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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220, 225, and 226

Child Nutrition Labeling Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes an Appendix C to the regulations for each of the following programs: National School Lunch Program, School Breakfast Program, Summer Food Service Program for Children, and Child Care Food Program to establish a Child Nutrition (CN) Labeling Program. The Department is issuing this appendix to formalize an existing voluntary technical assistance program which has operated without benefit of public scrutiny and which has grown over the past few years. This final rule (1) formally establishes a CN Labeling Program, (2) establishes product eligibility, (3) establishes a logo or a distinctive border which encloses a label statement, (4) establishes a warranty against audit claims for products that are CN labeled, (5) authorizes the Secretary to issue guidance material on the CN Labeling Program, and (6) defines the parts of the CN label statement.

DATES: Effective date: July 2, 1984.

Implementation period: All new CN labels submitted after the effective date of this rule must carry the CN logo and comply with all requirements set forth in this final rule. However, manufacturers may continue to use all currently approved CN labels for 18 months following the effective date of this rule. During this period, products with these CN labels will carry the warranty against audit claims without the use of the CN logo, provided that they are produced under an appropriate U.S. Department of Agriculture or U.S. Department of Commerce Federal inspection program. All CN labeled products must carry the new CN label by January 2, 1985.

FOR FURTHER INFORMATION CONTACT: Kathy Molino or Chris Clay at (703) 756-3556 or write to Cynthia H. Ford, Branch Chief, Technical Assistance Branch, Nutrition and Technical Services Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and has been classified nonmajor because it does not meet any of the three criteria of the Executive Order. It will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant impact on competition, employment, investment, productivity, innovation or on the ability of U.S. enterprises to compete. The CN Labeling Program has been in existence since the early 1970's and is currently administered by the Food and Nutrition Service (FNS) in conjunction with the Food Safety and Inspection Service (FSIS) and the Agricultural Marketing Service (AMS) of the United States Department of Agriculture (USDA), and the National Marine Fisheries Service of the United States Department of Commerce (USDC). The application procedures were established under existing FSIS, USDC, and Food and Drug Administration (FDA) labeling requirements. Final labeling authority remains with these agencies. Additionally, the CN Labeling Program will remain a voluntary technical assistance program. This final rule merely establishes authorization in program regulations.

The rule has also been reviewed with regard to the provisions of Pub. L. 96-354. Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that the rule does not have a significant economic impact on a substantial number of small entities.

Reporting and recordkeeping requirements contained in this rule have been approved by the Office of Management and Budget (OMB No. 0584-0320) under the Paperwork Reduction Act.

Background

The Child Nutrition (CN) Labeling Program has been in existence since the early 1970's as a voluntary technical assistance program. Over the years the program has come to play a significant role in the food service management of the Child Nutrition Programs and has been supported by both industry and food service authorities. Essentially, the CN Labeling Program involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. Products currently CN labeled include meat and poultry products, fish, juice drinks and juice drink products and a few miscellaneous items such as cheese pizzas and egg products. All of these products, with the exception of cheese pizza, are produced under Federal inspection by USDA or USDC.

Since the inception of the CN Labeling Program, the labeling procedures employed by FNS have evolved on a case-by-case basis to meet new situations. Thus, to date, the CN Labeling Program has been administered by FNS without formal regulations and benefit of public scrutiny. On February 25, 1983, the Department issued a proposed rule which would formally establish a CN Labeling Program. A total of 60 days was afforded to the general public in which it could comment on the proposed rule.

Comment Analysis

On April 28, 1983, the proposed rule comment period closed. Sixty-eight comments were received during the sixty-day comment period. Comments were received from industry, State directors and State staff, trade associations and manufacturers' representatives, district school food service directors and child nutrition directors, agencies of the Federal government and the general public. Of the 68 comments received, 67 were in favor and one was opposed to the proposal in general.

Comments in Favor

In general, commentors favoring the proposal agreed that the CN Labeling Program should be formalized in regulations. Several of these
commentors stated that formalizing the CN Labeling Program would (1) provide a uniform method of recognizing CN labeled products, (2) help ensure that food service authorities receive products as specified, (3) provide a uniform positive means of selecting food products that comply with child nutrition meal pattern requirements; and (4) maintain the integrity of the CN label. Overall, many of the commentors felt that the CN Labeling Program would help to further the goals of the Child Nutrition Programs by helping to ensure the nutritional quality of the meals served in these programs. Additionally, several commentors from industry felt that the proposed rule would provide equitable application and enforcement of the CN Labeling Program which would promote fair competition and good business practices.

Comments in Opposition

The one commentor opposing the proposal was concerned that the CN Labeling Program would create a disproportionately heavy burden on and be excessively costly for small processors who do not have large volume sales.

Discussion

There are a number of issues surrounding the establishment of the CN Labeling Program which are addressed in the February 25, 1993, proposal. Fifty-five of the commentors favoring and the one commentor opposing the proposal presented substantive comments on one or more of these specific issues. The following is a discussion of comments received on pertinent issues addressed in the proposal and the Department's response.

1. Products Eligible for CN Labels

In the proposed rule, the Department proposed to limit the use of the CN label statement to food products that contribute significantly to the meat/meat alternate component of the child nutrition meal patterns and are served in the main dish. Therefore, the Department proposed that juice drinks and juice drink products, which are currently CN labeled, no longer be eligible for CN label approval.

Two commentors favored and fourteen commentors opposed limiting CN labels to meat/meat alternate products. The two commentors in favor of this provision felt that CN labels are needed the most for meat/meat alternate items and that other meat components generally do not raise crediting issues. The fourteen commentors in opposition felt that this provision was too restrictive and that other products which meet the meal pattern requirements would also benefit from CN labels. Some products for which these commentors expressed a need for CN labels included preplated meals, fruit desserts, any products containing juice concentrate, juice drinks, and juice drink products.

Twenty-three commentors specifically addressed CN labeling of juice drinks and juice drink products. Five of these commentors favored and 18 commentors opposed the proposed discontinuation of CN labeling of juice drinks and juice drink products. In general, the five commentors in favor of this provision did not see a need to CN label juice drinks and juice drink products. Three of these five commentors felt that schools should use pure fruit juice and that CN labeling of juice drinks encourages the use of these products in lieu of pure fruit juices.

The 18 commentors opposed to discontinuing CN labeling of juice drinks and juice drink products felt that CN labels were needed on these products in order to ensure that they are credited properly toward the meal pattern requirements. Six of these 18 commentors felt that juice drinks may present as many problems as meat/meat alternates in determining their contribution toward meal pattern requirements. They stated that without CN labels it is difficult to determine the juice content of juice drink products since many of these products contain varying percentages of juice. Similarly, another commentor stated that juice drink products are commonly misconstrued and used as 100 percent juice. Two other commentors expressed concern that many juice drink products are inadequately labeled or mislabeled; thus information provided by salesmen is relied upon but may end up using products that are actually less than 50 percent full-strength juice. One commentor also stated that he felt that 50 percent or more juice can make a meaningful contribution toward the meal pattern requirements and that CN labeling of such products would encourage manufacturers to upgrade their formulations.

In view of the comments received, the final rule maintains eligibility for CN labels for juice drinks and juice drink products, as well as for meat/meat alternate products. Under the final rule, the Department will continue to CN label juice drinks and juice drink products that contain a minimum of 50 percent full-strength juice and that are produced under Federal inspection by USDA. This is not intended to encourage the use of juice drinks over full-strength juice, but to provide a means for properly determining the contribution of these products toward meal pattern requirements.

The final rule also retains the requirement that meat/meat alternate items must make a significant contribution toward meal pattern requirements, but were served in the main dish to be eligible for a CN label. This will allow for the CN labeling of a wide variety of meat/meat alternate products including preplated meals, provided that all components of such meals are produced under an appropriate Federal inspection program.

2. Establishment of a CN Logo

The Department proposed to require companies to use a CN statement logo or distinctive border as part of the CN label statement approval. The proposed rule also stated the conditions under which the CN logo could be used. It was proposed that the CN label must be reviewed and approved at the national level by FNS. The CN labeled product must then be produced under Federal inspection by USDA or USDC in accordance with an approved quality control program. The proposed rule also specified that the CN label statement be printed as an integral part of the product label along with the product name, the percent ingredient listing, the inspection program marking, the establishment number where appropriate, and the manufacturer's or distributor's name and address. Commentors addressed four specific issues under this provision.

Establishment and Design of the CN Logo. This issue was addressed by 26 commentors. Twenty-three of these commentors favored the use of a CN logo in general. Nine of these commentors felt that a distinctive border such as the CN logo would benefit both manufacturers and food service personnel and would be effective in distinguishing CN labels from other labels that look similar. Four of the 23 commentors favored the use of the CN logo with qualifications. Two commentors stated that the regulation should specify that the CN logo letters be very large and distinct. Another commentor stated that the logo lacked distinction and that an additional emblem would be helpful in identifying products. Similarly, a fourth commentor recommended coloring the logo.

Three commentors opposed the use of the CN logo as specified in the proposed regulations. Two of these three commentors felt that the logo was cumbersome, unnecessary and too costly because it would require new printing plates for each label. The third commentor felt that the logo should be
greatly simplified by reducing the number of letters used in the logo.

The final rule establishes the use of the CN logo with modifications to its design. The Department believes that the CN logo is needed to protect the integrity of the CN Labeling Program, to avoid possible abuse, and to make the CN label statement easy to identify. To make the logo easily useable by all manufacturers, the design is simplified in the final rule by reducing the number of letters used in the border. The size and color of the letters in the logo will be left to the discretion of the manufacturer. It is believed that the CN logo as specified in the final rule will provide the distinction necessary to identify CN labeled products.

Requiring Federal Inspection for all CN Labeled Products. Nine commentors were in favor of requiring Federal inspection for all CN labeled products. One of these commentors felt that the regulations should mandate the use of USDA acceptance service or USDC in-plant inspections for all CN labeled products. This commenter urged that such acceptance or inspection be in place whenever CN labeled products are being run. The other eight commentors recommended that existing FSIS inspectors be cross-trained to perform inspection functions where needed or else considerable costs would be imposed if USDA acceptance service graders had to be utilized. Two of these commentors specifically requested that resident FSIS inspectors in pizza plants be allowed to inspect both meat and cheese pizzas under the CN Labeling Program. Three commentors suggested that FSIS inspectors, including circuit inspectors, be used to review records for CN labeled non-meat items produced under a partial quality control program instead of requiring in-plant (off-line) inspection for these items.

One commentor misinterpreted the intent of this provision. This commentor thought that the proposed rule was implying that an USDA acceptance service grader must be present to assure compliance with CN label formulations in addition to the FSIS inspector. The final rule retains the requirement that all CN labeled products be produced under an appropriate USDA or USDC Federal inspection or acceptance service program. Under this provision, CN labeled meat and poultry products must be produced under mandatory FSIS inspection in accordance with an approved partial quality control program. The Department is not requiring that these products be produced under USDA acceptance service. Additionally, inspection for CN labeled non-meat products (eggs, cheese, dry beans, peanut butter) may be conducted by an FSIS or USDC inspector available at a plant under a process of cross-utilization. When non-meat products are inspected by FSIS under cross-utilization, the inspection will be performed in accordance with an approved partial quality control program. Inspection of non-meat products by USDA under cross-utilization will be performed in accordance with in-plant inspection guidelines established by USDC. In-plant (on line) inspection for non-meat products by USDA acceptance service will only be needed in FSIS and USDC inspected plants where cross-utilization is not available or in plants not under FSIS or USDC inspection. Additional information on obtaining and using Federal inspection for CN labeled products will be presented in guidance materials prepared by the Department for the CN Labeling Program.

Requiring That a CN Labeled Product Be Produced Under an Approved Quality Control Program. This provision was addressed by five commentors. Two of these commentors supported the proposed use of a partial quality control program with periodic inspection by a Federal inspector for monitoring CN labeled products. These two commentors also felt that CN labeled non-meat as well as meat and poultry products should be produced and inspected under an approved partial quality control program. One commenter was opposed to requiring the use of a partial quality control program for all CN label products. This commenter stated that some CN labeled products are currently being produced under USDC in-plant (on line) inspection instead of under a partial quality control program. Two commentors misinterpreted the intent of the Department in requiring the use of an approved partial quality control program for CN labeled products. One of these commentors thought that the use of a quality control program implied that CN labeled products would have to be produced under in-plant (on line) inspection. The other commentor thought that the quality control program requirement was implying that plants must have a total quality control program in effect, which would be very expensive for small processors.

The final rule retains the requirement that CN labeled products be produced under an approved partial quality control program. This will apply to all CN labeled products except those fish and non-meat items, when produced under in-plant (on-line) inspection by USDC inspectors or USDA acceptance service graders. These products will be produced under standards established by the appropriate inspection or acceptance service. For those CN labeled products produced under a partial quality control program, in-plant (on line) Federal inspection at all times during production will not be required. Additionally, the partial quality control provision applies only to CN labeled products and does not require that an entire plant be operating under a total quality control program. However, a processor operating under a FSIS approved total quality control program may also produce CN labeled products. Additional guidelines for establishing a partial quality control program and standards of inspection for CN labeled products will be presented in guidance material prepared by the Department for the CN Labeling Program.

Requiring Percent Ingredient Listing. Opposition to this provision was expressed by 12 commentors. Seven of these commentors stated that manufacturers should never be required to disclose proprietary formulas. They stated that such information is included in the label transmittal and does not need to be disclosed on the label. Two other commentors felt that FNS lacked the authority to impose such a requirement and that percent ingredient listing should remain voluntary consistent with FSIS policies. Two commentors also stated that such a requirement was unprecedented and unnecessary since all ingredients are listed in order of predominance on the product’s label.

The final rule does not require percent ingredient listing on CN labeled products. However, manufacturers are encouraged to use percent ingredient listing when possible. Several products may have ingredients listed in the same order of predominance on their labels, but be composed of different percentages of each ingredient. Therefore, the Department feels that percentage labeling may provide food service personnel with additional information to determine if a product meets its specifications.

3. Establishment of a Warranty Against Audit Claims

The Department proposed that a school or institution which purchases a CN labeled product in good faith and uses it according to the manufacturer’s directions will not have audit claims.
placed against it for that portion of the meal supplied by the CN labeled product. The proposed rule stated that under this warranty, yields for determining the product's contribution as stated on the CN label would be calculated using the Food Buying Guide for Child Nutrition Programs (Program Aid Number 1331). The proposed rule also specified courses of action that would be taken against a processor if a State or Federal auditor finds that a CN labeled product does not actually meet the meal pattern requirements claimed on the label. Three specific issues were addressed under this provision.

Establishing Warranty. Twenty-two commentors favored and one commentor was opposed to establishing a warranty against audit claims for CN labeled products. In general, the commentors in favor of this provision felt that the warranty would be valuable to food service personnel in making product selection and ensuring them that a product will meet meal pattern requirements. Five commentors also stated that the warranty would strengthen confidence in the CN Labeling Program. Two other commentors supporting the warranty felt that it was only justified in situations where stringent in-plant (on line) inspection can be provided. The one commentor opposing the warranty felt that if a manufacturer has multiple compliance checks made, why not hold the manufacturer blameless for what end users do to the product.

As proposed, the final rule establishes a warranty against audit claims for that portion of the meal supplied by the CN labeled product. The warranty will apply to all CN labeled products and will not require that they be produced under in-plant (on line) inspection. The Department feels that periodic inspection under an approved partial quality control program will provide reasonable assurance that a product complies with the CN label statement. This warranty is intended to benefit both schools and industry participating in the CN Labeling Program by limiting misuse of the CN Labeling Program and by providing an added benefit to schools. It is the Department's intention to maintain a manufacturer's current responsibility for compliance under this warranty. A thorough review of how the CN labeled product was used, etc. would be conducted before any action would be taken against a manufacturer for non-compliance.

Courses of Action. Four commentors favored the proposed courses of action that would be taken against a processor if a State or Federal auditor finds that a CN labeled product does not actually meet the meal pattern requirements claimed on the label. Three of these commentors, however, felt that the proposed courses of action were not severe enough and recommended that a monetary penalty also be levied against a company.

Opposition to the proposed courses of action was expressed by one commentor. This commentor felt that there are sufficient safeguards during production of CN labeled products to ensure compliance. Therefore, if a company has a CN labeled product then legal action should not be made against that company after the sale of the product.

The proposed courses of action to be taken against a company when a product does not meet the meal pattern requirements as stated on the CN label will be retained in the final rule. Within these courses of action a monetary penalty may be levied against a company if deemed appropriate by the agency pursuing the mislabeling or misbranding action.

Food Buying Guide Yields. Three commentors expressed opposition to using yields from the Food Buying Guide for Child Nutrition Programs (Program Aid Number 1331) for calculating a CN labeled product's contribution toward meal pattern requirements. Two of these commentors felt that processors should be able to establish their own cooking yields. The third commentor was concerned that many poultry products are not listed in the Food Buying Guide and suggested that the publication be thoroughly overhauled to make it equitable for all types of meat manufacturers.

The final rule retains the use of yields from the Food Buying Guide for Child Nutrition Programs for calculating a CN labeled product's contribution toward meal pattern requirements. This method is consistent with the Department's policy for determining the contribution toward meal pattern requirements of meat/meat alternate products. Additionally, it is believed that using yields from the Food Buying Guide will help ensure that various meat/meat alternate items, regardless of the cooking methods used or the addition of other ingredients, will be nutritionally equivalent. The Department does, however, continue to review and study yield data for meat/meat alternates and other food items served in the Child Nutrition Programs and, when warranted, additions and changes in the Food Buying Guide will be considered.

4. Authorization for FNS to Issue Operational Policies

The proposed rule authorized FNS to issue operational policies, procedures, and instructions for the CN Labeling Program through guidance material. This provision was favored by three commentors. All of these commentors agreed that published guidelines were definitely needed. One commentor specifically requested that crediting procedures for meat items be included in the manual to save the manufacturer time and expense in applying for CN labels. Another commentor recommended that input from industry be received prior to implementation of the policy manual.

The final rule establishes authority for FNS to issue operational policies, procedures and instructions for the CN Labeling Program through guidance material. Among the information to be included in this guidance is sample calculations and procedures for determining a meat/meat alternate product's contribution toward meal pattern requirements. In developing this guidance material, the Department has also taken into consideration comments received from industry and the needs they have expressed.

5. CN Label Statement

The proposed rule defined the parts of the CN label statement. The Department proposed that in addition to the CN logo, the CN label statement include: (1) The product identification number, (2) the statement of the product's contribution toward meal pattern requirements, including a meat/meat alternate product's contribution, if any, toward the bread/bread alternate and vegetable/fruit component, (3) statement of authorization, and (4) the approval date.

Product Identification Number. This issue was addressed by five commentors. Four of these commentors favored the use of a product identification number. They felt that this number was greatly needed for product control and identification of various end products. One of the four commentors, however, felt that FNS should assign numbers via phone conversation. Another commentor also felt that the identification number should remain the same if the label undergoes minor revisions. The one commentor opposed to the use of the identification number felt that it would slow down the label review process.

The final rule retains the use of the identification number as part of the CN label statement in order to maintain product control. When possible, the Department will allow this identification
number to be assigned via a phone conversation to avoid any delay in the label review process. Additionally, the Department will retain the same identification number of labels undergoing minor revisions that do not require submittal of a new label application. Additional information on assigning and using the identification number will be presented in guidance material prepared by the Department for the CN Labeling Program. 

Statement of Product's Contribution. This issue was addressed by five commentors. All of these commentors favored allowing a meat/meat alternate product's contribution toward the bread/bread alternate and vegetable/fruit component to be stated on the CN label. Comments were also received suggesting that the meat/meat alternate contribution be expressed in .25 ounce increments. The final rule allows the CN label statement to state a meat/meat alternate product's contribution toward the bread/bread alternate and vegetable/fruit component as well as the meat/meat alternate component. The Department will also allow the meat/meat alternate contribution to be expressed in .25 ounce increments. This latter provision will be established through policy changes in guidance material prepared by the Department for the CN Labeling Program.

Statement of Authorization. Nine commentors were opposed to requiring the statement of authorization in the CN label statement as specified in the proposed rule. As proposed, the statement of authorization reads as follows: "Use of this logo and statement authorized by the Food and Nutrition Service, United States Department of Agriculture 05-84." All of the commentors opposed to requiring this statement felt that it was too lengthy and would require manufacturers to increase the size of their labels; thus causing them to incur additional costs in packaging. The statement of authorization required in the CN label statement has been revised in the final rule. The statement has been shortened to read as follows: "Use of this logo and statement authorized by the Food and Nutrition Service, USDA 05-84." 

Approval Date. One commentor favored and three commentors opposed requiring that the CN label statement include the approval date. The one commentor in favor of this provision felt that if minor changes are made in a label the approval date should remain the same as on the original label. Those commentors opposing the use of the approval date felt that it was not necessary and stated that such a date is not required under FSIS label approval. The final rule will retain the use of the label approval date in the CN label statement. The Department feels that this date will facilitate tracing CN labels that may be out dated due to changes in policies, etc. The circumstances under which the approval date will need to be revised will be discussed in guidance material prepared by the Department for the CN Labeling Program.

Other Comments

A few commentors expressed concern about requiring manufacturers who currently have approved CN labels to resubmit within one year. These commentors recommended that manufacturers be given additional time to use existing label inventories if necessary. In view of these commitments, the Department has extended the implementation period for this rule to 18 months from its effective date. It is felt that 18 months will provide manufacturers with sufficient time to use up existing label inventories.

In response to all comments received on the proposed rule, revisions have been made in the final rule as referenced under specific issues. Additionally, minor revisions have been made to provide clarification. However, most of the general provisions of the proposed rule have not been changed. The Department will provide additional clarification of all provisions set forth in the final rule through guidance material.

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 226

Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 228

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

PARTS 210, 220, 225, 226—[AMENDED]

Accordingly, a new Appendix C, Child Nutrition (CN) Labeling Program, is added to 7 CFR Parts 210, 220, 225, and 226. For Parts 225 and 226 we are reserving Appendix B. Appendix C reads as follows:

Appendix C—Child Nutrition (CN) Labeling Program

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service (FNS) in conjunction with the Food Safety and Inspection Service (FSIS), and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA) and National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.

2. Products eligible for CN labels are as follows:

(a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10, 225.21, and 226.20 and are served in the main dish.

(b) Juice drinks and juice drink products that contain a minimum of 50 percent full-strength juice by volume.

3. For the purpose of this appendix the following definitions apply:

(a) "CN label" is a food product label that contains a CN label statement and CN logo as defined in paragraph 3 (b) and (c) below.

(b) The "CN logo" (as shown below) is a distinct border which is used around the edges of a "CN label statement" as defined in paragraph 3 (c).
(a) The "CN label statement" includes the following:
(1) The product identification number (assigned by FNS).
(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10, 220.8, 225.21, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements.
(3) Statement specifying that the use of the CN logo and CN statement was authorized by FNS, and
(4) The approval date.
For example:

CN

This 3.00 oz serving of raw beef pattie provides when cooked 2.00 oz equivalent meat for Child Nutrition Meal Pattern Requirements. (Use of this logo and statement authorized by the Food and Nutrition Service, USDA 05-84.)

CN

(d) "Federal inspection" means inspection of food products by FSIS, AMS or USDC.

4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:
(a) The CN label must be reviewed and approved at the national level by the Food and Nutrition Service and appropriate USDA or USDC Federal agency responsible for the inspection of the product. (OMB Approval No. OMB-0320).
(b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.
(c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate, and the manufacturer's or distributor's name and address.

