $_____
5. 20 gauge copper toned metal with mauve interior $_____
6. 20 gauge rose colored metal with pleated beige interior $_____
7. Oak stained soft-wood with pleated blue crepe interior $_____
8. Mahogany finished soft-wood with maroon crepe interior $_____
9. Solid white pine with beige crepe interior $_____
10. 20 gauge lead coated steel with bronze tone finish and white crepe interior $_____
11. 20 gauge lead coated steel with bronze tone finish and tan crepe interior $_____
12. 18 gauge steel with pale blue finish and off-white interior $_____
13. 10 gauge steel with bronze highlights and tan crepe interior $_____
14. Solid mahogany with tufted beige velvet interior $_____
15. Hand-finished solid cherry with pale blue velvet interior $_____
16. 16 gauge bronze finished with maroon velvet interior $_____

ANY NAME FUNERAL HOME

OUTER BURIAL CONTAINER PRICE LIST

(These Prices are Effective as of Month, Day, Year)

In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or grave liner will satisfy these requirements.

****

Concrete Grave Liner $_____

Standard Concrete Vault $_____

Deluxe Asphalt Steel-lined Vault $_____

Solid Copper Vault $_____

ANY NAME FUNERAL HOME

100 Main Street
Anytown, USA
(123) 456-7891

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

Charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below.

****

FUNERAL OF _____

FORWARDING OF REMAINS TO ANOTHER FUNERAL HOME $_____

This charge includes:
- removal of remains
- services of staff
- necessary authorizations
- embalming
- local transportation (but not shipping charges)

RECEIVING OF REMAINS FROM ANOTHER FUNERAL HOME $_____

This charge includes:
- services of staff
- care of remains
- transportation of remains to cemetery or crematory.

DIRECT CREMATION (As selected) $_____

This charge includes:
- removal of body
- necessary authorizations
- services of staff
- transportation to crematory
- cremation of body

TRANSFER OF REMAINS TO FUNERAL HOME $_____

(___ miles transported)

IMMEDIATE BURIAL (As selected) $_____

This charge includes:
- removal of body
- services of staff
- necessary authorizations
- local transportation to cemetery

EMBALMING $_____

- If you selected a funeral which requires embalming, such as a funeral with viewing, you may have to pay for embalming.*
- You do not have to pay for embalming you did not approve if you selected arrangements such as direct cremation or immediate burial.*
- If we charged for embalming, we will explain why below.*

OTHER PREPARATION OF THE BODY $_____

USE OF FACILITIES FOR VIEWING $_____

USE OF FACILITIES FOR FUNERAL CEREMONY $_____

OTHER USE OF FACILITIES $_____

(The following facilities are included:

_____
_____
_____

HEARSE $_____

LIMOUSINE(S) $_____
___ Limousines $_____. $_____

OTHER AUTOMOTIVE EQUIPMENT $_____

(This price includes:

_____
_____
_____.

ACKNOWLEDGEMENT CARDS $_____

CASKET SELECTED $_____

OTHER BURIAL CONTAINER $_____

SERVICES OF FUNERAL DIRECTOR AND STAFF $_____

Services include the following:
- arrangement of funeral and consultation with the family and clergy
- direction of the visitation and funeral
- preparation and filing of necessary notices, authorizations and consents

OTHER: $_____

_____
_____
_____

CASH ADVANCE ITEMS:

- Organist and/or other music $_____
- Hairdresser or barber $_____
- Flowers $_____
- Pallbearers $_____
- Clergy Honoraria $_____
- Obituary Notice $_____
- Death Certificate $_____
- Gratuities $_____

Total $_____

TOTAL COST FOR ARRANGEMENTS SELECTED $_____

FOR FUNERAL HOME: _____ Date: _____

ARRANGED BY: _____ Date: _____

LEGAL, CEMETERY OR CREMATORY REQUIREMENTS COMPELLING THE PURCHASE OF ANY ITEMS LISTED ABOVE:

1. _____

2. _____

* These statements are only required if the funeral provider chooses to use this statement as a contract or final bill.

Alternative 2

ANY NAME FUNERAL HOME

100 Main Street
Yourtown, USA
(123) 456-7891

GENERAL PRICE LIST

(These Prices are Effective as of Month, Day, Year)

The goods and services shown below are those we can provide to our customers. You may choose only those items you desire. However, any funeral arrangements you select will include a charge for our services.] If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected.

****

Forwarding of Remains to Another Funeral Home.....$_____

This charge includes removal of remains, services of staff necessary authorizations, embalming, and local (but not shipping charges).

Receiving of Remains from Another Funeral Home.....$_____

This charge includes services of staff, care of remains, and transportation of remains to cemetery or crematory.