1. The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:

INSPECTED BY THE
U.S. DEPT. OF AGRICULTURE
IN ACCORDANCE WITH
FNS REQUIREMENTS

(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the Food Buying Guide for Child Nutrition Programs (Program Aid Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the child nutrition programs purchases a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10, 220.8, 225.21, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report this finding to FNS. FNS will prepare a report of the findings and send it to the appropriate divisions of FSIS and AMS of the USDA, National Marine Fisheries Services of the USDC, Food and Drug Administration, or the Department of Justice for action against the company.

Any or all of the following courses of action may be taken:
(a) The company's CN label may be revoked for a specific period of time;
(b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product;
(c) The company's name will be circulated to regional FNS offices;
(d) FNS will require the food service program involved to notify the State agency of the labeling violation.

7. FNS is authorized to issue operational policies, procedures, and instructions for the CN labeling Program.

To apply for a CN label and to obtain additional information on the CN label application procedures write to CN Labels, U.S. Department of Agriculture, Food and Nutrition Service, Nutrition and Technical Services Division, 3010 Park Center Drive, Alexandria, Virginia 22302.

(National School Lunch Act Sections 9, 13, 17, 72, U.S.C. 1756, 1761, 1769; 7 CFR 210.10, 220.8, 225.21, 226.20)

Robert D. Leard,
Administrator.

[FR Doc. 84-11052 Filed 4-30-84; 8:45 am]
BILLING CODE 3410-30-M

7 CFR Parts 272 and 273

[Amendment No. 261]

Food Stamp Program; Alaska Thrifty Food Plan

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: The Agriculture and Food Act of 1961 (Pub. L. 97-98), enacted on December 22, 1981, provides for differing allotment levels for rural and urban Alaska to recognize significantly higher food costs in rural Alaska. This action concerns this statutory change. It will result in allotments for Alaska that are more representative of food costs in all areas of the State, and it will raise the ceiling on allotments for Guam and the Virgin Islands.

This action also concerns (1) a provision in the Agriculture and Food Act of 1961 which places into the statute what is now a regulatory provision permitting the use of "fee agents" in administering the Food Stamp Program in rural Alaska, and (2) a change in the method of calculating annual Thrifty Food Plan (TFP) updates in Guam and the Virgin Islands.

DATE: This action is effective May 1, 1984. Comments must be received on or before July 2, 1984 to be assured of consideration.
ADDRESS: Comments should be submitted to Thomas O'Connor, Supervisor, Issuance and Benefit Delivery Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: If there are any questions, please contact Thomas O'Connor at the above address, or by telephone at (703) 756-3425.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. This action would have a minimal effect on program costs at current levels of participation; it essentially redistributes current food stamp dollars spent in the State. It is not known whether an increase in the food stamp allotment in rural areas would encourage some persons who are not now in the program to begin to participate. To the extent that it does, program costs in Alaska would increase. However, relatively few people live in rural parts of Alaska, so even if this action brought about an increase in participation there, the national impact would be small. This is classified as a "non-major" action because it will not have an annual effect on the economy of more than $100 million. The action will not result in major increases in costs or prices and will not have a significant adverse effect on competition, employment, productivity, investment, or foreign trade. Further, this action is unrelated to the ability of United States based enterprises to compete with foreign-based enterprises. Adoption of this action would result in an Alaska allotment more representative of food costs in all areas of the State.

Justification for Publishing as an Interim Rule Effective Upon Publication

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. This action would have a minimal effect on program costs at current levels of participation; it essentially redistributes current food stamp dollars spent in the State. It is not known whether an increase in the food stamp allotment in rural areas would encourage some persons who are not now in the program to begin to participate. To the extent that it does, program costs in Alaska would increase. However, relatively few people live in rural parts of Alaska, so even if this action brought about an increase in participation there, the national impact would be small. This is classified as a "non-major" action because it will not have an annual effect on the economy of more than $100 million. The action will not result in major increases in costs or prices and will not have a significant adverse effect on competition, employment, productivity, investment, or foreign trade. Further, this action is unrelated to the ability of United States based enterprises to compete with foreign-based enterprises. Adoption of this action would result in an Alaska allotment more representative of food costs in all areas of the State.

Regulatory Flexibility Act

The action also has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. These provisions primarily represent changes in certification, issuance, and computer programming for Alaska, so the Alaska State and local welfare agencies would be affected. Those most affected would be current participants in the program. There would be no significant immediate impact on Guam or the Virgin Islands.

Paperwork Reduction Act

This regulation does not contain reporting and recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act.

Background

Thrifty Food Plan—Alaska

During most of the 1970's there was a separate food stamp allotment level for Alaska because it had food prices significantly different from those in the 48 States and D.C. Allotments for Alaska were based on the cost of the Thrifty Food Plan (TFP) in Alaska. This was at first an administrative policy, but it was incorporated into law by the Food Stamp Act of 1977 (Pub. L. 95-113, 91 Stat. 958), approved September 23, 1977. Although the separate TFP for Alaska averaged about one-third higher than the TFP for the 48 States, it was not high enough to meet the TFP needs of all persons in the State. Some rural areas of Alaska had food prices twice as high as the food stamp allotments because the allotment was based upon Anchorage prices only—the only area in the State where the Bureau of Labor Statistics routinely collected food price information. So an informal compromise was arrived at, and a procedure was developed to take into account food prices in more areas of the State. This procedure estimated an average TFP cost for all areas of the State by weighting the relative costs of food in twelve Alaska communities by the food stamp caseload in those communities. The procedure took into account food costs of about 85 percent of the food stamp population in the State and the average TFP obtained resulted in a 9.3 percent increase in Alaska allotments. The adjusted allotments were first published on November 9, 1978, at 44 FR 64067.

This 9.3 percent increase made the Alaska allotment more representative, on the average, of overall Alaska food costs, but it was still not high enough for every area. The allotment was still substantially less than would be required to purchase the components of the TFP "market basket" in the remote areas of the State where food costs are extremely high. At the same time, the 9.3 percent adjustment resulted in providing urban areas of the State with more than they needed to purchase the TFP "market basket." However, this was the best accommodation that could be made. Under the Food Stamp Act of 1977 (Pub. L. 95-113, 91 Stat. 958), the Department had authority only to have one allotment level for the State.

That changed with passage of the Agricultural and Food Act of 1981 (Pub. L. 97-98). This statute amended the Food Stamp Act of 1977 to give the Department the legislative authority to develop separate allotments for urban and rural areas of Alaska. This action concerns a procedure to implement that statute.

Rural/Urban Definition

The language of the 1981 Act specifies a rural/urban distinction to reflect the cost of food. The legislative history cites the purpose of the language as providing a cost differential for areas of the State where food prices are significantly higher than in Anchorage. The Department, therefore, had to assure that higher allotments be restricted to areas where there is a significant food price differential and that such areas be...
rural in character. In addition, to ease administration and prevent errors in determining whether residents are entitled to the higher rural allotment or not, a discrete geographic boundary is necessary in defining areas as urban or rural. In making this determination, the Department explicitly ruled out an urban-rural designation based solely upon the criteria used for fee agent coverage and eligibility for subsistence hunting and fishing. These criteria would result in more sporadic coverage of the rural allotments and would not necessarily address the specific concern of this rule—increased allotments in areas with higher food prices.

The State had recommended that the Department use family living cost data applied to each of the 23 county equivalents in the State of Alaska. These data were contained in a publication entitled, *Numbers: Basic Economic Statistics of Alaska Census Divisions*, which was prepared by the Alaska Department of Commerce and Economic Development, Division of Economic Enterprise. Each area would be designated as either rural or urban based upon whether its family living costs were comparatively high or low. A major advantage of the State-recommended data base was that its use of county equivalents resulted in coverage of all areas of the State. However, the major disadvantage of this was its use of overall family living costs rather than family food costs specifically. Using family food costs data would be more consistent with the legislative history and the purposes of the Food Stamp Program—to ensure increased consumption of food.

Therefore, the Department attempted to determine the food numbers which were embedded in the total family living costs data. The Department publication indicated that the indexes were obtained from the publication entitled *Alaskan Interregional Cost Differentials*, published by the Center for Northern Educational Research, University of Alaska. This publication contained only one set of food index numbers which could reasonably have been used to develop the family living costs data. Using these data, the Department was able to construct a food index for all but three Census Divisions, covering all but 4 percent of the population in the State. The three areas for which a food index could not be constructed were assigned their urban or rural designation based upon family living costs data.

Areas of the State which have food costs less than 130 percent of Anchorage costs are designated as urban areas for purposes of this rule. These areas are: Fairbanks-North Star Borough, Southeast Fairbanks Census Area, Matanuska-Susitna Borough, Anchorage Borough, Kenai Peninsula Borough, Kodiak Island Borough, Valdez-Cordova Census Area, Skagway-Yakutat-Angoon Census Area, Haines Borough, Juneau Borough, Sitka Borough, Wrangell-Petersburg Census Area, Prince of Wales-Outer Ketchikan Census Area, Aleutian Islands Census Area, and Ketchikan Gateway Borough. The remaining areas of the State are designated rural areas for allotment purposes. The rural areas all had food costs 130 percent or more of Anchorage costs.

Methodology for Urban/Rural Allotments

The Department used the same mathematical procedure to develop allotment levels for urban and rural areas of Alaska as was used to calculate the 9.3 percent adjustment. That is, an index number depicting costs was weighted by food stamp participation in each area, average differences for urban and rural areas were derived, and these differences were separately applied to Anchorage TFP costs. The results were reduced by one percent and rounded down as required by law. Size and economies of scale adjustments were also made. Since December 1990 participation statistics were available and more recent than the statistics used to obtain the 9.3 percent increase, these were used to determine the relative distribution of the caseload in each county equivalent area. The Department does not plan to make adjustments in the composite indexes to use another month's participation statistics. However, should the relative differences change substantially, then the Department would consider making adjustments.

Anchorage TFP costs were $345.70 for a family of four in June 1983. The current food stamp allotment of $374 reflects the 9.3 percent adjustment and legislated rounding and reductions. Costs in urban areas of the State were 6.4 percent higher than Anchorage costs, which are reflected in an allotment for urban areas of $384 for a family of four. Rural costs were 50.7 percent higher than Anchorage costs, which are reflected in a rural allotment of $515. The new allotment in urban areas is higher than Anchorage TFP costs, but it is lower than the current allotment. The new allotment for rural areas is substantially higher than the current allotment. The magnitude and direction of these differences are appropriate in view of the formula which was used to develop the current and the new allotments.

Thrifty Food Plan amounts for Alaska and the revisions are as follows:

**Thrifty Food Plan Amounts for Alaska**

<table>
<thead>
<tr>
<th>Household size</th>
<th>Current Thrifty Food Plan amounts</th>
<th>Anchorage Thrifty Food Plan amounts reduced by 1 pt</th>
<th>Urban allot­ments</th>
<th>Rural allot­ments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 person</td>
<td>$112</td>
<td>$102</td>
<td>$109</td>
<td>$154</td>
</tr>
<tr>
<td>2 persons</td>
<td>374</td>
<td>342</td>
<td>364</td>
<td>321</td>
</tr>
<tr>
<td>3 persons</td>
<td>533</td>
<td>487</td>
<td>518</td>
<td>512</td>
</tr>
<tr>
<td>4 persons</td>
<td>599</td>
<td>539</td>
<td>573</td>
<td>512</td>
</tr>
<tr>
<td>5 persons</td>
<td>673</td>
<td>616</td>
<td>655</td>
<td>606</td>
</tr>
</tbody>
</table>
| Each additional member | $+ 54 $+ 77 $+ 82 $+ 116

**Thrifty Food Plan Ceiling—Guam and the Virgin Islands**

Pub. L. 91-671, 84 Stat. 2048-2052, enacted January 11, 1971, provided, in part, that the separate coupon allotment schedules in Guam and the Virgin Islands could not exceed the coupon allotment schedules in the fifty States. The Food Stamp Act of 1977 incorporated similar language, but specified use of the Thrifty Food Plan with appropriate cost adjustments. The Department last adjusted the TFP amounts for the fifty States and the District of Columbia, Guam and the Virgin Islands in October 1983, based upon June 1983 prices. When the Alaska urban-rural TFP rules are implemented, the TFP amount used to cap Guam and the Virgin Islands' allotments will be allowed to increase. The Department will use the rural Alaska TFP amounts as the new cap to determine the TFP for Guam and the Virgin Islands.

**Fee Agents**

An amendment to the Agriculture and Food Act of 1991 has placed into the statute what is now a regulatory provision allowing the use of so-called "fee agents" in administering the food stamp program in rural Alaska. The Department is not making any change to the regulations pertaining to fee agents since fee agent provisions are included in current Food Stamp Program regulations. The definitions of "rural" Alaska for "fee agent" purposes will be unaffected by the urban-rural allotments.

**Thrifty Food Plan Adjustment—Guam and the Virgin Islands**

From the time the Food Stamp Program began to operate in Guam and
the Virgin Islands, the Bureau of Labor Statistics (BLS) has provided FNS with quarterly food price data to update values of the TFP in these areas. A statistical analysis of the TFP cost changes from September 1978 through June 1983 showed a close correlation between price changes in Guam and the Virgin Islands and the 48 States and D.C. The correlation coefficients of .989 in Guam and .973 in the Virgin Islands indicated that values of TFP changes in the 48 States and D.C. can be used to reliably estimate price changes in Guam and the Virgin Islands. This alternative method will also eliminate the need and expense of conducting separate surveys in these areas. Accordingly, the Department requested BLS to eliminate separate data collection for Guam and the Virgin Islands. Changes in the value of the TFP for the 48 States and D.C. will be used to update Guam and the Virgin Islands TFP values. The Department will, as a safeguard, periodically reestimate values of the TFP in these areas.

Implementation

Section 1303 of Pub. L. 97-98, dealing with Alaska’s Thrifty Food Plan, was among provisions which, under section 1338 of that law, were originally scheduled to become effective on dates prescribed by the Secretary, taking into account the need for orderly implementation (Pub. L. 97-98, Title XIII, sec. 1338, 95 Stat. 1285, December 22, 1981). However, Congress reconsidered the effective date provision of Pub. L. 97-98 in conjunction with passage of the Food Stamp Act Amendments of 1982 and mandated that, notwithstanding section 1338, all of the food stamp provisions of Pub. L. 97-98 not already effective would be effective upon enactment of the 1982 legislation (Pub. L. 97-253, Title XIII, sec. 1338, 95 Stat. 1285, September 8, 1982). The 1982 provisions were signed into law September 8, 1982. Since that time has now passed, it is important that this rule be implemented at the earliest possible date. However, the Department recognizes that the Alaska State agency must reprogram computers and communicate new allotment amounts to certification and issuance personnel. Therefore, in order to allow sufficient time for implementation, the Department is requiring that the Alaska State agency be required to provide the new allotment levels not later than August 1, 1984. The Department has been advised by the Alaska State agency that they need until August 1, 1984, to convert their caseload to the new allotment levels. The Alaska State agency advised us that they are presently in the process of establishing a Statewide computer eligibility determination system for all public assistance programs including the Food Stamp Program. Their staff and their computer system is already overworked handling normal Program operations and doing the total computer conversion. Based on this information the Department is not requiring the Alaska State agency to implement any sooner than August 1, 1984. However, if circumstances were to change, the State agency has the authority under this rule to implement sooner than August, 1984. Until February 1, 1985, households in rural Alaska may request enhanced benefits (otherwise known as retroactive benefits) for the period after September 8, 1982, during which they lived in rural Alaska and participated in the Food Stamp Program in that area. Because of the potentially large amounts involved, and to minimize economic disruption, the Department is requiring that these enhanced benefits be provided in amounts equal to the higher of $50 a month or one-twelfth of the total amount each month. Pub. L. 97-253, Section 162(b) also made the new TFP cap for Guam and the Virgin Islands effective as of September 8, 1982. During the period October 1, 1982, to September 30, 1983, Guam’s calculation for the TFP was one dollar higher for certain household sizes than the capped Guam TFP. When the Alaska urban-rural TFP rules are implemented, the TFP amount used to cap Guam’s allotment during this period will increase retroactively. Therefore, until February 1, 1985, certain households in Guam may request enhanced benefits for the period October 1, 1982 to September 30, 1983 during which they lived in Guam and participated in the Food Stamp Program in that area. These are household sizes two, five, and eight or more. Because Guam enhanced benefits will be relatively small, these may be provided in one month.

Enhanced Benefit Amounts

The following tables show the amount of enhanced benefits which households in Alaska and Guam will be entitled to receive for each month they participated in the Food Stamp Program in Guam or in rural parts of Alaska since September 8, 1982. Except for one- and two-person households, enhanced benefits shown in the tables are fixed amounts for each month, or partial month, of program participation. Some households will, therefore, receive slightly more than they would otherwise have been entitled to, but administrative complexity will, thereby, be greatly decreased. For example, in October 1982, four-person households in Alaska received a maximum coupon allotment of $365, based upon the 9.3 percent increase over Anchorage. The maximum coupon allotment for all four-person households participating in rural areas should have been $503, $138 more than they did receive. In October 1983, four-person households received a maximum allotment of $374, but those in rural areas should have received $515, or $141 more. The Department has determined that the higher amount, $141, which was based upon the most recent allotment period, be provided to four-person households in rural Alaska. The cost to the Federal Government of providing a fixed monthly amount for households sizes three or more is relatively small because the differences are small from one allotment period to another. The difference for four-person households sizes is about $35 a year. One and two-person households will be treated differently because of the higher cost to the Federal Government of providing a fixed amount. The Food Stamp Act of 1977 (Pub. L. 95-113, 91 Stat. 950, September 29, 1977) provided that one- and two-person households shall receive a minimum food stamp benefit of $10. Therefore, some one- and two-person households receive higher benefits than they would receive if their benefit calculation completely followed the formula used for the benefit calculation for other household sizes:

Food stamp benefit = Maximum allotment — 30 percent of net income

For example, a one-person household with the maximum net income, $507, received the $10 minimum benefit in October 1983. Under this rule, that household would still be entitled to $10, so they would not receive an enhanced benefit. A lower income one person household could, however, be entitled to enhanced benefits. For example, the one person household with $340 income should have received $52 but only received $10. This household would be entitled to receive $42 in enhanced benefits. The amounts of enhanced benefits for one and two-person households will vary according to their income. Therefore, these amounts must be calculated individually. To facilitate the calculation of monthly enhanced benefit amounts for one and two-person households, the Department will provide the affected State agencies with separate tables.

The following tables show the monthly amount of enhanced benefits for households in rural Alaska and in Guam.
MONTHLY ENHANCED BENEFITS FOR HOUSEHOLDS IN RURAL ALASKA

[Sept. 1982–implementation month]

<table>
<thead>
<tr>
<th>Household size</th>
<th>Monthly enhanced benefit amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>112</td>
</tr>
<tr>
<td>2</td>
<td>141</td>
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<tr>
<td>3</td>
<td>168</td>
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<td>4</td>
<td>201</td>
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<tr>
<td>5</td>
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<td>255</td>
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<td>8</td>
<td>325</td>
</tr>
<tr>
<td>9</td>
<td>362</td>
</tr>
</tbody>
</table>

MONTHLY ENHANCED BENEFITS FOR HOUSEHOLDS IN GUAM


<table>
<thead>
<tr>
<th>Household size</th>
<th>Monthly enhanced benefit amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>50</td>
</tr>
<tr>
<td>2</td>
<td>61</td>
</tr>
<tr>
<td>3</td>
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<td>4</td>
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</tr>
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<td>5</td>
<td>90</td>
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<td>6</td>
<td>100</td>
</tr>
<tr>
<td>7</td>
<td>110</td>
</tr>
<tr>
<td>8</td>
<td>120</td>
</tr>
</tbody>
</table>

Mass Change Notices

Households in urban Alaska will have their allotments reduced as a result of this action. Section 273.12(e)(1) provides that when Thrifty Food Plan amounts are being changed, a Notice of Adverse Action is not required. However, the Department is strongly encouraging the State of Alaska to send an individual notice to households of these changes. Normally, changes in Thrifty Food Plan amounts result in increases in the allotments households receive. Since these changes will result in decreases for households in urban areas, many households may be concerned and request fair hearings. Notices will avoid unnecessary hearings which could not possibly result in benefit increases. Thus, the State agency should provide mass change notices to all households in urban areas. We recommend that the notice also explain that the amount of the benefit reduction for each household size in urban areas will be no more than the following amounts: household size 1–$3, household size 2–$5, household size 3–$6, household size 4–$8, household size 5–$10, household size 6–$12, household size 7–$16, household size 8–$18, each additional person in households larger than 8–$3.

Characteristics of Urban Areas

Urban areas are those areas, within the 170 metropolitan statistical areas, that have a population of 50,000 or more. The urban allotment is based on the Thrifty Food Plan adjustment for urban Alaska, as calculated by the Food and Nutrition Service. See § 273.9 for a list of the Thrifty Food Plan for the 48 States and 11 areas. This adjustment is the product of multiplying 0.790 by the Anchorage Thrifty Food Plan.

Participating State Agencies

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1(g), a new paragraph (69) is added to read as follows:

§ 272.1 General terms and conditions.

(g) Implementation. * * *

(69) Amendment No. 261. State agencies shall implement this amendment establishing the Alaska urban and rural allotment levels and the new cap for Guam no later than August 1, 1984. Households in rural Alaska which request retroactive benefits by February 1, 1985 will be entitled to retroactive benefits for the period after September 8, 1982, during which they lived in rural Alaska and participated in the Food Stamp Program in that area. These retroactive benefits will be prorated over a period of time not to exceed 1 year. The amount provided each month will be the higher of $50 or one-twelfth of the total amount due.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.10 paragraph (6) is revised to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

(e) Calculating net incomes and benefit levels. * * *

(4) Thrifty Food Plan—(l) Level of the Thrifty Food Plan. The Thrifty Food Plan shall be uniform by household size throughout the 48 contiguous States and the District of Columbia. The Thrifty Food Plan for Hawaii shall be the Thrifty Food Plan for the 48 States and D.C., adjusted for the price of food in Honolulu. The plans for urban and rural parts of Alaska shall be the Thrifty Food Plan for the 48 States and D.C., adjusted for the price of food in Anchorage and further adjusted for urban and rural Alaska as defined in § 272(c). The Thrifty Food Plans for Guam and the Virgin Islands shall be adjusted for changes in cost of food in the 48 States and D.C., provided that the costs of these plans may not exceed the cost of the highest Thrifty Food Plan for the 50 States. The Thrifty Food Plan amounts in each area are adjusted annually and...
Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. This action is necessary to prevent the artificial spread interstate of corn cyst nematode (Heterodera zeae).

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the Federal Register. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the Federal Register as soon as possible.

Background

Corn cyst nematode Heterodera zeae, is a cyst-forming nematode that attacks the roots of host plants such as corn, barley, oats and sorghum. The nematode bores into the roots of the plants and feeds on the juices resulting in poor root development and poor plant growth. If allowed to become established in the United States it could cause severe crop losses. The corn cyst nematode is spread artificially through the movement of infested soil and equipment carrying infested soil.

Corn cyst nematode has been recently discovered in several counties in the State of Maryland. This is the first known find of corn cyst nematode in the Western Hemisphere. It has been previously reported only in the countries of India, Pakistan and Egypt. This document amends the regulations in Part 301 ("Domestic Quarantine Notices") of Title 7 of the Code of Federal Regulations (7 CFR Part 301) by adding a new Subpart 301.90, captioned "Corn Cyst Nematode." This subpart (1) quarantines the State of Maryland for corn cyst nematode; (2) designates certain areas in Maryland as "regulated areas"; (3) designates certain articles as "regulated articles"; and (4) establishes regulations governing the interstate movement of regulated articles from regulated areas.

Quarantine and Regulations

Infestations of corn cyst nematode were initially found in areas of Kent County, Maryland. Subsequent soil surveys detected the nematode in the counties of Cecil, Harford and Queen Anne's. These areas remain infested at this time. Therefore, this document, in Subpart 301.90, quarantines the State of Maryland for corn cyst nematode and establishes regulations prohibiting any common carrier or other person from moving interstate from any regulated area any regulated article except in accordance with conditions prescribed in § 301.90-4. Two footnotes are added for informational purposes. Footnote 1 references the authority of an inspector to stop and inspect, seize, quarantine, treat and otherwise dispose of regulated articles in accordance with provisions in the Federal Pest Act (7 U.S.C. 150dd, 150ff) and Plant Quarantine Act (7 U.S.C. 164a). Footnote 2 references 7 CFR Part 330 which prescribes regulations for the movement in interstate or foreign commerce of the corn cyst nematode.

Regulated Areas

The areas that are infested in the State of Maryland are described in § 301.90-3(c) and are designated as "regulated areas." The State of Maryland has imposed a quarantine and is enforcing regulations in the intrastate movement of regulated articles which parallels the Federal quarantine. The areas that are infested in Maryland are described as regulated areas as follows:

Maryland

Cecil County. That portion of the county south of U.S. Highway 1 and the Maryland-Pennsylvania State line, and west of the Maryland-Delaware State line and U.S. Highway 301.

Harford County. That portion of the county southeast of U.S. Highway 1.

Queen Anne's County. That portion of the county bounded by a line beginning at a point where U.S. Highway 301 intersects the Chester River, then southeasterly along said highway to its intersection with State Highway 304, then northwesterly along said highway to its intersection with the Chester River, then northeasterly along said river to U.S. Highway 301 (the point of beginning).

It is necessary to designate the above described areas as regulated areas because they are areas in which the corn cyst nematode has been found, or an area in which the Deputy Administrator has reason to believe the corn cyst nematode is present or an area deemed necessary to regulate because...
of its proximity to the corn cyst nematode or its inseparability for quarantine enforcement purposes from localities where corn cyst nematode has been found.

Regulated Articles

The regulations are designed to impose restrictions on the interstate movement of those articles which are determined to have a significant risk of carrying corn cyst nematode at the time of movement of such articles from areas designated as regulated areas because of corn cyst nematode. This is necessary to prevent the artificial spread interstate of corn cyst nematode. This is necessary for quarantine enforcement purposes from regulated areas.

Section 301.90-2 designates the following articles as regulated articles:

(1) Soil (except soil samples for processing, testing, or analysis in accordance with 7 CFR Part 301), compost, humus, and muck, separately or with other things (such as attached to equipment);
(2) Plants with roots with soil attached, except houseplants grown in a residence and not for sale;
(3) Grass sod;
(4) Root crops with soil attached;
(5) Mechanized farm equipment which has been used for soil tillage or harvesting (e.g., tractors, combines, plows, disks, planters and cultivators);
(6) Custom farm equipment which has been used for soil treatment (e.g., lime and fertilizer trucks, tenders and nurse tanks);
(7) Mechanized soil-moving equipment which has been used to move or transport soil (e.g., draglines, bulldozers, road scrapers, rototillers and dump trucks); and
(8) Any other product, article, or means of conveyance, of any character whatsoever, not covered above when it presents a risk of spread of corn cyst nematode and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions in the quarantine and regulations.

Definitions

New § 301.90-1 contains definitions for informational purposes of certain terms used in the regulations. These include definitions of the terms "certificate", "compliance agreement", "Deputy Administrator", "Inspector", "limited permit", "Plant Protection and Quarantine", "regulated area", and "regulated article." Section 301.90-1 also contains definitions of the terms "interstate", "moved", "person", and "State" which are defined in accordance with definitions and authority set forth in the Plant Quarantine Act (7 U.S.C. 161, 162) and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee).

In addition, § 301.90-5 provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if the inspector determines: (1) In consultation with the Deputy Administrator, that the regulated article is to be moved to a specified destination for specified handling, utilization, processing or treatment; (2) the regulated article is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of corn cyst nematode; and (3) the regulated article is eligible for movement under all other applicable federal domestic plant quarantines and regulations.

Section 301.90-5 also provides that certificates and limited permits may be issued (instead of issuance by an inspector) by a person engaged in the business of growing, handling or moving regulated articles, provided such person is operating under a compliance agreement (prescribed by § 301.90-6) and provides for the withdrawal of a certificate or limited permit if an inspector determines that the holder thereof has not complied with any conditions under the regulations for the use of such document.

Specifically, § 301.90-7 and 301.90-8 contain additional restrictions on the interstate movement of regulated articles.

In addition, § 301.90-5 provides for the issuance of certificates and limited permits on regulated articles. Specifically, § 301.90-7 provides that any person who desires a certificate or limited permit to move regulated articles should request inspection by an inspector as far in advance as possible (no less than 48 hours before the desired movement). A footnote, number 7, is added to indicate where to contact the inspectors. Section 301.90-8 requires a certificate or limited permit to be attached to the regulated article, or the accompanying waybill or other shipping document during the interstate movement. These provisions are necessary for enforcement purposes and to insure that persons desiring inspection services can obtain them before the intended movement date.

Compliance Agreements (§ 301.90-6)

Section 301.90-6 provides for the issuance and cancellation of compliance agreements. This section provides that a compliance agreement can be entered into by any person engaged in the business of growing, handling, or moving regulated articles who agrees in writing to comply with the provisions of Subpart 301.90 and any conditions imposed pursuant thereto. Compliance agreements are provided for the convenience of persons who, because of
Title 7 of the Code of Federal Regulations is amended by adding "Subpart—Corn Cyst Nematode", consisting of §§ 301.90-1 through 301.90-10, to read as follows:

Subpart—Corn Cyst Nematode

Quarantine and Regulations

Sec.

301.90 Quarantine and regulations; restrictions on interstate movement of regulated articles.

301.90-1 Definitions.

301.90-2 Regulated articles.

301.90-3 Regulated areas.

301.90-4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.

301.90-5 Issuance and cancellation of certificates and limited permits.

301.90-6 Compliance agreement and cancellation thereof.

301.90-7 Assembly and inspection of regulated articles.

301.90-8 Attachment and disposition of certificates and limited permits.

301.90-9 Costs and charges.

301.90-10 Treatments.


Subpart—Corn Cyst Nematode

Quarantine and Regulations

§ 301.90 Quarantine and regulations; restrictions on interstate movement of regulated articles.

(a) Quarantines and regulations. The Secretary of Agriculture hereby quarantines the State of Maryland in order to prevent the artificial spread of the corn cyst nematode (Heterodera zeae), a dangerous plant pest not heretofore widely prevalent or distributed within and throughout the United States; and hereby establishes regulations governing the interstate movement of regulated articles specified in § 301.90-2.

(b) Restrictions on interstate movement of regulated articles. No common carrier or other person shall move interstate from any regulated area any regulated article except in accordance with the conditions prescribed in this subpart.

1 Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 19 of the Plant Quarantine Act (7 U.S.C. 194a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

2 Regulations concerning the movement of corn cyst nematode in interstate or foreign commerce are contained in Part 330 of this chapter.
§ 301.90-1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

(a) Certificate. A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 301.90-5(a).

(b) Compliance agreement. A written agreement between Plant Protection and Quarantine and a person in which the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(c) Deputy Administrator. The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

(d) Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the quarantine and regulations in this subpart.

(e) Interstate. From any State into or through any other State.

(f) Limited permit. A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such regulated article is eligible for interstate movement in accordance with § 301.90-5(b).

(g) Moved (movement, move). Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, allowed to be moved or caused to be moved by any means. “Movement” and “move” shall be construed in accordance with this definition.

(h) Person. Any individual, partnership, corporation, company, society, association, or other organized group.


(j) Regulated area. Any State, or any portion thereof, listed in § 301.90-3(c) or otherwise designated as a regulated area in accordance with § 301.90-9(b).

(k) Regulated article. Any article listed in § 301.90-2 or otherwise designated as a regulated article in accordance with § 301.90-2.

(l) State. Each of the several States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and any other Territories or Possessions of the United States.

§ 301.90-2 Regulated articles.

The following articles are designated as regulated articles:

(a) Soil (except soil samples for processing, testing, or analysis in accordance with 7 CFR Part 301), compost, humus, and muck, separately or with other things (such as attached equipment);

(b) Plants with roots with soil attached, except houseplants grown in a residence and not for sale;

(c) Grass sod;

(d) Root crops with soil attached;

(e) Mechanized farm equipment which has been used for soil tillage or harvesting (e.g., tractors, combines, plows, disks, planters and cultivators);

(f) Custom farm equipment which has been used for soil treatment (e.g., lime and fertilizer trucks, tenders and nurse tanks);

(g) Mechanized soil-moving equipment which has been used to move or transport soil (e.g., dragliners, bulldozers, road scrapers, rototillers and dump trucks); and

(h) Any other product, article, or means of conveyance, of any character whatsoever, not covered above when it presents a risk of spread of corn cyst nematode.

§ 301.90-3 Regulated areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a regulated area in paragraph (c) of this section, each quarantined State, or each portion thereof, in which the corn cyst nematode has been found by an inspector in which the Deputy Administrator has reason to believe that the corn cyst nematode is present, or each portion of a quarantined State which the Deputy Administrator deems necessary to regulate because of its proximity to the corn cyst nematode or its inseparability for quarantine enforcement purposes from localities in which the corn cyst nematode occurs. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the interstate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the corn cyst nematode.

(b) The Deputy Administrator or an inspector may temporarily designate any nonregulated area in a quarantined State as a regulated area in accordance with the criteria specified in paragraph (a) of this section for listing such area. Written notice of such designation shall be given to the owner or person in possession of such nonregulated area and, thereafter, the interstate movement of any regulated articles from such area shall be subject to the applicable provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (c) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

(c) The areas described below are designated as regulated areas:

Maryland

Cecil County. That portion of the county south of U.S. Highway 1 and the Maryland-Pennsylvania State line, and west of the Maryland-Delaware State line and U.S. Highway 301.

Harford County. That portion of the county southeast of U.S. Highway 1.

Kent County. That portion of the county west of U.S. Highway 301.

Queen Annes County. That portion of the county bounded by a line beginning at a point where U.S. Highway 301 intersects the Chester River, then southwesterly along said highway to its intersection with State Highway 304, then northwesterly along said highway to its intersection with the Chester River, then northeasterly along said river to U.S. Highway 301 (the point of beginning).

§ 301.90-4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.

Any regulated article may be moved interstate from any regulated area in a...
quarantined State only if moved under the following conditions:
(a) With a certificate or limited permit issued and attached in accordance with §§ 301.90-5 and 301.90-6
(b) Without a certificate or limited permit, if (i) The article originated outside of any regulated areas, and (ii) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.
§ 301.90-5 Issuance and cancellation of certificates and limited permits.
(a) A certificate shall be issued by an inspector for the movement of a regulated article if such inspector:
(1)(i) Determines that it has been treated under the direction of an inspector in accordance with § 301.90-10; or (ii) Determines based on inspection of the premises of origin that it is free from the corn cyst nematode; or
(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the corn cyst nematode pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd).
(b) A limited permit shall be issued by an inspector for the movement of a regulated article if such inspector:
(1) Determines, in consultation with the Deputy Administrator, that it is to be moved to a specified destination for specified handling, utilization, processing, or treatment in accordance with § 301.90-10; (such destination and other conditions to be specified on the limited permit), when, upon evaluation of all of the circumstances involved in each case, it is determined that such movement will not result in the spread of the corn cyst nematode because life stages of the pest will be destroyed by such specified handling, utilization, processing, or treatment;
(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the corn cyst nematode pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd).
(c) Certificates and limited permits for use for shipments of regulated articles may be issued by an inspector or person engaged in the business of growing, handling, or moving regulated articles provided such person is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of a regulated article if such person has treated such regulated article to destroy infestation in accordance with the provisions in § 301.90-10 and the inspector has made the determination that such article is otherwise eligible for a certificate in accordance with paragraph (a) of this section; or if the inspector has made the determination that such article is eligible for a certificate in accordance with paragraph (a) of this section without such treatment. Any such person may execute and issue a limited permit for interstate movement of a regulated article when the inspector has made the determination that such article is eligible for a limited permit in accordance with paragraph (b) of this section.
(d) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector if such inspector determines that the holder thereof has not complied with all of the conditions under the regulations for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision in writing within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision and, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice governing such a hearing shall be established by the Deputy Administrator.
§ 301.90-6 Compliance agreement and cancellation thereof.
(a) Any person engaged in the business of growing, handling, or moving regulated article may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart. The compliance agreement shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.
(b) Any compliance agreement may be cancelled orally or in writing by the person who is supervising its enforcement whenever the person finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision, in writing within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision and, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice governing such a hearing shall be established by the Deputy Administrator.
§ 301.90-7 Assembly and inspection of regulated articles.
(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.90-5(c)) who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired

4 Treatments shall be monitored by inspectors in order to assure compliance with the requirements in this subpart.
4 Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to the United States or to stop such a pest in the United States from spreading or expanding, and to prevent the spread of any plant pest in the United States, enter upon all premises, seize and remove any plant pests, diagnose it and destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means or conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infected or infected by or contains any such plant pest.
movement), request an inspector to take any necessary action under this subpart prior to movement of the regulated article.

(b) Such articles shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

§ 301.90-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee’s copy of the accompanying waybill or other shipping document; Provided however, that the requirements of this section may be met by attaching the certificate or limited permit to the consignee’s copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.90-9 Costs and charges.

The service of the inspector shall be furnished without cost, except as provided in 7 CFR Part 354. The U.S. Department of Agriculture will not be responsible for any costs or charges incurred to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

§ 301.90-10 Treatments.

Treatments for regulated articles shall be as set forth below. Treatment schedules for used mechanized farm equipment, used mechanized soil moving equipment, used custom farm equipment, and used containers are as follows:

(a) Water under pressure using a single orifice nozzle. All soil and other debris must be removed.

(b) Steam by using portable steam equipment. The steam must remove all soil and other debris.

Precaution: Steam may remove loose paint and usually is not recommended for use on machinery with conveyor belts and rubber parts.

Limitation: Whether washed or steam cleaned, all soil and debris must be removed. If in the judgment of the inspector, equipment cannot be adequately cleaned, it must be fumigated.

(c) Methyl bromide at normal atmospheric pressure (NAP), chamber or tarpaulin.

Dosage:

- 240 g/m² (15 lbs./1000 ft²) for 24 hrs. at 15.5°C (60°F) or above.
- 180 g (oz.) minimum concentration reading at ½ hr.
- 120 g (oz.) minimum concentration reading at 24 hrs.

or

- 126 g/m² (8 lbs./1000 ft²) for 48 hours at 15.5°C (60°F) or above.
- 100 g (oz.) minimum concentration reading at ½ hr.
- 75 g (oz.) minimum concentration reading at 24 hrs.
- 50 g (oz.) minimum concentration reading at 48 hrs.

Limitation: Soil should be removed prior to fumigation. Particular attention must be paid to removing compacted soil.

Done at Washington, D.C., this 26th day of April, 1984.

Richard R. Backus,
Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84-11660 Filed 4-30-84; 8:45 am]
BILLING CODE 5410-34-M

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–CE–12–AD; Amdt. 39–4851]

Airworthiness Directives; Piper Models PA–31T, PA–31T1, PA–31T2 and PA–31T3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directives (AD), applicable to Piper Models PA–31T, PA–31T1, PA–31T2 and PA–31T3 airplanes which requires initial and repetitive dye-penetrant inspections of the fuselage bulkhead at station 332.0, for cracks and reinforcement or replacement of cracked bulkheads. Cracks in this bulkhead, in the area of the stabilizer main spar attachments, have occurred on Piper Model PA–31T Series airplanes. If bulkheads with cracks are not reinforced or replaced, propagation of the cracks may compromise the structural integrity of the stabilizer main spar attachment to the fuselage and result in loss of airplane control.

DATE: Effective Date: May 9, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Piper Aircraft Corporation Service Bulletin No. 773 applicable to this AD may be obtained from Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.


SUPPLEMENTARY INFORMATION: Several instances have been reported of cracking of the fuselage bulkhead at station 332.0 on Piper Model PA–31T Series airplanes. In the area to the front of the horizontal stabilizer spar attachment. The cracks have varied in length from two inches to six inches at the time of discovery. No structural failures or incidents have resulted from these cracks. The manufacturer has made available a structural repair kit for these bulkheads having cracks that do not exceed acceptable limits, and a reinforced bulkhead or replacement of bulkheads having cracks exceeding these limits. It has also issued Service Bulletin 773 which contains instructions for the inspection of this bulkhead, provides acceptable crack criteria, and makes available the reinforced bulkhead and parts for reinforcing the existing bulkhead.

The FAA has determined that cracks found on the fuselage bulkhead at Station 332.0 on PA–31T Series airplanes, if left uncorrected, can result in loss of structural integrity and possible loss of control of the airplane. Since this condition is likely to exist or develop on other airplanes of the same type design, an AD applicable to Piper Models PA–31T, PA–31T1, PA–31T2 and PA–31T3 airplanes is being issued which requires initial and repetitive dye-penetrant inspections of this bulkhead for cracks, and if necessary repair or replacement of the bulkhead in accordance with Piper Service Bulletin No. 773 dated December 19, 1983.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice

1 Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782.
and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39
Aviation safety, Aircraft.

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


Compliance: Required as indicated, unless already accomplished.

To prevent the propagation of cracks in the fuselage bulkhead at Station 332.0, and consequence loss of stabilizer front spar structural support, accomplish the following:

(a) Within 25 hours time-in-service after the effective date of this AD or upon accumulation of 200 hours time-in-service, whichever occurs later, and each 200 hours time-in-service thereafter, inspect, using a dye-penetrant method, the fuselage section 332.0 bulkhead in accordance with Piper Service Bulletin 773 dated December 19, 1983.

(1) If cracks are found that do not exceed the acceptable limitations given in this service bulletin, prior to return to service, stop drill the crack(s), and install Piper Reinforcement Kit K983.

(2) If cracks are found that exceed the acceptable limitations given in this service bulletin, prior to return to service, replace the bulkhead assembly with Reinforced Bulkhead Assembly Part No. 45583-16 or 45683-17.

(b) The repetitive inspections required by paragraph (a) of this AD may be discontinued when Piper Reinforcement Kit K983, or replacement Bulkhead Piper Part No. 45583-16 or 45683-17 is installed.

(c) The intervals between repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(d) The airplanes may be flown, in accordance with FAR 21.197, to a location where the AD may be accomplished.

(e) An equivalent method of compliance with this AD may be used if approved by the Manager, New York Aircraft Certification Office, FAA New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

This amendment becomes effective on May 9, 1984.

[14 CFR Part 75]
[Airspace Docket No. 83-AGL-29]
Establishment of Jet Routes and Area High Routes; Alteration of Jet Route J-106 Green Bay, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns Jet Route J-106 between Green Bay, WI, VORTAC and the Flint, MI, VORTAC. The realigned route reduces route mileage to users and reduces controller workload.

EFFECTIVE DATE: July 5, 1984.


SUPPLEMENTARY INFORMATION:

History

On February 8, 1984, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR 75) to realign Jet Route J-106 between Green Bay, WI, VORTAC and Flint, MI, VORTAC (49 FR 4778). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.8 dated January 3, 1994.

The Rule

This amendment to Part 75 of the Federal Regulations realigns Jet Route J-106 between Green Bay, WI, VORTAC and Flint, MI, VORTAC. The realignment established a direct course between the cited VORTACs resulting in reduced route mileage to users and reduced coordination workload for controllers.

List of Subjects in 14 CFR Part 75
Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, effective 0901 GMT, July 5, 1984, as follows:

J-106 (Amended)

By deleting the words “INT Green Bay 106” and Flint, MI, 310° radials, Flint” and substituting the words “Flint, MI”.

[Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 1306(g) [Revised, Pub. L. 97-449, January 12, 1983]); and 14 CFR 11.69]
Ammunition Hand-Loading Equipment Exported to the Republic of South Africa and Namibia

AGENCY: Office of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Office of Export Administration (OEA) issued a final rule (48 FR 2119, January 18, 1983) transferring export control over ammunition manufacturing machinery (except machinery for manufacturing shotgun shells) to the Office of Munitions Control, Department of State. This action ended an overlap of export jurisdiction that had existed for several years. However, at the time of the January rule, OEA did not specify ammunition hand-loading equipment (for both cartridges and shotgun shells) as equipment that was retained under its jurisdiction.

This rule adds ammunition hand-loading equipment to Supplement No. 2 to Part 379 of the Export Administration Regulations, “Commodities Subject to Export Control—Republic of South Africa and Namibia.” This rule also gives notice that ammunition hand-loading equipment (for both cartridges and shotgun shells) as equipment that was retained under its jurisdiction.

This rule adds ammunition hand-loading equipment to Supplement No. 2 to Part 379 of the Export Administration Regulations, “Commodities Subject to Export Control—Republic of South Africa and Namibia.” This rule also gives notice that ammunition hand-loading equipment (for both cartridges and shotgun shells) is controlled by entry 5399D of the Commodity Control List (Supplement No. 1 to section 399.1).

Exporters need a validated export license to export such equipment to the Republic of South Africa and Namibia, as well as to destinations in Country Groups Q, S, W, Y or Z, Afghanistan and the People’s Republic of China.

Effective Date: May 1, 1984.

FOR FURTHER INFORMATION CONTACT: Vincent Greenwald, Exporter Services Division (Telephone: (202) 377-3856), Office of Export Administration, Department of Commerce, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, 50 U.S.C. app. 2401 et seq.) (“the Act”), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. This rule does not impose new controls on exports, and is therefore exempt from section 13(b) of the Act, which expresses the intent of Congress that where practicable “regulations imposing controls on exports” be published in proposed form.

2. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The collection of this information has been approved by the Office of Management and Budget (OMB control number 0625-0001).

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12231 (46 FR 13193, February 19, 1981), “Federal Regulation.”

Therefore, this rule is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects

15 CFR Parts 379

Exports, science and technology.

15 CFR Part 399

Exports.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

PART 379—[AMENDED]

1. Supplement No. 2 to Part 379, “Commodities Subject to Republic of South Africa and Namibia Embargo Policy,” is amended by adding the phrase—“ammunition hand-loading equipment for both cartridges and shotgun shells,—between “implements of war (ECCN 2018),” and “equipment specially designed for manufacturing shotgun shells (ECCN 5399)” in paragraph 3.

PART 399—[AMENDED]

2. The Commodity Control List, Supplement No. 1 to section 399.1, is amended by revising the last sentence of the Special South Africa and Namibia Controls paragraph of Entry 5390D to read as follows: “A validated license is required for any export to the Republic of South Africa and Namibia of equipment specially designed for manufacturing shotgun shells and for any export of ammunition hand-loading equipment for both cartridges and shotgun shells.”


Dated: March 12, 1984.

John K. Boilock,
Director, Office of Export Administration, International Trade Administration.

[FR Doc. 84-11603 Filed 4-30-84; 8:45 am]
BILLING CODE 3510-05-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33-6525; 34-20894; 35-23290; FR 17; File No. 57-952]

Oil and Gas Producers; Full Cost Accounting Practices

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting amendments to its rules for recognition of gain or loss on sales and other transfers of oil and gas properties by registrants using the full cost method of accounting. The revised rules generally prohibit income recognition in connection with sales or other conveyances of oil and gas properties, and clarify the circumstances in which income may be recognized for management fees and compensation relating to contract services.

DATES: Effective June 1, 1984. The rules adopted herein are applicable to transactions occurring after May 31, 1984.


SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting final rules which amend its requirements for application of the full cost method of accounting by oil and gas producers to generally prohibit income recognition in connection with sales or other conveyances of oil and gas properties. The amended rules also clarify the circumstances in which income may be recognized in connection with the receipt of certain management fees and compensation relating to contract services.

Background

The Commission’s rules on the application of the full cost method of accounting by oil and gas producers...
have generally prohibited income recognition on sales or transfers of oil and gas properties except when the sale causes a significant alteration in the relationship between capitalized costs and proved reserves attributable to a cost center. In addition, the staff has permitted income recognition when the properties sold were held primarily for lease brokerage purposes. In Securities Act Release No. 6445, the Commission proposed to clarify its rules on income recognition and to codify the exception relating to lease brokerage activities ("the original proposals") on the theory that the full cost method of accounting need not be applied to properties maintained in a separate line of business from exploration and production activities. The original proposals also would have codified the policy, reflected in Staff Accounting Bulletin No. 47, to allow recognition as income, under certain circumstances, of management fees received by registrants engaged in organizing and managing limited partnerships involved only in the purchase of proved producing properties and subsequent distribution of income from such properties (commonly known as "income funds"). Based on its evaluation of the comment letters received on the original proposals, the Commission determined to reconsider these proposals. As explained in the reproposing release, the Commission was persuaded by comments that the lease brokerage concept was not workable because of significant practical and conceptual difficulties in distinguishing lease brokerage from production activities. Accordingly, the Commission's reproposing release would have generally eliminated income recognition in connection with sales or other conveyances of oil and gas properties. In addition, the revised rule proposals would have prohibited recognition as income of management fees and compensation for drilling and other services performed on properties in which an ownership or other economic interest is acquired or retained. The revised proposal reflected the view that current recognition of management fee and service contract income would be inconsistent with the full cost concept under which income is recognized only as reserves are produced.

Evaluation of Comments

The Commission received 31 comment letters of which 23 addressed the issue of income recognition on sales or other conveyances of property. More than 75% of these commentators expressed support for a general prohibition against recognizing gains or losses on sales or transfers of oil and gas producing properties. These commentators generally concurred with the view that the lease brokerage concept is not workable and could not be practically implemented. Commentators also noted that the proposed rules would prevent the erosion of basic distinctions between the full cost and successful efforts methods of accounting. The commentators opposing the proposed prohibition of income recognition on sales of property generally believe that a lease brokerage concept should be allowed and that guidelines could be established to prevent abuses. These commentators argued that companies that have separate lines of business and can separate their properties into two distinct classes at the date of acquisition should be allowed to do so.

Twelve of the comment letters addressed the issue of recognition as income of management fees. Over 80% of these commentators opposed the proposal to prohibit income recognition and argued that organizing an income fund for producing properties is fundamentally different from a partnership or joint venture formed to explore or develop non-producing properties. These commentators indicated that compensation for services rendered to income funds is a separate issue from the reinvestment of that compensation to acquire an interest in the properties, even though ultimate realization of that interest would be dependent upon successful and profitable production of reserves. Several commentators suggested that income recognition should be allowed to the extent consideration received exceeds any estimated exploration and development cost which must be subsequently incurred. Commentators supporting the proposal to prohibit recognition of management fee income pointed out that ultimate realization of income which is reinvested in the properties is subject to substantial risk arising from uncertainties regarding quantities of reserves, potential changes in market prices and costs, and tax law revisions.

Finally, 25 comment letters addressed the issue of income recognition for drilling and other services on properties in which the registrant has or acquires an economic interest. All of these commentators opposed the Commission's proposed general prohibition of income recognition for services. Two commentators suggested that the prohibition should apply only if the service activities are an integral part of a company's oil and gas producing activities and such services are provided primarily to affiliates or related entities that own an interest in the properties. These circumstances would suggest that the activities are more like traditional drilling arrangements than contract services. Most commentators argued that service activities constitute a separate line of business and pointed out that companies are often forced to acquire an incidental economic interest in properties in order to obtain the service contract. In these cases, the commentators indicated that income should be recognized to the extent of third party interests in the properties.

Discussion of Final Rule

The final rules prohibit recognition of income on sales or other transfers of oil and gas properties in connection with partnerships, joint venture operations, or various other forms of drilling arrangements, except when there is a significant alteration of the relationship between costs and proved reserves pursuant to existing Rule 4-10(i)(8)(i) of Regulation S-X. The Commission concluded that the lease brokerage concept is not workable, and that the approach adopted is objective and will lead to more consistent and comparable application than the lease brokerage concept.

The revised rules also provide, as proposed, that income may be recognized for those amounts which represent reimbursement of organization, offering, general and administrative expenses, etc., that are identifiable with the transaction, if such amounts are currently incurred and charged to expense. With respect to the recognition as income of management fees, the revised rules make a distinction between arrangements involving proved developed properties and those involving other properties because the Commission understands that the risk of realization of an investment in an income fund is substantially less than that related to properties requiring significant further exploration and
development. Accordingly, the Commission's revised rules provide that management fees received in connection with income funds may be recognized as income provided that any estimated development expenditures required in connection with the production of the existing proved reserves are less than 10% of the partnership's recorded cost of the properties. Any fees not recognized as income under this rule would be credited to the full cost pool and recognized through a lower amortization provision as reserves are produced. Any management fees received in connection with unproved properties or proved undeveloped properties would be credited to the full cost account.

The revised rules with respect to drilling and other contractual services on properties in which the registrant has or acquires an economic interest permit income recognition under specified circumstances. Commentators argued that a general prohibition against income recognition for contractual services would be unduly restrictive, particularly where a minor interest is required to be acquired in order to obtain the service contract.

The Commission is persuaded by the comments that the mere existence of an economic interest in properties upon which services are performed pursuant to a contract should not result in a prohibition of recognition of any income from such services. It believes, however, that income should only be recognized to the extent it exceeds a company's costs in connection with the contract and the properties. The identification of the costs of the properties may be difficult once the registrant has held an economic interest in the properties for more than one year. However, under full cost accounting, costs of properties lose their specific identity once transferred into a full cost pool. To determine the cost of a specific property, it would be necessary to allocate certain adjustments, such as amortization, made to the properties as a group.

Accordingly, the final rules differentiate between services performed on properties as to which the registrant has held an economic interest for at least a year from those performed on properties as to which the registrant acquired or acquired the interest within a year of the date of the service contract. If the interest is acquired within a year of the date of the service contract income may be recognized to the extent that cash consideration received exceeds the registrant's costs. These costs include the registrant's costs of acquiring the properties and performing the services as well as its share of other costs incurred and estimated to be incurred in connection with the properties. Registrants that acquired the economic interest in the properties more than a year before the date of the service contract are permitted to recognize income from the contract pursuant to generally accepted accounting principles. Accordingly, a company may recognize income for compensation received relating to contractual services under the following conditions:

1. Where an interest in the properties is acquired in connection with a service contract, income may be recognized to the extent the cash consideration received, net of the cost associated with such contract, exceeds the company's share of costs incurred and estimated to be incurred in connection with such properties. Ownership interests acquired within one year of the date of such a contract are considered to be acquired in connection with the service for purposes of applying this rule. The amount of any guarantees or similar arrangements undertaken as part of this contract should be considered as part of such costs for purposes of applying this rule. For example, assume that a company drills a well on a property in which it acquires a 2% working interest and receives $500,000 for these services. Assume also that the costs of drilling are $450,000. The company is required to pay $11,000 for its working interest in the property, and is obligated to pay an additional $15,000 for its share of estimated future exploration and development costs. In addition, the company guarantees $10,000 of the indebtedness incurred to acquire the leasehold. Under these rules, income from drilling would be recognized in the amount which the consideration received ($500,000) is reduced by the related costs ($450,000) and the related guarantees ($11,000). In this example, the company would recognize $27,000 of the $400,000 costs of drilling as income for purposes of this rule.

2. Where an interest in the properties has been held for at least one year through transactions unrelated to the service contract, and that interest is unaffected by the service contract, income may be recognized subject to the general provisions for elimination of intercompany profit under generally accepted accounting principles.

3. If the company performs contractual services on behalf of investors in oil and gas producing activities managed by the company or an affiliate, no income from those contractual services should be recognized. Any income not recognized as a result of these rules would be credited to the full cost account and recognized through a lower amortization provision as reserves are produced.

Deletion of Staff Accounting Bulletin Guidance

Because the final rules announced in this release eliminate the recognition of income under the lease brokerage concept, the interpretive guidance on lease brokerage activities provided in Staff Accounting Bulletin No. 47 is superseded by these rules. Consequently, Topic 12-D-4 is deleted from the Staff Accounting Bulletin Series.

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604(a), the Commission has prepared a final regulatory flexibility analysis of the economic impact which the amendments adopted herein will have on small entities. This analysis is attached to this release.

Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) [47 FR 21028] is updated to:

1. Remove the third paragraph of section 406.03.c.iv and add the section of this release entitled "Discussion of Final Rules".

This codification is a separate publication issued by the Commission. It will not be published in the Federal Register/Code of Federal Regulations.

List of Subjects in 17 CFR Part 210

Accounting, Reporting and recordkeeping requirements, Securities.

Text of Rules

Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By revising the paragraph heading for paragraph (i)(6), by revising paragraph (i)(6)(iii) and adding paragraph (i)(6)(iv) of § 210.4—10 to read as follows:


(ii) Other transactions.

(iii) Partnerships, joint ventures and drilling arrangements. (A) Except as provided in subparagraph (i)(i) of this section, all consideration received from sales or transfers of properties in connection with partnerships, joint venture operations, or various other forms of drilling arrangements involving oil and gas exploration and development activities (e.g., carried interest, turnkey wells, management fees, etc.) shall be credited to the full cost account, except to the extent of amounts that represent reimbursement of organization, offering, general and administrative expenses, etc., that are identifiable with the transaction, if such amounts are currently incurred and charged to expense.

(B) Where a registrant organizes and manages a limited partnership involved only in the purchase of proved developed properties and subsequent distribution of income from such properties, management fee income may be recognized provided the properties involved do not require aggregate development expenditures in connection with production of existing proved reserves in excess of 10% of the partnership's recorded cost of such properties. Any income not recognized as a result of this limitation would be credited to the full cost account and recognized through a lower amortization provision as reserves are produced.

(iv) Other services. No income shall be recognized in connection with contractual services performed (e.g., drilling, well service, or equipment supply services, etc.) in connection with properties in which the registrant or an affiliate (as defined in § 210.1-02(b)) holds an ownership or other economic interest, except as follows:

(A) Where the registrant acquires an interest in the properties in connection with the service contract, income may be recognized to the extent the cash consideration received exceeds the related contract costs plus the registrant's share of costs incurred and estimated to be incurred in connection with the properties. Ownership interests acquired within one year of the date of such a contract are considered to be acquired in connection with the service for purposes of applying this rule. The amount of any guarantees or similar arrangements undertaken as part of this contract should be considered as part of the costs related to the properties for purposes of applying this rule.

(B) Where the registrant acquired an interest in the properties at least one year before the date of the service contract through transactions unrelated to the service contract, and that interest is unaffected by the service contract, income from such contract may be recognized subject to the general provisions for elimination of intercompany profit under generally accepted accounting principles.

(C) Notwithstanding the provisions of (A) and (B) above, no income may be recognized for contractual services performed on behalf of investors in oil and gas producing activities managed by the registrant or an affiliate. Furthermore, no income may be recognized for contractual services to the extent that the consideration received for such services represents an interest in the underlying property.

(D) Any income not recognized as a result of these rules would be credited to the full cost account and recognized through a lower amortization provision as reserves are produced.

Authority

These amendments are adopted pursuant to the authority in Sections 5, 6, 7, 8, 10, 19(a) and Schedule A [25] and [26] [15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77s(a) and 77aa [25] and [26]] of the Securities Act of 1933; Sections 12, 13, 14, 15(d) and 23(a) [15 U.S.C. 78l, 78m, 78n, 780(d), 78w(a)] of the Securities Exchange Act of 1934; Sections 5(b), 14 and 20(a) [15 U.S.C. 78e(b), 78n, 78a(a)] of the Public Utility Holding Company Act of 1935 and Section 503 [42 U.S.C. 6238] of the Energy Policy and Conservation Act of 1975.

Shirley E. Hollis, Assistant Secretary.

Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis, which relates to amendments of the Regulation S-X rules for application of the full cost method of accounting by oil and gas producers, has been prepared in accordance with 5 U.S.C. 604(a). The corresponding initial regulatory flexibility analysis appears at 48 FR 44223 [Release No. 33-6484].

1. Need for and Objectives of Rule—As discussed in the section of the release entitled, "Background," the staff became aware of confusion as to the circumstances under which the Commission’s rules permit gain or loss recognition on transfers of oil and gas producing properties. This misunderstanding has created a potential for inconsistency in accounting practice and noncomparability of reported results.

Rule 4-10(i)(6) has generally prohibited gain recognition with limited exceptions. However, the staff permitted income recognition on the sale of properties held in a separate lease brokerage inventory account based on the view that such transactions were not prohibited by the existing rules. Rules were proposed in December 1982 to codify this staff approach. Commentators on that proposal maintained that the lease brokerage concept was not workable because of significant practical and conceptual difficulties in distinguishing lease brokerage from production activities. In response, the Commission reconsidered the staff approach. Because it recognized that a general prohibition against income recognition would have a significant impact on the operating results of some full cost companies, it reproposed rules for public comment in order to ensure that all arguments in favor of income recognition would be adequately heard and considered.

The final rule prohibits income recognition on sales of oil and gas properties, except in specified circumstances. The rule amendments should narrow the diversity in current practice resulting from varying interpretations of the existing rules. In addition, the amendments clarify when registrants can recognize management fees and compensation from drilling and other services as income in response to comments as discussed in 2 below.

2. Issues Raised by Public Comments—The only commentator to specifically address the Initial Regulatory Flexibility Analysis published with the proposed rules opposed the scope of the proposed rules as they relate to drilling and other contract services. The proposed rules would not have permitted recognition as income of management fees or compensation from drilling or other services for the same reason that recognition of income on sales of properties was proposed to be prohibited, that is, gains should be
DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission

18 CFR Part 271
[Docket No. RM79-76-213 (Texas-2 Addition II); Order No. 370]

High-Cost Gas Produced From Tight Formations; Texas


AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1977 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Railroad Commission of Texas that an additional area of the Canyon Sand Formation located in Irion County, Texas be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective May 25, 1984.

FOR FURTHER INFORMATION CONTACT: Elisabeth Pendley, (202) 357-8476, or Walter W. Lawson, (202) 357-8556.

The Commission amends § 271.703(d) of its regulations to include the Canyon Sand Formation as a designated tight formation eligible for incentive pricing under § 271.703(d). The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued September 12, 1983 based on a recommendation by the Railroad Commission of Texas (Texas) in accordance with § 271.703(d). The Canyon Sand Formation, located in Irion County, Texas meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Texas recommendation. This amendment shall become effective May 25, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb, Secretary.

PART 271—[AMENDED]

Section 271.703 is amended to read as follows:

1. The authority citation for Part 271 reads as follows:


2. Section 271.703 is amended by adding paragraph (d)(10)(iii) to read as follows:

§ 271.703 Tight formations.

(d) Designated tight formations. * * * (10) Canyon Sandstone Formation in Texas. RM79-76 (Texas—2). * * * (iii) Irion County. —(A) Delineation of formation. The Canyon Sandstone Formation is located in all of the portion of Irion County which lies to the east of a straight line directed between the junction of Crockett, Schleicher, and Irion Counties at the south end of the line and the junction of Reagan, Tom Green, and Irion Counties at the north end of the line.

(B) Depth. The Canyon Sandstone Formation is that interval from 6,290 feet to the top of the Strawn Formation at 7,870 feet shown on the electric log of the John H. Hill, McManus No. 1 well located in the north central part of Irion County in Section 35, Block 6, HATC RR. Co. Survey. The top of the formation dips at a rate of approximately 50 feet per mile in a west-southwest direction across the designated area.

BILLING CODE 8717-01-M

* The Commission previously designated a portion of the Canyon Sandstone Formation in Crockett, Edwards, Schleicher, Sutton, Terrell, and Val Verde Counties as a tight formation in order No. 329 (Texas-2) on September 27, 1983.


* * * 40 FR 41494, September 15, 1975. Comments on the proposed rule were invited but none were received. No party requested a public hearing and no hearing was held.
DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
30 CFR Part 906
Colorado Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 906 by (1) removing certain conditions of the Secretary of the Interior's approval of the Colorado permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and (2) approving certain additional amendments to the Colorado program. The conditions being removed by the Secretary pertain to the right of entry to authorized representatives of the Secretary; to the authority for the State to inspect on an "irregular basis"; and to replacement of surety bonds. The three additional amendments being approved by the Secretary pertain to: repeal of State provisions when and if Federal provisions are repealed, deleted or withdrawn; deletion of provisions for permit approval or disapproval criteria for existing structures; and revision of rules concerning effluent limitations.

For providing opportunity for public comment and conducting a thorough review of the program amendments and related material, the Secretary has decided to approve certain of the modifications and to remove some of the conditions of approval.

EFFECTIVE DATE: The removal of these conditions and the approval of these program amendments are effective on May 1, 1984.

FOR FURTHER INFORMATION CONTACT:
Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, N.W., Suite 216, Albuquerque, New Mexico 87102, Telephone: (505) 769-1466.

ADDRESSES: Copies of the amendments to the Colorado program and all written comments received on the proposed amendments are available for public review at the OSM Headquarters Office, the OSM Albuquerque Field Office and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue, N.W., Suite 216, Albuquerque, New Mexico, Telephone: (505) 769-1466.
Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, N.W., Room 5315, Washington, D.C. 20240, Telephone: (202) 343-7806.

SUPPLEMENTARY INFORMATION: On February 25, 1982, OSM published a Federal Register notice, a meeting was held on February 9, 1983, between representatives of OSM and the Colorado divided to discuss the remaining conditions and the additional proposed amendments to the Colorado program. As a result of the meeting, the State of Colorado submitted to OSM on May 26, 1983, additional information intended to satisfy conditions (bb)(3), (ee) and (oo). Also, the State, on August 2, 1983, provided to OSM material from the Colorado Attorney General's office that clarifies Colorado S.B. 370's effect on the Colorado statute as it pertains to repeal of State provisions after repeal of a counterpart Federal provision. OSM published a notice in the Federal Register on December 1, 1983, announcing receipt of this material and inviting public comment on whether the additional material corrected the deficiencies and whether the Secretary should approve the additional amendments to the State program (48 FR 54249-54251). The comment period closed December 16, 1983.

The Secretary of the Interior determined that the Colorado permanent submitted by Colorado to satisfy conditions placed on the Colorado program. The Secretary also indicated in the December 16, 1982 Federal Register that he had not completed his review of all the material submitted by Colorado on January 7 and February 9, 1982, to correct the following conditions: Condition (c), relating to technical guidance documents; condition (d), relating to success of revegetation; condition (1), relating to right of entry; condition (p), relating to permit renewal; condition (r), relating to inspections; condition (bb)(3), relating to replacement of surety bonds; condition (ee), relating to citizen suits; condition (oo), relating to limitations placed on underground operations; and condition (ss), relating to inspection reports and the additional amendments unrelated to conditions pertaining to compliance with all effluent limitations addressed at rule 4.05.3(5); deletion of portions of rule 2.07.6(3) relating to criteria for permit approval or denial regarding existing structures; and a Colorado Attorney General's opinion regarding Colorado S.B. 370 concerning repeal of State statutory or regulation provisions after a Federal counterpart has been repealed. Therefore, the Secretary deferred a decision on these materials until a later date.

Subsequent to the December 16, 1982 Federal Register notice, a meeting was held on February 9, 1983, between representatives of OSM and the Colorado Mined Land Reclamation Division to discuss the remaining conditions and the additional proposed amendments to the Colorado program. As a result of the meeting, the State of Colorado submitted to OSM on May 26, 1983, additional information intended to satisfy conditions (bb)(3), (ee) and (oo). Also, the State, on August 2, 1983, provided to OSM material from the Colorado Attorney General's office that clarifies Colorado S.B. 370's effect on the Colorado statute as it pertains to repeal of State provisions after repeal of a counterpart Federal provision. OSM published a notice in the Federal Register on December 1, 1983, announcing receipt of this material and inviting public comment on whether the additional material corrected the deficiencies and whether the Secretary should approve the additional amendments to the program (48 FR 54251-54251). The comment period closed December 16, 1983.

Background on the Secretary's Conditional Approval

On January 7 and February 9, 1982, OSM received from the State of Colorado material intended to satisfy 45 program conditions. The State also submitted certain revisions to the program regulations unrelated to the program conditions. OSM published a notice in the Federal Register on February 25, 1982, announcing receipt of these provisions and inviting public comment on whether the proposed program amendments corrected the deficiencies, and whether the Secretary should approve the additional amendments to the program (47 FR 8207-8212). A public hearing scheduled March 23, 1982, was not held because no one expressed a desire to present testimony. The public comment period closed March 29, 1982. Subsequent to the close of the public comment period, it became apparent that certain other proposed amendments to the Colorado program had been omitted from the February 25, 1982 Federal Register notice. OSM then reopened the public comment period on June 16, 1982 (47 FR 25979-25981) on the program amendments not described in the February 25, 1982 notice. The public comment period ended on July 6, 1982. On December 16, 1982 the Secretary published in the Federal Register (47 FR 56342-56351) his findings on the material
regulatory program, as submitted for his approval, contained 45 deficiencies. As discussed, Colorado submitted modifications which completely satisfied 35 conditions and partially satisfied 1 condition. Colorado has requested an extension to meet condition (mm) concerning award of attorney’s fees. The extension request is the subject of a pending rulemaking (47 FR 58342-58351) and is not addressed in this notice. The following eight conditions and one partial condition of approval are discussed in this notice:

1. The Colorado program did not have fully promulgated regulations requiring the approval of the Director of the Office of Surface Mining in the selection of alternative technical guidance documents for revegetation success as required by 30 CFR 816.116(b) and 817.116(b) (Condition (c)).

2. The Colorado program did not have fully promulgated regulations providing for the approval of the Director of the Office of Surface Mining of revegetation success standards on small mines consistent with 30 CFR 816.116 and 817.116 (Condition (d)).

3. The Colorado program did not have fully promulgated regulations requiring that each permit issued by Colorado allow for the right of entry to authorized representatives of the Secretary of the Interior consistent with section 517(c) of SMCRA (Condition (1)).

4. The Colorado program did not have a fully enacted statute providing that the holder of a valid permit may not continue mining beyond the expiration date of the permit if the final administrative decision is not to renew the permit consistent with section 506(d)(3) (Condition (f)).

5. The Colorado program did not have a fully enacted statute providing for inspections on an “irregular basis,” for permitted operations which are inactive consistent with section 517(c)(1) of SMCRA (Condition (f)).

6. The Colorado program did not have fully promulgated regulations which provide for issuance of a cessation order to operators who have not replaced a surety bond within 90 days after incapacity of the surety consistent with 30 CFR 806.12(e)(6)(ii) and 808.12(g)(7)(iii) (Condition (bb)(3)).

7. The Colorado program did not have a fully enacted statute requiring a showing that a violation or order would immediately affect the legal interest of the plaintiff as a condition precedent to commencement of a citizen’s suit without 60 days prior notice, consistent with section 520(b)(2) of SMCRA (Condition (ee)).

8. The Colorado statute at section 34-48-102 allowed a priority of right exception to the restriction on mining under any building or other improvements without securing the owner against damages, which is inconsistent with section 516(c) of SMCRA (Condition (oo)).