DIRECT CREMATIONS: $_____ to $_____

Our charge for a direct cremation (without ceremony) includes:

* removal of remains and transportation to crematory
* cremations
* necessary services of staff and authorizations

If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without outside covering), or pouches of canvas.

1. Direct Cremation with container provided by purchaser.....$_____
2. Direct Cremation with alternative container.....$_____
3. Direct Cremation with unfinished pine box.....$_____

IMMEDIATE BURIALS: $_____ to $_____

Our charge for an immediate burial (without ceremony) includes:

* removal of body
* local transportation to cemetery

* necessary services of staff and authorizations

1. Immediate burial with container provided by purchaser.....$_____
2. Immediate burial with unfinished pine box.....$_____
3. Immediate burial with beige cloth-covered soft wood casket with beige interior.....$_____

FUNERAL ARRANGEMENTS:

Transfer of Remains to Funeral Home (within 50 mile radius).....$_____

Embalming $_____

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not reuqire you to pay for it, such as a direct cremation or immediate burial.

Other Preparation of Body.....$_____

Use of Facilities for Viewing

Main Stateroom (per day).....$_____
Smaller Stateroom (per day).....$_____

Use of Facilities for Funeral Ceremony

Chapel.....$_____
Smaller Stateroom.....$_____

Other Use of Facilities

Tent and chairs for graveside service.....$_____

Hearse.....$_____

Limousine.....$_____

Other Automotive Equipment

Flower car.....$_____
Family car.....$_____

Acknowledgement Cards.....$_____

Caskets:

Please note that a fee for the use of our services is included in the price of our caskets. Our services include arrangement of funeral and consulation with the family and clergy, direction of the visitation and funeral, preparation and filing of necessary notices, and authorizations and consents.

1. Beige cloth-covered soft-wood with beige interior.....$_____
2. Taupe embossed cloth-covered soft-wood with pleated beige crepe interior.....$_____
3. 22 gauge bronze colored metal with white interior.....$_____
4. 22 gauge silver toned metal with blue crepe interior.....$_____
5. 20 gauge copper toned metal with mauve interior.....$_____

---

* If a consumer may not decline a charge for the services of funeral director and staff this sentence must be included here. Please see the compliance guides for a further explanation.

6. 20 gauge rose colored metal with beige pleated interior.....$_____

7. Oak stained soft-wood with pleated blue interior.....$_____

8. Mahogony finished soft-wood with maroon crepe interior.....$_____

9. Solid white pine with beige crepe interior..$_____

10. 20 gauge lead coated steel with silver tone finish and white crepe interior.....$_____

11. 20 gauge lead coated steel with bronze tone finish and tan crepe interior.....$_____

12. 18 gauge steel with pale blue finish and off-white interior.....$_____

13. 18 gauge steel with bronze highlights and tan crepe interior.....$_____

14. Solid mahogony with tufted beige velvet interior.....$_____

15. Hand-finished solid cherry with pale blue velvet interior.....$_____

16. 16 gauge bronze finished with maroon velvet interior.....$_____

Outer Burial Containers:

In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you hve such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements.

1. Concrete grave liner.....$_____

2. Standard concrete vault.....$_____

3. Deluxe asphalt steel-lined vault.....$_____

4. Solid copper vault.....$_____

Other:

Pallbearers (6).....$_____

Burial clothing.....$_____

[FR Doc. 84-6792 Filed 3-13-84; 8:45 am]
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Vol. 49, No. 51

Wednesday, March 14, 1984

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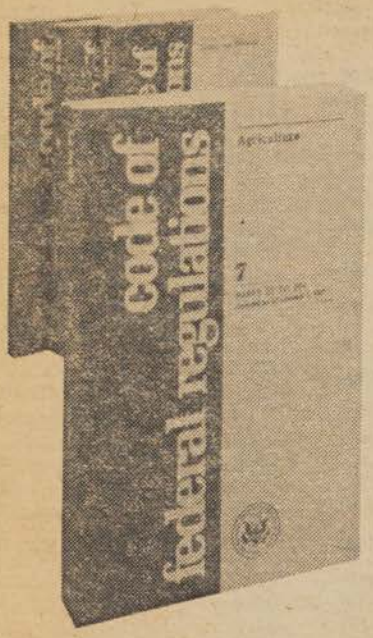
H.R. 4957/Pub. L. 98-229

To apportion certain funds for construction of the National System of Interstate and Defnse Highways for fiscal year 1985 and to increase the amount authorized to be expended for emergency relief under title 23, United States Code, and for other purposes. (Mar. 9, 1984; 98 Stat. 55) Price: $1.50

Last List March 12, 1984



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