9. The Colorado program did not have fully promulgated regulations consistent with 30 CFR 840.111(d)(3), requiring that inspection reports be adequate to enforce the requirements of and carry out the terms and purposes of the State program (Condition (as)).

Secretary’s Findings

Set forth below, pursuant to 30 CFR 732.15 and 732.17, are the Secretary’s findings concerning those program modifications submitted by Colorado which satisfy existing program conditions:

1. As discussed in Finding 4(d)(ix) of the December 15, 1990 Federal Register notice, the Secretary found that the State had no equivalent provision to 30 CFR 788.27(b) which requires that each permit issued by the regulatory authority insure that the permittee shall allow right of entry to authorized representatives of the Secretary. The Secretary conditioned his approval by requiring a modification of the Colorado regulations to require that issued permits ensure that permittees allow right of entry to authorized representatives of the Secretary. However, based on discussions in a meeting on February 9, 1993, between officials of OSM and the State and on a subsequent review of the condition, the Secretary has determined, as discussed below, that there is sufficient rationale and justification for removing the condition.

Section 517(a) of the SMCRA directs the Secretary to conduct oversight inspections and provides that representatives of the Secretary shall have the right to enter surface mining operations. Colorado has stated that this provision is direct authorization for OSM to conduct warrantless Federal inspections without a provision in a permit issued pursuant to the State regulatory program. The Fourth Amendment to the Constitution imposes limitations on government searches. Generally, a warrant is required in order to conduct a search. The Fourth Amendment provision has been held to apply to administrative inspection of private commercial property. Marshall v. Barlow’s, Inc., 436 U.S. 307 (1978). However, an exception has recently been recognized by the Supreme Court. Ordinarily, the owner of a commercial enterprise does not have the same degree of expectation of being free from unreasonable searches as a homeowner.

In two cases, Colonnnade Catering Corp. v. United States, 397 U.S. 73 (1970), (Federal inspection of a retail liquor establishment) and United States v. Biswells, 406 U.S. 31 (1972) (Federal regulation under the 1968 Gun Control Act), the Supreme Court established several tests determining whether a warrantless search is permissible. If the business involved is pervasively regulated and has a long tradition of close government supervision, then a businessman does not have the same reasonable expectation of privacy as a homeowner and a warrantless search may be permissible. Put another way, the Court has concluded that the businessman has impliedly consented to such searches when he enters an industry that has a long history of pervasive regulation. In Donovan v. Dewey, 452 U.S. 594 (1981), the Court narrowed the test established in the earlier cases to allow warrantless inspections under the Coal Mine Health and Safety Act of 1977, 30 U.S.C. Section 801 et seq., by almost disregarding the second part of the test—that the industry have a long tradition of close regulation.

Section 103(a) of that Act, 30 U.S.C. 813(a), is a provision comparable in its terms to Section 517(a) of the Surface Mining Act. The Court in Donovan finessed the Colonnnade and Biswells two-part test by emphasizing the statutorily set inspection frequency provision of the Federal Mine Health and Safety Act. By the statutory specification of inspection frequency (four times a year for underground mines and twice a year for all other mines), the Court was able to conclude that the mine operator did not have a reasonable expectation of privacy. By that same reasoning, an operator under SMCRA should not have a reasonable expectation of privacy because section 517(a) sets an inspection frequency. Although, under a State regulatory program the inspection is conducted by the State regulatory authority at the specified frequency, the Secretary conducts oversight inspections on a random basis in accordance with a policy set to achieve at least a certain confidence level.

[Warrantless inspections of commercial property may be constitutionally objectionable if their occurrence is so random, infrequent or unpredictable that the owner, for all practical purposes, has no real expectation that his property will from time to time be inspected by government officials. Donovan at 599 citing Marshall v. Barlow’s, Inc., 436 U.S. at 323.]

Also, the Secretary has determined that there are no provisions in the Colorado
Statute or regulations which would prevent warrantless Federal oversight inspections. Therefore, the Secretary finds that the Colorado program does not conflict with the Federal provisions and thus removes condition (1) of its approval of the State's program.

2. As discussed in Finding 4(f)(i) of the December 15, 1980 Federal Register notice, the Secretary found the Colorado program not to be consistent with section 512(c)(1) of SMCRA and 30 CFR 840.11(d)(1) which require that inspections occur on an irregular basis, including those which operate nights, weekends or holidays. CRS 34-33-122(4)(b) and SR 5.02.3(9) limited such inspections to emergency situations and "normal business hours." 

Colorado interpreted "normal business hours" to be all times that a mine was regularly operating or, in the case of a closed mine, the hours it would have been operating if it were open (June 11, 1980 submission, p. 8, State Response to OSM Review of Colorado Act). The Secretary conditioned his approval by requiring the State to amend its program by removing the phrase "normal business hours" from the authority to conduct inspections. Colorado amended its statute at CRS 34-33-122(4)(b) to provide that inspections shall occur on an irregular basis "during times of operation at the mine," but allows site inspections "at any time" if an operation lacks a valid permit or if there is reason to believe that significant environmental harm exists in a particular instance. Colorado was asked to clarify its authority with respect to inactive sites. In the meeting of February 9, 1983, Colorado stated that it had the authority under Colorado laws and regulations to inspect sites that are active and inactive. Therefore, the Secretary finds that revised CRS 34-33-122(4)(b) and the clarification provided on February 9, 1983 are consistent with the Federal requirements concerning inspections occurring on an irregular basis. Also, the adoption of the amendment satisfies condition [c] of the Secretary's approval of the State's program.

3. As discussed in Finding 4(g)[xiii][H] of the December 15, 1980 Federal Register notice, the Secretary found the Colorado program not to be consistent with 30 CFR 806.12(e)[6][iii] and 806.12(f)[7][iii] which required that a cessation order be given operators who have not replaced a surety bond within 90 days after incapacity of the surety. The State regulations at 3.02.4(2)(b)[v][c] and 3.02.4(2)(d)[vii][c] provide for this but also add that the State may amend the relevant permit to include only those operations for which any other remaining bond liability is sufficient. This would be in lieu of issuing a cessation order if suitable replacement bond is not provided after 90 days. The Secretary conditioned his approval by requiring a modification to the Colorado regulations to require that the State issue a cessation order to an operator who has not replaced a bond within 90 days of incapacity of the surety. However, based on discussions in a meeting held February 9, 1983, between officials of OSM and the State, a subsequent explanation of Colorado's intent as expressed in the May 28, 1983 document, and a review of the condition in light of the revised Federal regulations of 30 CFR 806.15(c) published in 48 Federal Register 32961 (July 19, 1983), the Secretary has concluded, as discussed below, that there is sufficient justification for removing the condition. Colorado Rules 3.02.4(b)[v] and 3.02.4(b)[vi][c] provide the State with two options in the event that a surety company bankrupts, becomes insolvent or has its license suspended or revoked. The first option allows the State to reduce or modify the permit area so that any existing bond would sufficiently cover all lands affected by mining activity. Lands that would be removed from the permit area would be only those lands not affected by mining. If the adjustment of the permit does not solve the problem of insufficient bond, then the State has the authority to exercise its second option, that being the issuance of a cessation order. Therefore, the Secretary finds that Colorado Rules 3.02.4(a)[b][v][c] and 3.02.4(a)[d][v][c] are not inconsistent with the Federal provisions and thus removes condition [bb][3] of his approval of the Colorado program. Set forth below are the Secretary's findings concerning those program modifications submitted by Colorado which do not satisfy existing program conditions.

4. As discussed in Finding 4(c)[ii][I] of the December 15, 1980 Federal Register notice, Section 4.05.6(4)(b)(i) of the Colorado regulations was found not to be consistent with 30 CFR 816.116(b) and 30 CFR 817.116(b). The State regulations at 4.15.7[2][d][vi] allow the selection of technical guidance documents for revegetation success to be made after consultation with the Director of OSM. The Federal rules require the approval of the Director of OSM. The Secretary finds that Colorado Rule 4.15.7(d)[ii] is still less effective than 30 CFR 816 and 817.116[a][1] and further does not satisfy condition [c] of his approval of the Colorado program.

5. As discussed in Finding 4(c)[iii] of the December 15, 1980 Federal Register notice, the Secretary found the Colorado regulations at 4.15.7[2][d][vi] to be inconsistent with the Federal rules at 30 CFR 816.116(d) and 817.116(d), published March 13, 1979, which established specific standards and techniques for soil cover and seeding survival rates which were specific to permit areas of 40 acres or less in size. Further, these standards were applicable only in locations with an average annual rainfall of more than 26 inches. The Colorado provision provided that the State could approve the use by the operator of unspecified standards set by the State "based on local environmental conditions and available data for similar sites" for both surface and underground mines that would affect 40 acres or less without regard for average annual rainfall. To satisfy the condition, Colorado revised its program at SR 4.15.7[2][d][vii] which would be applicable to mines that affect 40 acres or less without regard to annual rainfall and would provide that the Division consult with OSM in establishing these standards for small mines.
The State's explanation of the revised regulation at SR 4.15.7(2)(d)(vi) focused on the fact that the revegetation requirements would apply to all mines under 40 acres regardless of annual precipitation, making small mines subject to revegetation success standards as stringent as mines affecting more than 40 acres. Under the Colorado program a success standard is developed for each mine following the parameters set forth in section 4.15.7 of the State regulations. The revised Federal regulations published in 48 FR 40159 (September 2, 1983) provides at 30 CFR 816.116(a)(1) and 817.116(a)(1) that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in the approved program. Although the revised Federal mine provides greater flexibility to the regulatory authority in the selection of standards for evaluating success of revegetation and techniques for developing statistically valid samples, it also requires that the standards and techniques be included in an approved regulatory program. Thus, inclusion in an approved program goes beyond the consultation provision of the State's provision as well as requiring the approval of the Director of OSM.

Therefore, the Secretary finds that SR 4.15.7(2)(d)(vi) is still less effective than 30 CFR 816.116(a)(1) and 817.116(a)(1) and further does not satisfy the term of his approval of the Colorado program.

6. As discussed in Finding 4(d)(xv) of the December 15, 1980 Federal Register notice, the Secretary found that the Colorado program failed to clearly provide that no holder of a valid permit could continue to mine after the term of his/her application expires if the State has determined that the permit should not be renewed. Section 508(b)(3) of SMCRA and 30 CFR 771.21(b)(2) specify that applications for permit renewals shall be submitted to the regulatory authority at least 120 days prior to expiration of the original, valid permit. Section 43–33–106(7.7) of the Colorado statute requires the submission of an application for renewal at least 180 days prior to permit expiration. In addition, the Colorado statute expressly authorizes the holder of a valid permit to continue surface mining operations under the terms of that permit until a “final administrative decision on renewal is rendered.”

The Secretary conditioned his approval of the State's regulatory program on Colorado amending its program to provide that no holder of a valid permit could continue to mine after the term of his permit expires if the State regulatory authority has determined that the permit should not be renewed. Colorado originally proposed to satisfy this condition by amending its statute to require that applications for permit renewals be filed with the State regulatory authority at least one year prior to the original expiration date.

The State now takes the position that amendments to its statute are unnecessary because the result required by condition (p) will be accomplished by the provisions of its approved regulatory program. Colorado states that statutory deadlines for processing permit renewal applications assure an initial administrative decision on renewal within 120 days of filing or, for good cause shown, within 180 days of filing. The Secretary finds that implementation of the enforcement and bonding provisions of its program ensures that operations continuing beyond the permit expiration date will be conducted in accordance with SMCRA's requirements until a final administrative decision is rendered on renewal.

A conflict between Colorado's statute and the Federal regulations occurs in those instances where the State regulatory authority has found that a permit should not be renewed and the operator petitions for review. The Colorado statute allows an operator to continue mining under the terms of a valid permit even if the original term expires during an appeal on his permit renewal application. The revised Federal regulations at 30 CFR 775.11(b)(2) (48 FR 44397, September 8, 1983) have been amended to allow for the continuation of mining under an existing permit if the regulatory authority has granted temporary relief, pending final determination of the administrative proceedings and if: (1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief; (2) the person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination; and (3) the relief sought will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources.

The fact that a statutory deadline exists under the State's law does not assure that the State regulatory authority will render an initial decision on an application for permit renewal within 120 days of filing or even within 180 days of filing for good cause shown.

If the State regulatory authority meets the statutory deadline when an operator contests an initial decision of nonrenewal, the process of administrative appeal may extend well beyond 180 days after the date on which his/her application was filed. For these reasons, Colorado's response that the State regulatory authority "normally" must meet the statutory deadline for initial decisions on permit renewal applications does not always lead one to the conclusion that the provisions of the approval program will accomplish the result required by condition (p). Therefore, the Secretary finds that the State provisions are still less effective than the requirements of the revised Federal regulations, 30 CFR 775.11(b)(2), and the State's explanation does not satisfy condition (p) of his approval of the Colorado program.

7. As discussed in Finding 4(h)(v) of the December 15, 1980 Federal Register notice, the Secretary found the Colorado statute at CRS 34–33–135(2) (a) and (b) to be inconsistent with section 520(b)(2) of SMCRA, which provides an exception to the requirement of 60 days prior notice contained in section 520(b)(1) and permits the commencement of a citizen's suit to compel compliance with SMCRA immediately after written notice is provided to the regulatory authority upon a showing that the violation or order complained of constitutes an "imminent threat" to the plaintiff's health or safety or would "immediately affect a legal interest of the plaintiff." Sections 34–33–135(2) (a) and (b) of the Colorado statute require a showing of "irreparable injury" by the plaintiff as a condition precedent to immediate commencement of a citizen's suit within 60 days prior written notice to the State.

Colorado has not amended its statute to conform to section 520(b)(2) of SMCRA on the theory that existing provisions for expedited relief in the State program achieve the same result required by condition (ee). Colorado maintains that the State's standard accurately reflects the normal criterion for expedited relief under the rules of civil procedure. Although the State concedes that "irreparable injury" obliges the plaintiff to satisfy a "slightly higher" burden under State law than under the standard provided by Federal law, Colorado contends that differences between the two statutes are so minor as to make their actual effect negligible.

For two reasons, the Secretary finds the State's explanation is insufficient and its provision inconsistent with section 520(a)(2). First, there is a discrepancy in time between an interest
which is irreparably damaged and one which is immediately affected. A person could have a legal interest which is immediately affected, but not irreparably damaged. In such a situation in Colorado, a person would not be able to bring suit within 60 days after furnishing notice to the regulatory authority because his interest, although affected immediately, would not be irreparably damaged. Because he was not irreparably damaged, that person could not obtain temporary relief in a Colorado State court, but possibly could get expedited consideration of the case. Yet such consideration could only come 60 days after giving notice. Second, there is no support for the State’s assertion that there will be only a few instances when a person is seeking judicial review of the agency’s action involving a mandatory duty under the State’s statute. In order for a person seeking such judicial review to obtain temporary relief, he would have to meet the irreparable injury test which the State has added to its counterpart to section 520(a)(2) and the standards of its counterpart to section 528(c). Thus, such an individual has an extra standard to meet, judicial review of the agency’s failure to perform a mandatory duty could occur every time a surface coal mining operation came within 100 feet of a public road or cemetery or within 300 feet of an occupied dwelling. See SMCRA section 522(e) (4) and (5). On its face, it seems that more than a few such instances would arise.

Therefore, the Secretary finds that the Colorado provisions are still inconsistent with SMCRA and the State’s explanation does not satisfy condition (ee) of his approval of the Colorado program.

8. As discussed in Finding 4(i)(v) of the December 15, 1980 Federal Register notice, the Secretary found that CRS 34-49-102 allowed a priority of right exception to the restriction on mining under any building or other impoundments without securing the owner against damages which is inconsistent with section 516(c) of SMCRA.

Section 516(c) of SMCRA requires the regulatory authority to suspend underground coal mining under urbanized areas, cities, towns, and communities adjacent to industrial or commercial buildings, any duty impoundments, or permanent streams if it finds imminent danger to inhabitants of those areas.

In its submission of July 25, 1980, Colorado provided an Attorney General’s opinion which characterized this provision as an exception to surface owner protection. No such exception appears in SMCRA. The Attorney General’s opinion states that the “priority of right” language merely recognizes the principle of Pennsylvania Coal Co. v. Mahon, 290 U.S. 333, 59 L.Ed. 322, 43 S. Ct. 156 (1922). The opinion goes on to state that the fact that this principle is not explicitly recognized in section 516(c) of SMCRA does not render it nugatory.

The State’s explanation is focused on the authority of the regulatory authority to suspend underground mining operations which pose a threat to surface structures. The authority under section 516(c) to suspend operations takes precedence over any property rights to not provide surface support. However, the priority of right provision in CRS 34-49-02 also pertains to the liability of the underground operator for surface damage. The revised Federal subsidence rule, 30 CFR 817.121(c), requires the operator to restore land damaged as the result of subsidence, and defers to State law on the question of liability for damage to structures. However, the priority of right provision in Colorado State law would exempt the operator from restoration of damaged land. The State’s explanation addresses issues of protection and prevention but does not deal with the question of liability once damage as a result of subsidence occurs. The State may not be able to suspend mining operations once subsidence occurs, and it would also not be able to require an operator to repair damaged land if an operator has the priority of right. Therefore, the Secretary finds that the State provision is less effective than 30 CFR 817.121(c) and inconsistent with section 516(c) of SMCRA. Thus, the State has not satisfied condition (oo) of the Secretary’s approval of the State program.

9. As discussed in Finding 4(f)(vii) of the December 15, 1980 Federal Register notice, the Secretary found the Colorado regulations at 502.2(4) are inconsistent with the Federal rules of 30 CFR 840.11(d)(3) which required that inspections by the State shall include the prompt filing of inspection reports “adequate to enforce the requirements of and to carry out the terms and purposes of the State program, SMCRA, 30 CFR Ch. VII, the exploration approval and the permit.” Colorado Rule 502.2(4) provides only that inspections include the filing of inspection reports and that inspection forms be approved by the Board; it does not address the adequacy of the inspection form. The Secretary conditioned his approval on Colorado promulgating a regulation to implement 30 CFR 840.11(d)(3) or otherwise amend its program to accomplish the same result.

The revised Federal regulations published in the August 16, 1982 Federal Register (47 FR 35620) provide at 30 CFR 840.11(e)(3) that State inspections shall include the prompt filing of inspection reports adequate to enforce the requirements of the approved State program. The State chose not to revise its regulations at 502.2(4) but rather attempted to satisfy the program condition by submitting to OSM a copy of the Colorado Mined Land Reclamation Division Inspection Report. An OSM evaluation of the inspection report form revealed the potential for utilization of the inspection report as a warning notice. The review of actual forms use by MLRD inspectors has confirmed the fact that the inspection form has been used to provide written documentation of warnings being given to mine operators rather than Notices of Violation being written. This practice is in clear violation of the State's instruction to properly use Colorado program. Therefore, the Secretary finds that Colorado Rule 5.02.2(4) is still less effective than 30 CFR 840.11(e)(3) and further that Colorado’s inspection report inaccurately documents the use by the State of a formal warning system. Thus, the State has not satisfied condition (se) of the Secretary’s approval of the State program.

Other Amendments Submitted by the State

In the December 16, 1982 Federal Register notice, the Secretary deferred action on revisions unrelated to conditions involving the Colorado rules at 2.07.6(3) and 4.05.2(7). In addition, the Secretary had not completed his review of Colorado SB 370 concerning repeal of State statutory or regulation provisions after a Federal counterpart has been revealed.

Therefore, set forth below, pursuant to 30 CFR 732.15 and 732.17, are the Secretary’s findings concerning the above State program modifications.

1. Colorado proposes to delete Colorado Rule 2.07.6(3) which establishes permit approval or denial criteria for existing structures no less effective than 30 CFR 780.21. Initially, OSM was concerned that if the rule was deleted, the State would not have the authority to disapprove permit applications which did not document compliance with applicable standards for existing structures. However, in March of 1983 meeting with OSM, Colorado explained that by deleting the rule, the program would require immediate compliance with all program regulations.
requirements. With this explanation, the Secretary finds deletion of Colorado Rule 2.07.6(3) to be no less effective than 30 CFR 786.21.

2. Colorado proposes to amend Colorado Rule 4.05.2(7) to require that, “[d]ischarges of water from areas disturbed by surface coal mining and reclamation operations shall be made in compliance with applicable Federal and State water quality standards…” Colorado proposes to eliminate the requirement that the discharges for disturbed areas meet, at a minimum, the effluent limitations promulgated by U.S. EPA under 40 CFR Part 434. Initially, OSM was concerned about this amendment because it appeared the Colorado regulations did not identify specific effluent limitations for discharges from disturbed areas. However, in the February 8, 1983 meeting with OSM, Colorado cited Colorado Rule 4.05.2(7) which states that in no case shall Federal and State water quality standards, regulations, standards or effluent limitations be violated. Therefore, the Secretary finds the Colorado regulations no less effective than the Federal regulations.

3. Colorado proposes to amend its statute at section 34-33-108 with S.B. 370 which provides for the repeal of certain State regulations if and when certain Federal law, rules, or regulations are repealed, deleted, or withdrawn. OSM was concerned whether every amendment of a Federal regulation under SMCRA triggered S.B. 370. OSM also was concerned that the proposed amendment conflicted with OSM requirements, that all modifications to the approved State program do not become effective until “approved by the Secretary”. The State, on August 2, 1983, submitted to OSM an opinion from the Colorado Attorney General’s office addressing OSM’s concerns. The opinion clarified the MLRD’s position that S.B. 370 only applies when Federal rules or laws are repealed, deleted or withdrawn. It does not apply where an individual Federal rule or scattered rules are incidentally repealed as part of a more comprehensive revision, if the substance of the deleted provisions survives in the new regulations. The Colorado Attorney General's Office has stated that S.B. 370 is triggered only by a Federal rulemaking proceeding that completely abrogates either a single rule or set of rules with no promulgation of a replacement rule or rules on the same subject. Therefore, the Secretary finds that the language of S.B. 370 as it amends CRS 34-33-108 is in accordance with SMCRA and no less effective than the Federal regulations.

Public Comments
The Environmental Policy Institute (EPI) commented that Colorado had not satisfied conditions (c), (d), (p), (ee), (oo) and (ss). For the reasons stated in his findings, the Secretary agrees that the State has not satisfied these conditions. EPI commented that Colorado had not complied with condition (1) because the State noted that it lacked the statutory authority to authorize right of entry by representatives of the Secretary. The Secretary finds that the condition has been satisfied. See Finding 1 of the Secretary’s findings for the Secretary’s decision to remove this condition.

EPI commented that Colorado had not complied with condition (r) because the State’s amended statute limits inspections to “times of operation at the mine” unless the operator is mining without a permit or believed to be causing significant environmental harm. The Secretary finds that the condition has been satisfied. See Finding 2 of the Secretary’s decision to remove the condition.

EPI commented that Colorado had not complied with condition (bb)(3) because that State had not removed language from SR 3.02.4(2)(b)(v)(C) and (2)(d)(v)(C) allowing amendments to permit areas rather than cessation orders for unbolded areas. The Secretary finds that the condition has been satisfied. See Finding 3 of the Secretary’s findings for the Secretary’s decision to remove the condition.

EPI commented that Colorado’s proposed amendment (CRS 34-33-108 and SR 1.13) which provides for the automatic repeal of State regulations if and when provisions of the Federal law or rules are withdrawn is contrary to 30 CFR 732.17(g) which provides that changes to State law and regulations shall not take effect until approved as a State program amendment. The State clarified, in an attorney general’s opinion, that the amendment only applies when provisions of Federal rules or law are repealed, deleted or withdrawn. The amendment does not apply where an individual Federal rule or scattered rules are incidentally repealed as part of a more comprehensive revision if the substance of the deleted provisions is retained in the new regulations. Thus, the amendment would be triggered only by a Federal rulemaking that completely abrogates either a single rule or set of rules with no promulgation of a replacement rule or rules on the same subject.

EPI commented that Colorado’s proposed amendment to delete Colorado Rule 2.07.6(3) which establishes criteria for permit approval or denial for existing structures renders the State’s rules less effective than the Federal rules. In the February 9, 1983 meeting between OSM and Colorado officials, the State clarified that by deleting the rule, the program requires that existing structures must comply with all State program requirements. Based on this explanation, the Secretary finds that the deletion of SR 2.07.6(3) is no less effective than 30 CFR 786.21.

Summary of Secretary’s Decision
Based on his findings, the Secretary is removing conditions (l), (r) and (bb)(3) of his approval of the Colorado program. In addition, the Secretary is approving the three amendments submitted by Colorado which are unrelated to conditions of approval. These amendments are the deletion of SR 2.07.6(3), revision of SR 4.05.2(7), and revisions of CRs 34-35-108 and SR 1.13, respectively.

For those conditions which the Secretary finds not to be satisfied, he is establishing revised dates pursuant to the State’s legislative and administrative procedures for the State to submit amendments to satisfy the remaining conditions.

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

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

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

3. Paperwork Reduction Act: This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.
List of Subjects in 30 CFR Part 906
Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Leona A. Power,
Acting Assistant Secretary for Land and Minerals Management.

PART 906—COLORADO

§ 906.11 Conditions of State regulatory program approval. [Amended]

1. 30 CFR 906.11 is amended as follows:

(a) By removing and reserving paragraphs (l), (r), and (bb)(3).

(b) By removing the dates “June 1, 1982” and “December 1, 1982”, each time they appear with the exception of paragraph (mm) and inserting in their place the date “September 30, 1984”.

2. 30 CFR 906.15 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) as follows:

§ 906.15 Approval of amendments to State regulatory programs.

(b) The following amendments are approved effective May 1, 1984:


EFFECTIVE DATE: May 1, 1984.

FOR FURTHER INFORMATION CONTACT:
Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 Federal Register (47 FR 34068). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions (a), (b), (c), (d), (e), (f)(1)-(f)(10), (g), (h)(1)-(h)(3), (i)(1)-(i)(3), (j) and (k)(1)-(k)(5). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary’s findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 Federal Register. In accepting the Secretary’s conditional approval, Ohio agreed to correct deficiencies (a), (b), (c), (h)(1) and (k)(1) by August 8, 1983; deficiency (e) by September 16, 1982; and the remaining deficiencies by February 8, 1983.

On January 6, 1983, Ohio submitted materials to OSM intended to, among other things, satisfy conditions (f)(7), (k)(3), (k)(4), and (k)(5) of the Secretary’s approval of the Ohio program concerning: (1) Vegetation responsibility and (2) administrative review procedures. After providing opportunity for public review and comment and conducting a thorough review of the program amendments, the Secretary has determined that the modifications to the Ohio program satisfy the conditions of approval and meet the requirements of SMCRRA and the Federal permanent program regulations. Accordingly, the Secretary is removing the conditions and approving the regulatory amendments. The Federal rules at 30 CFR Part 935 which codify decisions concerning the Ohio program are being amended to implement these actions.

II. Submission of Revisions

By letter dated February 8, 1984, Ohio submitted proposed program amendments consisting of revised regulations to satisfy conditions (f)(7), (k)(3), (k)(4) and (k)(5) due February 8, 1984. Specifically, Ohio has:

1. Proposed changes to paragraph (E)(5) of rule 1501:19-1-45 to meet condition (f)(7); and

2. Proposed to add new paragraphs (j), (k), and (l) to rule 1513-1-01 to meet conditions (k)(3), (k)(4) and (k)(5).

On February 8, 1984, OSM published a notice in the Federal Register announcing receipt of the amendments and requesting public comment on whether the proposed amendments are no less effective than the Secretary’s regulations and whether the amendments satisfy the conditions of approval. (49 FR 7250) The public comment period ended March 29, 1984.

A public hearing scheduled for March 28, 1984, was not held because no one expressed a desire to present testimony.
III. Secretary’s Findings

The Secretary finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on February 8, 1984, meet the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

1. Condition (f)(7)

The Secretary found that in the Ohio program conditionally approved on August 16, 1982, the Ohio regulations did not establish the beginning of the period for extended responsibility consistent with 30 CFR 816.116(b)(1) (Finding 13.12, 47 FR 34685). On May 24, 1983, the Secretary found that a January 8, 1983, Ohio amendment did not fully satisfy condition (f)(7), because the Ohio rule provided that the period would begin "at the last time of substantially augmented seeding:...", whereas the Federal rule at 30 CFR 816.116(b)(1) provided that period begins after the last year of augmented seeding, fertilizing, irrigation or other work.

Because Ohio did not define the word "substantially," the Secretary found that the condition was not fully satisfied. The Secretary amended condition (f)(7) to require the State to delete the word "substantially" from OAC 1501:13-9-15(E)(5). Section 816.116 was amended at 48 FR 40160 (Sept. 2, 1983), and the applicable requirement is now on 30 CFR 816.116(c)(1).

Ohio has amended its rule 1501:13-9-15(E)(5) to remove the word "substantially." The Secretary now finds that the amended Ohio rule is no less effective than 30 CFR 816.116(c)(1), and condition (f)(7) has been satisfied.

2. Conditions (k)(3), (k)(4) and (k)(5)

The Secretary found that in the Ohio program conditionally approved on August 16, 1982, the Ohio regulations on administrative review did not provide for: (1) Discovery against the Chief or the Division of Reclamation; (2) a right of intervention in instances provided for in 43 CFR 4.1110(c)(1) and (f); and (3) burden of proof requirements consistent with 43 CFR 4.1171 and 4.1193. The Secretary now finds that Ohio has amended its rules at OAC 1513-1-01 by adding paragraphs (J), (K) and (L) to provide discovery, intervention, and burden of proof provisions consistent with 43 CFR Part 4, and conditions (k)(3), (k)(4) and (k)(5) have been satisfied.

IV. Public Comments

No public comments were received on the proposed program amendments.

Accordingly, 30 CFR Part 935 is amended as set forth herein.

Leona A. Power,
Acting Assistant Secretary for Land and Minerals Management.

PART 935—OHIO

§ 935.11 [Amended]

1. 30 CFR 935.11 is amended by removing and reserving paragraphs (f)(7), (k)(3), (k)(4), and (k)(5).

2. 30 CFR 935.15 is amended by adding a new paragraph (h) as follows:

§ 935.15 Approval of regulatory program amendments.

(h) The following amendments submitted to OSM on February 8, 1984, are approved effective upon promulgation of the rules by the State, provided the rules adopted are identical to the rules as submitted and reviewed by OSM: Ohio Administrative Code Sections 1501:13-9-15(E)(5), 1513-101(I), (J), (K), and (L).


ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[49 FR 9945, April 2, 1984]

Approval and Promulgation of State Implementation Plans; Revisions to the Montana Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: EPA is approving a revision to the Montana State Implementation Plan. This revision, originally submitted by the State on June 7, 1982, and augmented by additional information submitted October 4, 1983, modifies the sulfur oxide (SO₂) plan for the East Helena nonattainment area.

DATES: This action will be effective on July 2, 1984.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

- Environmental Protection Agency, Montana Office, Federal Office Building, 301 S. Park, Helena, MT 59620
- Environmental Protection Agency, Region VIII, Air Programs Branch,
Environmental Protection Agency, The Office of the Federal Register, 110 L. Street, NW., Room 6401, Washington, D.C. 20408
The Office of the Federal Register, 110 L. Street, NW., Room 6401, Washington, D.C. 20408


SUPPLEMENTARY INFORMATION: The ASARCO lead smelter is the only significant source of sulfur dioxide (SO2) impacting the East Helena nonattainment area.

On May 16, 1975, the Board of Health and Environmental Sciences of the State of Montana issued a "Determination and Order" limiting the SO2 emissions from the ASARCO smelter to 80 tons per day and 20 tons per six hours. This action was approved by EPA as part of the Montana SIP on September 19, 1975 (40 FR 43216). As one of the measures undertaken to comply with this requirement, ASARCO constructed a double contact sulfuric acid plant which was completed in July 1977.

As part of the maintenance procedures for the acid plant, the catalyst beds must be screened to remove accumulated particulate matter by a process requiring shutdown of the acid plant for a period of five to ten days. The time periods between maintenance for catalyst screening varies from a few months to 16 months or more and is not predictable. During screening the SO2 which is normally transformed into sulfuric acid and recovered as a product, instead bypasses the acid plant and is emitted to the atmosphere. This can, and does, cause the ASARCO plant to exceed the SO2 emission limits of 80 tons per day and 20 tons per six hours.

The existing SIP contains no mechanism to accommodate catalyst screening. Therefore, the EPA issued a Notice of Violation (NOV) to ASARCO on August 20, 1980 for bypassing their acid plant during catalyst screening. An appeal was filed by ASARCO and on May 16, 1981, the Board of Health and Environmental Sciences affirmed the determination and order.

The Montana Air Quality Bureau (AQB) in making its decision are also included in the Order, and are summarized as follows: (1) ASARCO is to request permission from the AQB to screen catalyst at least two weeks in advance of the proposed shutdown of the acid plant, or if that is impossible, such notice as is reasonable under the circumstances shall be provided. (2) In conjunction with its request ASARCO is to submit the following information: (a) Expected length of shutdown; (b) an estimate of SO2 emissions during shutdown; (c) measures to be taken by ASARCO to minimize emissions; and (d) reasons why it is impossible or impractical to shut down the entire smelter during the maintenance period. (3) No later than 48 hours prior to acid plant shutdown, the AQB shall make a decision to permit acid plant shutdown or to require shutdown of the entire smelter for catalyst screening. (4) Unless otherwise specified by the AQB, acid plant shutdown is not to exceed ten days. (5) ASARCO is required to meet National Ambient Air Quality Standards during shutdown. (6) Catalyst failure caused in whole or in part by poor design, poor maintenance, careless operation or any other preventable upset condition or preventable equipment breakdown shall be grounds for denial.

The order also requires ASARCO to submit to the State, not later than 20 days after maintenance is completed, a report describing the maintenance activities, the duration of the acid plant shutdown, the ambient concentrations of sulfur dioxide recorded during the shutdown, and any other pertinent information.

The Montana SIP revision specifies that whenever it is necessary to bypass the acid plant for more than four hours for maintenance, ASARCO shall request permission to exceed its SIP limits. EPA does not interpret this language as allowing an automatic exemption for exceedances during any scheduled maintenance lasting less than four hours.

In general any exceedance of a SIP emission limit is a violation. Recognizing that some types of exceedances are unavoidable, EPA has adopted an enforcement policy which permits the exercise of enforcement discretion with respect to exceedances in certain narrow circumstances. Memoranda from former Assistant Administrator Kathleen Bennett to the Regional Administrators, dated September 28, 1982 and February 15, 1983 describe the policy. That policy permits the exercise of enforcement discretion with respect to excess emission during scheduled maintenance on pollution control equipment if a source can demonstrate that such emissions could not have been avoided through better scheduling for maintenance or through better operation and maintenance practices. EPA believes that the criteria and procedures in this SIP revision for granting an exemption provide for a reasonable approach to the catalyst maintenance problem and are consistent with EPA's policy. Accordingly, EPA is today approving those criteria and procedures. However, EPA is not approving in advance any determination by the Montana Board of Health and Environmental Sciences that those criteria and procedures have been satisfied in any specific instance. (Thus, this action does not constitute an approval of the finding of fact in paragraph 13 of the order submitted by the State which states that excess emissions during scheduled maintenance are not properly deemed to constitute a violation of the SIP). Rather, EPA retains its authority to independently consider and determine whether to take enforcement action on the basis of those criteria and procedures.

In making its determination, EPA will consider such factors as whether the ASARCO smelter has taken all measures to conduct its catalyst screening as expeditiously as possible, including the use of offshift and overtime labor, whether better scheduling of maintenance could have avoided excess emissions, and whether production losses which would result from a shut down of processing equipment during maintenance of pollution control equipment could have been made up when the smelter would not otherwise be operating at maximum
capacity. EPA will also consider any other factors which are relevant to determining whether it was impossible or impractical to shut down the smelter operation during scheduled maintenance.

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

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

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

List of Subjects in 40 CFR Part 52
Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon Monoxide, and Hydrocarbons, Intergovernmental relations.

This rulemaking is issued under the authority of section 110 of the Clean Air Act (42 U.S.C. 7410).

Note.—Incorporation by reference of the State Implementation Plan for the State of Montana was approved by the Director of the Federal Register on July 1, 1982.

William D. Ruckelshaus, Administrator.

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

PART 52—AMENDED

Subpart BB—Montana

In Section 52.1370 paragraph (c)(16) is added as follows:

§ 52.1370 Identification of plan

(c) ** * * * * *

(16) A revision to the East Helena nonattainment plan for sulfur dioxide (SO2) was submitted on June 7, 1982, and supplemental information was submitted October 4, 1983.

BILLING CODE 6560-50-41

40 CFR Part 52

(A-6-FRL 2573-1)

Approval and Promulgation of Implementation Plan: Louisiana Lead Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As required by section 110(a) of the Clean Air Act and the October 5, 1978 (43 FR 46246), promulgation of national ambient air quality standards (NAAQS) for lead, the State of Louisiana has submitted a State Implementation Plan (SIP) for lead. This action approves the part of the lead SIP which provides for attainment and maintenance of the lead NAAQS for the Baton Rouge area of the State. The rest of the Louisiana lead SIP was previously approved by EPA in a Federal Register notice published on July 28, 1982 (47 FR 32529).


ADDRESSES: Incorporation by reference material is available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Air and Waste Management Division, Air Branch, State Implementation Plan Section, 1201 Elm Street, Dallas, Texas 75270

Environmental Protection Agency, Public Information Reference Unit, EPA Library, 401 M Street, SW, Washington, D.C. 20460

The Office of the Federal Register, Rm. 4001, 1100 L Street, N.W., Washington, D.C. 20401

State of Louisiana, Department of Environmental Quality, Air Quality Division, P.O. Box 44069, Baton Rouge, LA, 70804

FOR FURTHER INFORMATION CONTACT: J. Ken Greer, Air and Waste Management Division, Air Branch, State Implementation Plan Section, 1201 Elm Street, Dallas, Texas 75270 (214) 707-9350.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, the NAAQS for lead was promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air (µg lead/m³) averaged over a calendar quarter. As required by Section 110 of the Clean Air Act (CAA), and the October 5, 1978 promulgation of the NAAQS for lead, all States must submit a SIP which will provide attainment and maintenance of the lead NAAQS. Louisiana has developed and submitted such as SIP.

The general requirements for a SIP are outlined in Section 110 of the Clean Air Act and EPA regulations 40 CFR 51, Subpart B. Specific requirements for developing a lead SIP are outlined in 40 CFR Part 51, Subpart E. Air monitoring requirements for lead are found in 40 CFR Part 58. These provisions require the submission of air quality data, emission data, air quality modeling, control strategies for each area exceeding the NAAQS, a demonstration that the NAAQS will be attained within the time frame specified by the CAA, and provisions for ensuring maintenance of the NAAQS. EPA has evaluated the Louisiana lead SIP by comparing it to the requirements for an approval SIP, as set forth in the above mentioned regulations.

On July 27, 1979, the Governor of Louisiana submitted to EPA a lead SIP for the State of Louisiana. A public hearing was held concerning the State's lead SIP on July 24, 1979. Additional information concerning the lead SIP was submitted to EPA in letters dated January 6, 1982, April 1, 1982, May 4, 1982, January 4, 1983, and September 15, 1983. On July 28, 1982 (47 FR 32529), EPA approved the Louisiana lead SIP except for the part of the SIP concerning the Baton Rouge area. As explained in the notice and in EPA's March 1982 Evaluation Report, additional information was requested from the State to correct discrepancies that existed between EPA and State modeling for Ethyl Corporation in Baton Rouge, Louisiana. Therefore, EPA delayed action on the Baton Rouge area until the State could submit additional information for the Ethyl facility, which the State submitted to EPA in letters dated January 4, 1983, September 15, 1983, September 30, 1983, and October 31, 1983.

On November 15, 1983, (46 FR 51944), EPA proposal approval of the Louisiana lead control plan for the Baton Rouge area. Discussion of the control plan and EPA's review of the control plan were explained in the proposed rulemaking, and in EPA's Evaluation Report of September 1983, which was made available for public review at the time of the proposed rulemaking. No public comments were received on EPA's proposed approval action of the State's lead control plan for the Baton Rouge area. This notice explains EPA's final approval action on the State's lead control plan for Baton Rouge, and removes a previous "no action" taken.
II. The Baton Rouge Lead Control Plan

As explained in the November 15, 1983 proposed rulemaking, EPA requested Louisiana to do additional modeling of the Ethyl corporations; lead gasoline additive manufacturing plant in Baton Rouge, to determine that the lead NAAQS was being attained around the Ethyl facility, and would continue to be maintained. The State did the modeling using the model, Industrial Source Complex-Short Term version, and submitted the modeling to the regional Office in a letter dated September 15, 1983. The State also submitted to EPA in the September 1983 final rule the State’s lead control plan for the Ethyl facility which included lead emission limitations for each of the major stacks at the facility, a requirement that Ethyl must raise the height of the six lead reverbatory furnace stacks to a height of 179 feet by September 1, 1986, and that the facility could operate no more than five reverbatory furnaces at any one time. The above requirements on the Ethyl facility were included in a State Administrative Order (A.O.) for which a public hearing was held on October 20, 1983, and which was signed into effect by the Assistant Secretary of the Louisiana Office of Environmental Affairs on October 31, 1983. The State submitted the final A.O. to the Ethyl facility and to EPA by letter dated October 31, 1983. The final A.O. and lead control plan for the Ethyl facility is the same as the lead control plan on which EPA based its proposed approval action in November 1983. The Ethyl facility is proceeding to meet the deadlines listed in the final A.O. and the State’s modeling demonstrates full attainment, and continued maintenance, of the lead NAAQS with the A.O.’s requirements in effect for the Ethyl facility. Therefore, EPA finds that the Louisiana lead control plan for the Baton Rouge area is adequate for the attainment and maintenance of the lead NAAQS around the Ethyl facility. As explained in the proposed rulemaking, there are not other significant lead emitting sources in the Baton Rouge area except mobile sources. The State has already demonstrated in its general lead SIP, which EPA approved on July 28, 1982, that the Federal lead phasedown-in-gas program will protect the lead NAAQS from being exceeded throughout Baton Rouge due to mobile source emissions of lead.

The State is operating two lead State and Local Air Monitoring Stations (SLAMS) in the Baton Rouge area. Both are near the Ethyl facility, one site is to the east, in a neighborhood area with high motor vehicle travel, and the other site is to the west of the facility in an area indicative of the area around the Ethyl facility. Both SLAMs sites were reviewed and approved by the Regional Office in 1982, and both sites have been operating for the last two years. Since Baton Rouge is below the size cutoff (cities with population greater than 500,000), no lead National Air Monitoring Stations (NAMS) are required to be located in Baton Rouge.

On October 13, 1983, the United States Court of Appeals for the District of Columbia Circuit remanded portions of EPA’s stack height regulations (40 CFR 51.1, 51.12 and 51.18 (1983)) to the Agency for reconsideration. Sierra Club v. EPA, 719 F.2d 436. Recently, a group of affected industries filed a petition for a writ of certiorari with the United States Supreme Court, where it is still pending. The stack height in this SIP action, however, is below the de minimus height of 65 meters. The de minimus provision of EPA’s stack height regulations (40 CFR 51.13(b)(1)(ii)(III)(1983)) was not challenged in the Court of Appeals. Accordingly, in EPA’s opinion the raising of the existing stacks at Ethyl Corporation’s facility to a height of 179 feet (approximately 34 feet below the de minimus height specified in EPA’s regulations) is approvable. If, however, the de minimus provision of EPA’s regulations is modified as a result of the further judicial process, it may be necessary to review today’s SIP action consistent with any change in EPA’s regulations.

EPA’s Action

EPA has evaluated the Baton Rouge part of the Louisiana lead SIP and has determined that it meets the requirements of Section 110(a) of the Clean Air Act and 40 CFR Part 51, Subparts B and E. EPA believes that the Baton Rouge part of the SIP is adequate to attain and maintain the lead NAAQS throughout Baton Rouge, with the implementation of the State’s A.O. for the Ethyl facility.

Today’s action is EPA’s final approval of the Baton Rouge part of the Louisiana lead SIP, therefore the Louisiana lead SIP is fully approved by EPA.

EPA finds that the Louisiana SIP that has been approved for other NAAQS’s contains regulations that satisfy general regulations not specifically mentioned in the lead SIP, and these general regulations are incorporated into the State’s lead SIP.

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

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. 603(b), I have certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Incorporation by reference of the State Implementation Plan for the State of Louisiana was approved by the Director of the Federal Register Office on July 1, 1982.

This notice of final rulemaking is issued under the authority of Section 110(a) of the Clean Air Act, 42 U.S.C. 7410(a).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxides, Nitrogen dioxides, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, and Intergovernmental relations.


William D. Ruckelshaus, Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 Part 52, Subpart T—Louisiana of the Code of Federal Regulations is amended to include the following: 1. Section 52.970 is amended by revising (c)(32), and by adding (c)(39) as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(32) The Louisiana State Implementation Plan for lead and Regulations for the Control of Air Pollution from lead, 10.0—10.3 and 19A.0, were submitted to EPA on July 27, 1979, by the Governor of Louisiana as adopted by the Louisiana Air Control Commission on July 24, 1979. Letters of Clarification dated January 6, 1982, April 1, 1982 and May 4, 1982 also were submitted. No action is taken on the Baton Rouge area.

* * * * *

(39) The Louisiana State Implementation Plan for lead for the Baton Rouge area was submitted on July 27, 1979, with letters of clarification and revisions dated January 4, 1983, September 15, 1983, September 30, 1983. The final lead control plan was submitted in a letter dated October 31,
Amendments to the Retrofit Device Evaluation Regulations To Include Fuel Additives and To Improve Administration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action is intended to eliminate the present confusion regarding the Agency’s authority and capability to test fuel additives as part of the retrofit device evaluation program under the Motor Vehicle Information and Cost Savings Act (MVICSA), 15 U.S.C. 2011. It is also intended to promote more efficient administration of the retrofit device evaluation program. Specifically, this rule (1) establishes a new definition of “retrofit device” to explicitly include fuel additives, (2) establishes a new, more precise definition of a “manufacturer” of a retrofit device, (3) formally grants certain rights to manufacturers to participate in EPA’s evaluation of their devices, and (4) establishes that EPA has appropriate test procedures and protocols for fuel additives.

EFFECTIVE DATE: This final rule will become effective on May 31, 1984.

ADDRESS: Availability of documents.—Copies of material relevant to this rulemaking are located in Public Docket No. A-18-01, at the U.S. Environmental Protection Agency, Central Docket Section, Docket No. A-18-01, at 401 M Street SW, Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m., Monday through Friday. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Merrill W. Korth, Test and Evaluation Branch, Emission Control Technology Division, Environmental Protection Agency, 2265 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 688-4299.

SUPPLEMENTARY INFORMATION: OMB Control Number: 2000-0419.

This action amends EPA’s Fuel Economy Retrofit Device Regulation (40 CFR Part 610) by redefining “retrofit device” and “manufacturer” and granting manufacturers certain rights to participate in EPA’s evaluation of their retrofit devices. It also clarifies EPA’s authority and capability to use existing test procedures for fuel additives. EPA proposed these amendments to the regulations governing the retrofit device evaluation program in a Notice of Proposed Rulemaking, 44 FR 57742 (December 28, 1982).

I. Background

EPA proposed to redefine “retrofit device” by explicitly including fuel additives within the definition. As revised, the regulatory definition would be more consistent with that given in Section 511 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2011. This would consequently help eliminate confusion among fuel additive manufacturers regarding EPA’s authority to evaluate fuel additives under the retrofit device program.

A related issue which also needed clarification was whether the test procedures EPA has been using for retrofit devices (including fuel additives) were indeed appropriate for fuel additives. By means of the preamble to this final rule, EPA is confirming that its test procedures EPA has been using for retrofit devices (including fuel additives) were indeed appropriate for fuel additives. By means of the preamble to this final rule, EPA is confirming that its test procedures EPA has been using for retrofit devices (including fuel additives) were indeed appropriate for fuel additives.

Overall, the final rule clarifies EPA’s authority, capability (using established test procedures), and intention to evaluate fuel additives under the retrofit device program.

EPA proposed the new definition of “manufacturer” because (1) some device manufacturers had complained that contrary to the intent of the MVICSA, the existing definition allowed distributors and sellers to apply for an EPA evaluation of retrofit devices, and (2) EPA was receiving multiple applications for evaluation of the same device, thereby causing confusion and unnecessary paperwork. The new definition of “manufacturer” to exclude distributors and sellers will better serve the purpose of the MVICSA and will correct these problems.

In an effort to improve the evaluation program, EPA also proposed to afford manufacturers certain rights to participate in the evaluation of their devices. As a result of having these rights, EPA hopes that more manufacturers will participate in the Agency’s testing of their devices from the outset and resolve differences in opinion regarding test designs early in the test program, thus improving the quality of the testing.

In addition to the proposed amendments, the NPRM also requested comments on these changes and specifically requested comments on whether the test procedures EPA has been using for electrical and mechanical retrofit devices (and fuel additives) are appropriate for fuel additives. The comment period closed on February 28, 1983. However, because two companies requested an extension of the comment period, EPA reopened it from June 1 to July 1, 1983.

II. Comments Received

In response to the NPRM, various companies and the U.S. Army submitted comments. The EPA staff has summarized and responded to the comments in a document called “Summary and Analysis of Comments” that is available through the Central Docket Section, Docket No. A-28-01 (see Availability of Documents, above). Comments were mixed, with some companies fully endorsing the proposed changes and others objecting to certain portions. The more significant comments received and the action EPA has taken as a result of them are as follows:

A. Definition of Retrofit Device

Ford Motor Company commented that EPA’s proposed definition of “retrofit device” did not conform to the MVICSA definition because it contained the word “substance” and asked EPA to explain how a “substance” differs from a fuel additive. EPA included the term “substance” to cover additives other than liquid additives, e.g., tablets, powder, etc. EPA’s intent is still to cover additives other than liquid additives. However, because the phrase “fuel additive” in the regulation is not limited by its own terms to liquids, EPA has concluded that the words “or substance” are unnecessary to the definition and has deleted them.

Ford also commented that the definition should specifically exclude oil and oil additives. EPA is not authorized under Section 511 of the MVICSA to evaluate oil or oil additives for fuel economy benefits. For this reason and also because of some confusion among manufacturers regarding EPA’s authority to test oil and oil additives, EPA believes Ford’s comment has merit in that it will help preclude future misunderstandings. Thus, EPA has revised the definition of “retrofit device” to be more explicit by specifically...
excluding lubricants and lubricant additives.

Pennzoil Company suggested an alternative definition of "retrofit device" that did not alter the meaning of EPA's proposed definition but merely rearranged the wording. Because Pennzoil's proposed definition is more concise, EPA has adopted it in the final rule, but without the words "or substance."

While redefining "retrofit devices" makes clear EPA's authority and intent to test fuel additives under the retrofit device evaluation program created by the MVICSA, the testing under this program should be distinguished from that required for two programs under the Clean Air Act. First, procedures and protocols for determining the health effects of fuel additives are still being developed under Section 211(b)(2) of the Clean Air Act, 42 U.S.C. 7545(f)(4), and will be published in a later rulemaking. It should be emphasized that the fuel economy and emission testing of a fuel additive under the MVICSA would in no way fulfill any responsibility of the manufacturer to perform any health effects tests required by the regulations issued in the future under Section 211 of the Act.

Second, for purposes of waivers under section 211(b)(4) of the Clean Air Act, 42 U.S.C. 7545(f)(4), the testing performed under the retrofit device program does not automatically satisfy the requirement that fuel additives be tested over the "useful life" of a vehicle to determine their impact on emission control systems. However, relevant test data generated from such testing may be submitted in applications for such waivers.

Finally, EPA emphasizes that fuel additives evaluated under the retrofit device program are only those which are for aftermarket use and are introduced to the vehicle's fuel system by other than fuel dispenser pumps. It does not include those additives contained within the finished or fully blended fuels.

B. Definition of Manufacturer

Pennzoil Company commented that the definition of "manufacturer" should be revised to cover those situations where the first manufacturer has a fuel additive made by a second manufacturer to specifications prescribed by the first manufacturer. EPA agrees with Pennzoil Company and has accordingly revised the definition.

C. Manufacturer's Rights

Bell Laboratory, Incorporated, commented that the proposal for EPA to make a "reasonable effort" to contact manufacturers when it intends to test their device is not enough and that regulations should require that EPA give actual notice and mail. In past evaluations, EPA has routinely notified manufacturers by letter each time it intended to test their products. In response to Bell's suggestion, the final regulation states that EPA will send a letter for purposes of notification.

Although EPA intends to certify those letters which it expects may have difficulty reaching the manufacturer, it does not believe that this practice is necessary in all cases.

General Motors Corporation commented that EPA should not provide manufacturers the right to comment on test plans for their devices. Bell Laboratory and Lubrizol Corporation on the other hand, commented that the manufacturer's opportunity to comment on the test plan and other phases of the evaluation program are limited. These comments, in addition to similar ones from other commenters, indicated that most companies are not aware of the full extent of participation that EPA has afforded manufacturers during device evaluation programs. EPA would like to make clear that it will continue to give prior notification of its intent to test the device, to provide an opportunity to attend the test sessions and to comment on the specific test plan, results, and conclusions reached by the Agency. Additionally, the manufacturer will continue to be provided with a draft copy of the final report and of the Federal Register Notice (which gives the summary and conclusions of the evaluation), and an opportunity to comment on them prior to release to the public. The manufacturer's opportunity to participate in the development of a test plan is provided not only to benefit the manufacturer, but also to help assure a technically sound test plan. Although EPA will consider all comments from the manufacturer, it cannot assure that every proposal will be acted on. Some comments may not be appropriate for various reasons (e.g., technically unsound, too resource intensive, unauthorized by regulation, and redundant effort). The MVICSA places the responsibility of evaluating retrofit devices specifically on EPA. While EPA will consider suggestions from the manufacturer, EPA will not, as suggested by Bell Laboratory's comment, delegate this authority to an arbitrator whenever the manufacturer disagrees with EPA's evaluation program. Should EPA and the manufacturer not agree on some facet(s) of the evaluation program, the evaluation program will not be delayed. EPA will act with all due speed to develop an accurate and meaningful final evaluation report for that particular device, and publish its conclusions in the Federal Register.

D. Test Procedures/Protocols

The main issue posed by EPA's proposal to clarify that existing procedures for testing mechanical and electrical retrofit devices apply to fuel additives is whether those procedures are appropriate for determining fuel economy and emission benefits for fuel additives. The proposal specifically solicited comments on this issue. Most of the comments received addressed this issue and although some companies took exception to EPA using its existing test procedures for fuel additives, several other commenters fully supported EPA's proposal. Overall, the comments indicated that most companies were not familiar with the test procedures/protocols that EPA has followed in past evaluations of retrofit devices. This unfamiliarity is reflected in the majority of the comments received and appears to stem from the fact that the companies have never been involved in an EPA evaluation of a retrofit device. Taking into consideration all these comments, EPA has concluded that no sound reason was given against using the existing Federal Test Procedure (FTP) and Highway Fuel Economy Test (HFET) procedures for evaluating the fuel economy and emission benefits of fuel additives. For this reason, and also because some fuel additive manufacturers have expressed a desire to have their additives evaluated in the immediate future, EPA intends to use these procedures for fuel additives. Subsequent to this rulemaking, EPA will consider any new suggestion for alternative test methods and propose any revisions that appear to be appropriate.

In an effort to avoid any future misunderstanding, EPA would like to briefly outline the following features of its retrofit device evaluation program with respect to test procedures/protocols.

1. For purposes of retrofit device evaluations (including fuel additives), EPA has been using, and intends to continue using, the FTP and HFET procedures when possible for the following reasons:
   (a) The cycles represent reasonable characterizations of city and highway driving patterns.
   (b) They are well defined, standardized procedures used extensively by industry and government to evaluate a broad variety of factors influencing emissions and fuel economy.
(c) The technical community is familiar with the data generated with these procedures.

(d) Test-to-test variability of data is less than with other methods, e.g., track or road testing, because of better control of parameters which affect fuel economy (e.g., drivers' habits, road, traffic, and ambient conditions).

(e) These procedures, which were established in 44 FR 17946 (March 23, 1979) for the testing of retrofit devices (including fuel additives), are already in place and EPA has used them successfully on other devices as well as fuel additives.

2. The FTP and HFET procedures may be modified under the provisions of § 610.31(c) as needed in any given case (e.g., by testing with commercial pump fuel, hot-start testing) to test the claims of additive manufacturers, so long as the acquisition of sound data is not jeopardized. Under the existing rule, the test protocols may also be modified in a given case, as necessary, so that a technically correct evaluation of a particular fuel additive can be made. For example, EPA may allow the accumulation of mileage, with and without the additive, for purposes of evaluating break-in and durability. The actual miles accumulated would vary for each additive based upon the manufacturer's claims. Mileage accumulation up to 15,000 miles, which is currently allowed under § 610.33(c), should be adequate to evaluate all fuel additive claims.

Should EPA determine that a particular fuel additive cannot be satisfactorily tested using the FTP and HFET procedures, then other procedures may be used under § 610.31 of the regulations.

3. The test program must have a sufficient number of test vehicles so that statistically significant test data will be obtained. EPA realizes that for fuel additives which manufacturers claim cause only a one or two percent improvement in fuel economy, several vehicles will be required and the total test cost may be large. However, in such cases there is no acceptable way to avoid testing many vehicles and still generate meaningful data. EPA will try to minimize test cost whenever practical, but it will not do so at the expense of sufficient data.

4. EPA will continue to use the carbon balance method as its primary method for calculating fuel economy benefits from retrofit devices including fuel additives. In accordance with 40 CFR 610.42(a), other methods, e.g., gravimetric or volumetric, may also be used by independent test labs in conjunction with the carbon balance method. In those instances in which the addition of a fuel additive causes a significant change in the hydrogen/carbon ratio of the fuel, the carbon balance method may be modified in accordance with § 610.42(a) so that a technically correct calculation of fuel economy can be made. In any instance in which the hydrogen/carbon ratio cannot be adequately determined, the gravimetric or volumetric methods may be used in lieu of the carbon balance method. All of the methods allowed above are entirely appropriate for fuel additive evaluation because the test protocols require back-to-back testing and, therefore, the true change attributable to a fuel additive is readily determined and is not influenced by any slight deviation in actual fuel economy levels from those noted in on-road testing.

5. EPA's primary interest in evaluating devices (or additives) under Section 511 of the MVICSA is to determine changes in fuel economy and emissions. Based on the type of device and also on EPA's resources, EPA may also evaluate safety, driveability, and durability. EPA is not required to, nor does it intend to, evaluate fuel additives with respect to such benefits as freeze protection, water absorption capabilities, etc.

6. Because it lacks the necessary authority under the MVICSA, EPA will not evaluate oils or oil additives for fuel economy benefits.

E. Other Comments

Comments were also received that were not directly related to the proposed amendments or the test procedure issue, but were pertinent to the device evaluation program. Among those, Ford Motor Company commented that Table 1 in § 610.21 should be revised to specifically include fuel additives. EPA agrees; therefore this final rule includes an amended Table 1. Additionally, Lubrizol Corporation and Wynn Oil Company commented that EPA must treat certain information provided by manufacturers for their devices and fuel additives as confidential. EPA's position with respect to claimed confidential information is that all such information, including support data or other information which relate to the description and/or function of the device, will be handled in accordance with EPA regulations on confidentiality, 40 CFR 2.201–2.215. The classification of such data or information as confidential must be justified on a case-by-case basis by the manufacturer. In accordance with 40 CFR 2.208 EPA will not treat test results as confidential since Section 511(c) of the MVICSA requires disclosure of such information. Additionally, EPA may decide not to perform an evaluation of a device if it judges it cannot develop a technically sound final report because the preliminary information submitted by the manufacturer was claimed to be confidential.

III. Administrative Designation

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, or government agencies, or significant adverse effects on competition, employment, investment, productivity, or innovation.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket cited at the beginning of this preamble.

IV. Effect on Small Entities

Section 605 of the Regulatory Flexibility Act requires the Administrator to certify regulations that do not have a significant impact on a substantial number of small entities. I certify that this regulation does not have such an effect, because this regulation is not imposing any new requirement that would increase significantly the burden on small businesses beyond that already created under Section 511 of the MVICSA or under the prior regulations in this area. Thus, the Agency has not prepared an analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

V. Reporting and Recordkeeping Requirements

Information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and have been assigned OMB control number 2000-0419.

VI. List of Subjects in 40 CFR Part 610

Fuel economy, Gasoline, Motor vehicles.
PART 610—[AMENDED]

For the reasons set forth in the preamble, Part 610, Subchapter Q, Chapter I of Title 49, Code of Federal Regulations, is amended as set forth below.

1. The authority citation for Part 610 reads as follows:


2. In § 610.11 paragraphs (a)(1), (a)(1)(i), (a)(1)(ii), and (a)(4) are revised and (a)(1)(iii) is added as follows:

§ 610.11 Definitions.

(a) * * *

(i) "Retrofit device" or "device" means:

(i) Any component, equipment, or other device (except a flow measuring instrument or other driving aid, or lubricant or lubricant additive) which is designed to be installed in or on an automobile as an addition to, as a replacement for, or through alteration or modification of, any original component, or other devices; or

(ii) Any fuel additive which is to be added to the fuel supply of an automobile by means other than fuel dispenser pumps; and

(iii) Which any manufacturer, dealer, or distributor of such device represents will provide higher fuel economy than would have resulted with the automobile as originally equipped, as determined under rules of the Administrator.

4. In § 610.30, paragraph (d) is added as follows:

§ 610.30 General.

(d) For each device that the Agency intends to test, the Administrator will give the manufacturer prior notice by mail of the Agency's intent to test the device and provide the manufacturer the opportunity to attend the test sessions and to comment on the specific test design and results.

SUMMARY: The Maritime Administration (MARAD) is amending its merchant marine training regulations to effect a further 10 percent reduction in the entering classes at the United States Merchant Marine Academy.

EFFECTIVE DATE: May 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Edwin M. Hackett, Academies Program Officer, Office of Maritime Labor & Training, Maritime Administration—DOT, 400 Seventh Street, SW, Room 7302, Washington, DC 20590, Telephone: (202) 426–5759.

SUPPLEMENTARY INFORMATION: Following is a summary of the content of this final rulemaking.

Subpart C—Admission and Training of Midshipmen at the United States Merchant Marine Academy

Section 310.53 Nominations and vacancies—This section provides for lower quotas for geographical areas eligible to send students to the United States Merchant Marine Academy. State quotas are set in proportion to a state's representation in Congress (House and Senate), with no state having a quota of less than one.

The United States Merchant Marine Academy Regulations were amended, effective May 31, 1983, to achieve a reduction in the size of the entering classes by 10 percent. That reduction was necessary because there was an estimated oversupply of deck and engine officers that required at the Academy for it to continue to meet its training program size warranted by continuing conditions and projections of workforce supply and demand. A continuing oversupply of deck and engine officers is projected based on present levels of class sizes. This projection has been the subject of discussions in various forums, including assemblies of senior officials of all maritime academies. The need for restraint in production of licensed merchant marine officers is based on the belief that, if unemployed in their professions, these young persons would have wasted 4 years of effort and dedication of their training. Also, the Federal expenditure involved would be a waste of national resources. Any subsequent changes in class size must necessarily be based on reasonable estimates, national maritime and defense needs and on a consideration of the minimum number of students required at the Academy for it to continue to meet its training program.
objectives in support of national maritime policy.

Cost and Benefits

This rule imposes no costs on the private sector. It reduces the entering class by 29 positions each year (with 116 fewer positions over a four year period) with an estimated savings in Federal cost of $939,000 (meals, uniforms, textbooks and midshipman travel) in the first year of implementation rising to $1,340,000 in the second year, $1,888,000 in the third year and $2,688,000 by the fourth year, as each subsequent new class is admitted with 29 fewer positions. These savings figures are based on the costs of the uniforms, textbooks and travel for each midshipman which amount to $974.00 ($229.00 + $301.00 + $444.00, respectively). The cost of meals for each midshipman is $1,768.00 during the first and fourth years, when they are at the Academy, and $884.00 during the second and third year when the students are away from the academy for six months for training aboard merchant ships.

E.O. 12291, Statutory Requirements and DOT Procedure

The Maritime Administrator has made a determination that this rulemaking meets none of the criteria in Executive Order 12291 for a major rule. Since this rulemaking affects only students and applicants to the USMMA, the economic impact of this final rule has been found to be so minimal under Department of Transportation regulatory policies and procedures (44 FR 11084, February 26, 1979) that a full regulatory evaluation is unnecessary.

The regulation contains no new or amended reporting requirement within the scope of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Pursuant to DOT Order 2100.5, this rule is DOT Procedure impossible and periodic issues regulations on merchant marine training as final rules, without opportunity for comment, since it believes it would not receive any substantive or meaningful comments.

Therefore, pursuant to provisions of 5 U.S.C. 553, good cause exists for finding that notice and public comment procedure is impracticable and unnecessary. In addition, due to the urgency surrounding the candidate selection process, the Maritime Administration finds good cause to make this rule effective immediately under 5 U.S.C. 553.

List of Subjects in 46 CFR Part 310

Grant programs, Education, Schools, Seamen.

Accordingly, Subpart C of 46 CFR Part 310 is amended as follows:

PART 310—MERCHANT MARINE TRAINING

Subpart C—Admission and Training of Midshipmen at the United States Merchant Marine Academy

Section 310.53. Nominations and vacancies, is amended by revising paragraph (b)(5) to read:

§ 310.53 Nominations and vacancies.

(b) The distribution of each entering class by State is:

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Maryland..............................................3
Massachusetts.................................6
Michigan..............................................9
Minnesota..............................................5
Mississippi....................................... 3
Missouri..............................................2
Montana.............................................1
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Ohio................................................. 10
Oklahoma......................................... 14
Oregon.............................................. 1
Pennsylvania................................. 19
Rhode Island................................. 21
South Carolina.............................. 11
South Dakota.................................. 13
Tennessee......................................... 18
Texas................................................. 23
Utah................................................. 13
Vermont........................................... 17
Virginia........................................... 20
Washington....................................... 18
West Virginia................................. 14
Wisconsin......................................... 26
Wyoming............................................. 1

This regulation is not subject to the requirements of section 3507 of Pub. L. 96-511, December 11, 1980.

([Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 5, 1981); 49 CFR 1.66 (46 FR 47458, September 28, 1981)]

By Order of the Maritime Administrator,
Georgia P. Stamas, Secretary.

[FR Doc. 84-11585 Filed 4-30-84; 8:45 am]
BILLING CODE 4910-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1011, 1152, 1177, 1180, and 1182

[Ex Parte No. 246 (Sub-2)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: On February 17, 1984, the Interstate Commerce Commission published a notice of proposed rulemaking in the Federal Register (49 FR 6118) proposing to adjust existing fees and to establish several new fees for services the agency provides.
In this document, the Commission adopts the revision to its schedule of fees for services and benefits provided by the agency under its jurisdictional statute. New fees are being established for various activities where persons are identifiable recipients of special benefits conferred by activities of the Commission. The fees are based on the Commission's costs of providing services in accordance with judicially established guidelines. It is necessary to establish new fees to transfer the cost burden of providing services from the general taxpayer to the recipient of the services. This action will require persons who request or utilize the Commission's services to pay a fair and equitable charge.

DATE: These rules will be effective July 2, 1984.

FOR FURTHER INFORMATION CONTACT:
Cost Study Information—
Paul Meder, (202) 275-7457,
Susan Maslar, (202) 275-6778
Other Information—
James H. Bayne, (202) 275-7428
or
Kathleen King, (202) 275-7429.

SUPPLEMENTARY INFORMATION:
Additional information is contained in the full Commission decision which may be obtained from the Office of the Secretary, Room 2215, 12th Street and Constitution Avenue, N.W., Washington, DC 20423; or call (202) 275-7428.

Regulatory Flexibility Analysis
We adopt our preliminary finding that this proceeding will have a significant economic impact on a substantial number of small entities and that those impacts will be generally beneficial. Most of the comments did not specifically address the potential impact on small entities. As we noted in the NPR, our application fee for motor carrier authority will decrease, rather than increase. Inasmuch as this is the major contact that small carriers have with the Commission, they should generally benefit. Moreover, owner-operator application fees will decrease, which should enable more owner-operators to participate more directly in regulated transportation.

Where new fees are adopted or fees have been increased we have attempted to minimize the effect on small entities to the extent legally practicable. For example, we have adopted separate rail and non-rail fees in many instances. This should benefit small entities, whose filing fees will no longer subsidize more complex proceedings.

The rail fees adopted here provide separate fee categories in the merger, consolidation and purchase applications, so that small carriers are not burdened with the fees that correspond to major rail proceedings. We have considered similar treatment for applications to construct, extend, acquire or operate rail lines under 49 U.S.C. 10901 (Item 33), as suggested by the New York Department of Transportation and American Short Line Railroads, but find this to be unnecessary in view of the substantially reduced costs and the availability of the exemption procedures.

We have decreased some fees where we found the amount was excessive or would discourage use of Commission protection contrary to the public interest. Numerous commentors objected to our charging for tariffs and suggested various alternatives. These fees have been decreased.

Finally, we note that small shippers may be significantly impacted by the newly introduced fee for filing complaints against existing rates. As noted above, we have decreased this fee. To the extent the fee may nonetheless unduly affect small entities, it may be further reduced or waived under our general procedure of Section 1002.2(e). In that way, small businesses can continue to use the Commission's regulatory procedures.

In sum, we believe the rules as adopted represent an appropriate balance which satisfies the purposes of both the IOAA and the Regulatory Flexibility Act (5 U.S.C. 601-612). The fees adopted are for services that flow to identifiable beneficiaries. They are set at the full cost of the services provided to the maximum extent practicable. However, we also have considered alternatives suggested by the commentors.

It is ordered: The motion of the Motor Carrier Traffic Association, Inc., for a general waiver of our tariff filing and general increase fees is denied.

The final rules set forth in the appendix are adopted.


List of Subjects in 49 CFR Parts 1002, 1011, 1152, 1177, 1180 and 1182

Administrative practice and procedure.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison concurred with a separate expression.

James H. Bayne,
Acting Secretary.

Appendix
Title 49 of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

(1) In § 1002.1, the heading, introductory text and paragraphs (a)—(f) are revised to read as follows:

§ 1002.1 Fees for records search, copying, certification, and related services.

(a) Certificates of the Secretary, $3.00.

(b) Services involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $16.00 per hour.

(c) Services involved in checking records to be certified to determine authenticity, including the clerical work, etc., incidental thereto, at the rate of $11.00 per hour.

(d) Electrostatic copies of tariffs, reports, and other public documents, at the rate of $0.60 per letter size or legal size exposure. A minimum charge of $3.00 will be made for this service.

(e) The fee for search and copying services requiring ADP processing are as follows:

(1) A fee of $28.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

(2) The fee for port minute time for the search will be set at the current rate set forth in the Commission's contract with its time sharing computer contractor. Information on those charges can be obtained from the Chief, Section of Systems Development, Interstate Commerce Commission, Washington, DC 20423.

(3) Printing shall be charged at the rate of $0.05 per page of computer generated output with a minimum charge of $25. A charge of $25 per reel of magnetic tape will be made if the tape is to be permanently retained by the requestor.

(4) Search and copying services for records not considered public under the Freedom of Information Act as follows:
(1) The search fee hourly rate will be based on the hourly rate of the individual or individuals who perform the search. Those hourly rates are set forth in the following table.

<table>
<thead>
<tr>
<th>Grade</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>GS-1</td>
<td>4.68</td>
</tr>
<tr>
<td>GS-2</td>
<td>5.21</td>
</tr>
<tr>
<td>GS-3</td>
<td>5.98</td>
</tr>
<tr>
<td>GS-4</td>
<td>6.27</td>
</tr>
<tr>
<td>GS-5</td>
<td>7.51</td>
</tr>
<tr>
<td>GS-6</td>
<td>8.38</td>
</tr>
<tr>
<td>GS-7</td>
<td>9.31</td>
</tr>
<tr>
<td>GS-8</td>
<td>10.31</td>
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<tr>
<td>GS-9</td>
<td>11.39</td>
</tr>
<tr>
<td>GS-10</td>
<td>12.54</td>
</tr>
<tr>
<td>GS-11</td>
<td>13.79</td>
</tr>
<tr>
<td>GS-12</td>
<td>15.51</td>
</tr>
<tr>
<td>GS-13</td>
<td>16.63</td>
</tr>
<tr>
<td>GS-14</td>
<td>20.20</td>
</tr>
<tr>
<td>GS-15 and above</td>
<td>27.29</td>
</tr>
</tbody>
</table>

(2) The Secretary will inform any person who submits a deficient filing that:

(i) Such filing will be rejected, unless the appropriate fee is submitted within a specified time;

(ii) The Commission will not process any filing that is deficient under this paragraph; and

(iii) The date of filing will be deemed the date on which the Commission receives the appropriate fee.

(3) This provision does not preclude a determination that a filing is deficient for any other reason.

(c) Fees not refundable. Fees will be assessed for every filing in the type of proceeding listed in the schedule of fees contained in paragraph (f) of this section, subject to the exceptions contained in paragraphs (d) and (e) of this section. After the application, petition, notice, tariff, contract, or other document has been accepted for filing by the Commission, the filing fee will not be refunded, regardless of whether the application, petition, notice, tariff, contract, or other document has been accepted for filing by the Commission, the filing fee will not be refunded, regardless of whether the application, petition, notice, tariff, contract, or other document has been accepted for filing by the Commission, the filing fee will not be refunded, regardless of whether the application, petition, notice, tariff, contract, or other document has been accepted for filing by the Commission, the filing fee will not be refunded, regardless of whether the application, petition, notice, tariff, contract, or other document has been accepted for filing by the Commission.

(2) Each filing of an original or updated notice of intent to engage in compensated intercorporate hauling operations shall be considered a separate filing, and shall be subject to payment as described in paragraph (f)(12) of this section.

(3) Separate fees will be assessed for the filing of temporary authority applications as provided in paragraphs (f)(6), (9), and (10) of this section, regardless of whether such applications are related to an application for corresponding permanent authority.

(4) The Commission may reject concurrently filed applications, petitions, notices, contracts, or other documents asserted to be related and refund the filing fee if, in its judgment, they embrace two or more severable matters which should be the subject of separate proceedings.

(e) Waiver of Reduction of filing fees. It is the general policy of the Commission not to waive or reduce filing fees except as described below:

(1) Filing fees are waived for an application or other proceeding which is filed by a federal government agency, or a state or local government entity. For purposes of this section the phrases “federal government agency” or “government entity” do not include a quasi-governmental corporation or government subsidized transportation company.

(2) In extraordinary situations the Commission will accept requests for waivers or fee reductions in accordance with the following procedure:

(i) When to request. At the time that a filing is submitted to the Commission, the applicant may request a waiver or reduction of the fee prescribed in this part. Such request should be addressed to the Secretary.

(ii) Basis. The applicant must show the waiver or reduction of the fee is in the best interest of the public, or that payment of the fee would impose an undue hardship upon the requestor.

(iii) Commission Action. The Secretary will notify the applicant of the decision to grant or deny the request for waiver or reduction.

(f) Schedule of Filing Fees.
<table>
<thead>
<tr>
<th>Type of proceeding</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>An application for motor carrier or water carrier operating authority, water carrier exemption authority, a certificate of registration or broker's license or to change the control of a motor carrier</td>
<td>$150</td>
</tr>
<tr>
<td>A &quot;Fitness-only&quot; application for motor carrier emergency temporary authority under 49 U.S.C. 10922(b)(5)(A) to transport food and related products.</td>
<td>70</td>
</tr>
<tr>
<td>A petition to transfer or lease or to change the control of a motor or water carrier</td>
<td>1,000</td>
</tr>
<tr>
<td>A petition to transfer or lease or to change the control of a motor or water carrier</td>
<td>27</td>
</tr>
<tr>
<td>A notice required by 49 U.S.C. 10524(b) to request the transfer or lease or to change the control of a motor or water carrier</td>
<td>150</td>
</tr>
<tr>
<td>A notice of abandonment filed by a railroad (except applications seeking such authority in connection with a bankruptcy proceeding)</td>
<td>90</td>
</tr>
<tr>
<td>Part I.—Non-Rail Applications to Discontinue Transportation Services</td>
<td></td>
</tr>
<tr>
<td>An application for approval of a rail rate association agreement, 49 U.S.C. 10708.</td>
<td>1,200</td>
</tr>
<tr>
<td>An application for approval of an amendment to a non-rail rate association agreement</td>
<td>3,600</td>
</tr>
<tr>
<td>An application for a determination under 49 U.S.C. 11321(a)(2) or (b)</td>
<td>20,000</td>
</tr>
<tr>
<td>An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 11220.</td>
<td>100</td>
</tr>
<tr>
<td>An application to transfer or lease a certificate or permit, including a certificate of registration or broker's license or to change the control of a motor carrier</td>
<td>500</td>
</tr>
<tr>
<td>An application for approval of a motor vehicle sales, service, and repair activity.</td>
<td>500</td>
</tr>
<tr>
<td>A petition for exemption under 49 U.S.C. 11343(a)(1)</td>
<td>100</td>
</tr>
<tr>
<td>Part IV.—Rail Applications for Operating Authority</td>
<td></td>
</tr>
<tr>
<td>An application for a certificate authorizing the construction, extension, acquisition, or operation of less than 100 miles of railroad</td>
<td>1,000</td>
</tr>
<tr>
<td>Fee for Line Establishing Program application filed under 49 U.S.C. 10910(b)(1)(A)(h)</td>
<td>2,400</td>
</tr>
<tr>
<td>A &quot;Fitness-only&quot; application for motor carrier emergency temporary authority under 49 U.S.C. 10922(b)(5)(A) to transport food and related products.</td>
<td>70</td>
</tr>
<tr>
<td>A petition to transfer or lease or to change the control of a motor or water carrier</td>
<td>1,000</td>
</tr>
<tr>
<td>A petition to transfer or lease or to change the control of a motor or water carrier</td>
<td>27</td>
</tr>
<tr>
<td>A notice of abandonment filed by a railroad (except applications seeking such authority in connection with a bankruptcy proceeding)</td>
<td>150</td>
</tr>
</tbody>
</table>

Part VII.—Formal Proceedings

<table>
<thead>
<tr>
<th>Type of proceeding</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>A complaint alleging unlawful rates or practices of carriers</td>
<td>2,300</td>
</tr>
<tr>
<td>A complaint or petition seeking the prohibition of the division of joint rates, fares or charges under 49 U.S.C. 10705(6)(A)(3)</td>
<td>1,400</td>
</tr>
<tr>
<td>A petition for declaratory order; (i) Petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding; (ii) All other petitions for declaratory order</td>
<td>1,000</td>
</tr>
<tr>
<td>Requests for nationwide and regional collectively filed general rate increases or major rate reductions, accompanied by supporting cost and financial information</td>
<td>4,200</td>
</tr>
<tr>
<td>A petition for exemption from filing tariffs by water and bus carriers</td>
<td>100</td>
</tr>
<tr>
<td>An application for a certificate authorizing the operation of explosive trains</td>
<td>2,000</td>
</tr>
<tr>
<td>Part VIII.—Informal Proceedings</td>
<td></td>
</tr>
<tr>
<td>An application for authority to establish reduced rate or rates or practices filed by inter-state rail carriers. 49 U.S.C. 11501</td>
<td>500</td>
</tr>
<tr>
<td>A petition for review of state regulations of intrastate rates, rules or practices filed by inter-state bus carriers. 49 U.S.C. 11501</td>
<td>500</td>
</tr>
<tr>
<td>A complaint alleging unlawful rates or practices of carriers</td>
<td>2,300</td>
</tr>
</tbody>
</table>

1. Per series transmitted.
2. Per accepted certificate of insurance or self-insurer.
3. Per application.
4. Per page.
5. Per delivery.
6. Per movement.

(3) Section 1002.3 is added, to read as follows:
§ 1002.3 Updating user fees.

(a) Update. Each fee established in this part shall be updated in accordance with this section annually.

(b) Publication and effective dates. Updated fees shall be published in the Federal Register and shall become effective 30 days after publication.

(c) Payment of fees. Any person submitting a filing for which a fee is established shall pay the fee in effect at the time of the filing.

(d) Method of updating fees. Each fee shall be updated by multiplying the base level direct labor costs by percentage changes in average wages and salaries of Commission employees. Base level direct labor costs are direct labor costs determined by the Commission’s FY 1983–84 User Fee Cost Study. The base period for measuring changes shall be April 1984.

(2) Governmental overhead costs shall be updated by multiplying updated direct labor costs by estimated employee fringe benefits and other wage related governmental cost contributions. Estimates of these benefits and contributions are currently published by the Office of Management and Budget in OMB Circular A-76.

(3) General and administrative costs and operational overhead shall be updated by multiplying updated direct labor and governmental overhead costs by the sum of base level operations overhead and current Commission general and administrative percentage costs. Base level operations overhead are those percentage costs determined by the Commission’s FY 1983–84 User Fee Cost Study. Current Commission general and administrative percentage costs shall be determined by dividing budgeted Commission general and administrative costs for the current fiscal year by total budgeted agency expenses for the current fiscal year.

(4) Other costs shall be updated by multiplying base level other costs by percentage changes in the consumer price index. Base level other costs are other costs determined by the Commission’s FY 1983–84 User Fee Cost Study. The base period for measuring changes shall be April 1984.

(e) Rounding of updated fees. Updated fees shall be rounded in the following manner: (1) fees between $1-$30 will be rounded to the nearest $1; (2) fees between $30-$100 will be rounded to the nearest $10; (3) fees between $100-$999 will be rounded to the nearest $50; and (4) fees above $1,000 will be rounded to the nearest $100. (This rounding procedure excludes copying, printing and search fees.)

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

(4) In § 1011.8, a new paragraph (b) is added to read as follows:

§ 1011.8 Delegation of Authority by the Interstate Commerce Commission to Specific Bureaus and Offices of the Commission.

(b) Office of the Secretary. Authority to waive filing fees set forth in 49 CFR 1002.2(f) will be delegated to the Secretary of the Commission, to be exercised in consultation with involved offices.

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

(5) In § 1152.23, paragraph (e) is revised to read as follows:

§ 1152.23 Summary application.

(e) A check or money order payable to the Interstate Commerce Commission must be submitted with the application to cover the applicable filing fee.

PART 1177—RECORDATION OF DOCUMENTS

(6) In § 1177.3 paragraph (c) is revised to read as follows:

§ 1177.3 Requirements for submission.

(c) Be accompanied by a fee in the appropriate amount. The filing fee for either a primary or secondary document is $10 per document. However, assignments which are executed prior to the filing of the primary document and which are submitted concurrently will be treated along with the primary document as one fee purpose and will be assessed only one $10 fee. A lease and agreement (Philadelphia Plan) shall be similarly treated.

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

(7) In § 1180.4, paragraph (c)(1) is revised to read as follows:

§ 1180.4 Procedures.

(c) Application. (1) The fee to file a primary application with the Commission under these procedures is set forth at 49 CFR 1002.2(3)(40)–(49). There is no filing fee for a directly related application filed by the party that filed the primary application. The fee for a directly related or responsive application filed by another party is $1,700. For a finance-related exemption application filed by any party the fee is $450.

PART 1182—MOTOR CARRIER APPLICATIONS TO CONSOLIDATE, MERGE, OR ACQUIRE CONTROL UNDER 49 U.S.C. 11343-11344

§ 1182.1 [Amended]

(b) In § 1182.1, paragraph (b) is amended by revising the amount “$700” in the third sentence to read “$600”.

[FR Doc. 84-11678 Filed 4-30-84; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 40322-37]

Shrimp Fishery of the Gulf of Mexico

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement the mandatory reporting of statistical data by shrimp fishermen, dealers, and processors. The Fishery Management Plan for the Shrimp Fishery in the Gulf of Mexico, approved in 1980, contained a management measure requiring the reporting of shrimp landing statistics. Regulations to implement this provision were reserved until the National Marine Fisheries Service designed a reporting system approved by the Gulf of Mexico Fishery Management Council. This system has been developed and approved and is implemented by this final rule. The intended effect of this rule is to provide for timely reporting of shrimp catch data during the fishing season.


ADDRESS: A copy of the Final Supplemental Regulatory Impact Review may be obtained from Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813–893–3722.
SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) was approved May 29, 1980, under authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). Final regulations implementing the FMP were published in the Federal Register on May 20, 1981 (46 FR 27494). The FMP contains a provision for the accumulation of shrimp landings information necessary for responsive management of the fishery. However, because the data collection system had not been developed when the regulations were implemented, one section of the regulations, 50 CFR 658.5, was reserved. The National Marine Fisheries Service (NMFS) is responsible for the design (subject to review by the Gulf of Mexico Fishery Management Council (Council) implementation, and management of the data collection system. NMFS has now designed and the Council has approved a statistical data collection system which essentially makes mandatory the voluntary reporting program utilized in this fishery since 1956. This final rule implements that system.

The proposed rulemaking (46 FR 42940, September 23, 1981) contained a discussion of the need for the mandatory reporting and a description of data collection procedures. These are not repeated here.

Response to Comments

Two commenters (a shrimp association and a national fishing organization) opposed the requirement for immediately reporting price and volume information. Delayed reporting of this information was considered by the Council prior to the publication of the proposed regulations, but was rejected because: (1) It is unnecessary to protect confidentiality of current bid prices since dealers will be providing current box weight and box weight prices rather than prices for packed and graded shrimp, (2) it would significantly add to the cost of and disrupt a stable data collection and analysis system, and (3) it would reduce the information available for those management decisions which are time critical.

The same national fishing organization suggested that prior to implementation of the proposed mandatory reporting NMFS insure that industry is supportive of the program in order that accurate data will be reported.Industry representatives at public hearings, as well as Council meetings, substantiated the need for accurate data, and indicated general support for the proposed system. Additionally, the commenter suggested that NMFS insure that data collection be uniform throughout the Gulf. The system which will be implemented under this rule is Gulf-wide and the same criteria and data reporting requirements will apply to all resource users.

Marine resource agencies for the States of Texas and Louisiana objected to the application of the reporting requirements to shrimping activities occurring within State waters. These agencies indicated that such action would constitute preemption of State authority and impact on present and future State laws. NMFS disagrees that this action preempts State authorities, as a matter of law. A State is free to require the submission of information from shrimp fishermen, dealers and processors without conflicting with the Magnuson Act. Furthermore, there is no conflict between Federal and State requirements: NMFS collects shrimp statistics under the current voluntary data gathering programs for both States under cooperative agreements.

Effective management of the shrimp resource in the Gulf requires comprehensive and uniform data collection. Stock assessment, maximum sustainable yield calculations and optimum yield determinations must be based upon information gathered from State waters as well as the fishery conservation zone (FCZ). Were NMFS to accept and implement the comments of these marine resource agencies, its ability to properly manage the shrimp resource throughout the Gulf would be unacceptably limited.

Changes From the Proposed Rule

The final rule clarifies § 658.5(b)(1) to require the reporting of vessel name and official number.

Classification

The Assistant Administrator for Fisheries, NOAA, after considering all comments on the proposed regulatory amendment has determined that this regulatory amendment is necessary and appropriate for conservation and management of the fishery and is consistent with the national standards and other provisions of the Magnuson Act, and other applicable law. It was previously determined, on the basis of a regulatory impact review (RIR), that rules to implement the FMP, except for this measure, were not major under Executive Order 12291. The RIR was summarized in the preamble to the final rules for the FMP (see 46 FR 27498). A final supplemental RIR, prepared for this regulatory amendment, does not alter the findings of the previous RIR.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because the regulatory amendment simply adds a mandatory requirement to an already existing data collection system and very limited additional economic impacts will be experienced. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). The mandatory collection of this information has been approved by the Office of Management and Budget (OMB control number 0648-0013) through September 30, 1986.

This action is part of a previous Federal action for which a final environmental impact statement (EIS) was prepared. The final EIS for the FMP was filed with the Environmental Protection Agency and the notice of availability was published on March 13, 1981 (46 FR 16720).

The Council determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects in 50 CFR Part 658

Fisheries, Reporting requirements.


For reasons set forth in the preamble, 50 CFR Part 658 is amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 658 reads as follows:

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

2. In Part 658, the Table of Contents is amended by revising the heading for § 658.5 from “Recordkeeping and reporting [Reserved]” to read “Reporting requirements.”

3. In § 658.2, the definition of Statistical area is added in alphabetical order to read as follows:

§ 658.2 Definitions.

Statistical area means one or more of the 21 statistical grids depicted in Figure 8. In addition, the term includes the following "inside" water areas:
4. § 658.5 is revised to read as follows:

4. § 658.5 Reporting requirements.

(a) Vessel owners and operators. The owner or operator of any fishing vessel that fishes for, or lands, shrimp or any part thereof in the Gulf of Mexico or in adjoining State waters, and who is selected to report by the Center Director, must provide upon request the following information regarding any fishing trip to the Center Director or his designee:

1. Name and official number of vessel;
2. Amount of catch of shrimp by species;
3. The condition of the shrimp (heads on/heads off);
4. Depth fished and information regarding fishing location that is specific enough to enable the Center Director or his designee to ascertain the statistical area fished;
5. Person to whom sold, bartered, or traded;
6. Number, size and type of gear; and
7. Effort and period of fishing.

(b) Dealers and processors. Any person who receives shrimp or parts thereof by way of purchase, barter, trade or sale from a fishing vessel or person that fishes for, or lands, shrimp or parts thereof in the Gulf of Mexico or in adjoining State waters, and who is selected to report by the Center Director, must provide upon request the following information to the Center Director or his designee:

1. Fishing vessel (name and official number) or person (if harvested from other than a vessel) from which received;
2. Amount of shrimp or parts thereof received by species and size category for each vessel trip; and
3. Exvessel value by size category of shrimp or portions thereof received.

(Affirmed by the Office of Management and Budget under OMB control number 0648-0013).

5. In § 658.7, paragraphs (b) through (l) are redesignated as (c) through (m), and a new paragraph (b) is added to read as follows:

5. In § 658.7, paragraphs (b) through (l) are redesignated as (c) through (m), and a new paragraph (b) is added to read as follows:
Proposed Rules

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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC has determined that it is not unlawful under the Glass-Steagall Act for an insured nonmember bank to establish or acquire a bona fide subsidiary that engages in securities activities nor for an insured nonmember bank to become affiliated with a company engaged in securities activities. At the same time, however, the FDIC has found that some risk may be associated with those activities. In order to address that risk and to ensure the legality of insured nonmember bank indirect involvement in securities activities, the FDIC is proposing to amend its regulations to (1) define bona fide subsidiary, (2) limit an insured nonmember bank’s permissible direct and indirect investments in its securities subsidiary or subsidiaries, (3) require notice of intent to invest in a securities subsidiary, (4) limit the permissible securities activities of insured nonmember bank subsidiaries, and (5) place certain other restrictions on loans, extensions of credit, and other transactions between insured nonmember banks and their subsidiaries or affiliates that engage in securities activities. This action is a continuation of a rulemaking initiated by the FDIC on May 9, 1983 with the adoption of a proposed amendment to Part 337 which was published for public comment at 48 FR 22155.

DATE: Comments must be received by May 31, 1984.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C.

Comments may be hand delivered to Room 6108 between the hours of 8:30 a.m. and 5:00 p.m.


SUPPLEMENTARY INFORMATION: On August 23, 1982, the Board of directors of the FDIC adopted a policy statement concerning the applicability of the Glass-Steagall Act to securities activities of subsidiaries of nonmember banks. The policy statement, which was published in the Federal Register on September 3, 1982 (47 FR 38984), concluded that, in the opinion of the Board of Directors, the Banking Act of 1933 (popularly known as the Glass-Steagall Act and codified in various provisions of title 12 of the United States Code) does not by its express terms prohibit an insured nonmember bank from establishing an affiliate relationship with or organizing or acquiring a subsidiary corporation that engages in the business of issuing, underwriting, selling or distributing stocks, bonds, debentures, notes, or other securities. Although the policy statement was not designed to address the safety and soundness of such activities, it did state that the FDIC recognized its ongoing responsibility to ensure the safe and sound operation of insured nonmember banks and that, depending on the facts, potential risks can be inherent in a bank subsidiary’s involvement in particular securities activities.

In keeping with that statement, the FDIC on September 20, 1982 adopted an Advance Notice of Proposed Rulemaking (47 FR 42121) designed to solicit comment on the need, if any, for rulemaking with regard to securities activities of affiliates and subsidiaries of insured nonmember banks. After carefully reviewing the comments received in response to that notice and after reviewing in conjunction therewith the purposes of the Glass-Steagall Act as articulated in the Act’s legislative history and recent case law construing the Act, the FDIC adopted on May 9, 1983 a proposed regulation (May, 1983 proposal) addressing the securities activities of subsidiaries and affiliates of insured nonmember banks. As stated in the preamble to the May, 1983 proposal (48 FR 22156), “[The] proposal is a recognition by the FDIC that at least some of [the] hazards [contemplated by the Glass-Steagall Act] can and do exist [when a bank is indirectly involved in securities activities] even though, in the FDIC’s opinion, a bank’s involvement in securities activities is not unsafe or unsound in all instances. * * * Rather than deny insured nonmember banks the opportunity of acquiring or forming securities subsidiaries because of the presence of some risk, the FDIC is proposing to eliminate or lessen the risks that can be present by placing a number of restrictions on a nonmember bank’s indirect involvement in the securities area.”

The basic features of the May 1983 proposal were as follows: (1) A requirement that a bank give FDIC notice of intent to invest in a securities subsidiary; (2) a prohibition on an insured nonmember bank establishing or acquiring a subsidiary that underwrites securities unless the underwriting activity is done on a best-efforts basis, is the underwriting of top rated debt securities, and/or is the underwriting of a money market type mutual fund; (3) a limit on the bank’s investment in one or more securities subsidiaries to twenty percent of the bank’s equity capital; (4) a limit on the amount of loans or other extensions of credit that the bank can make to its securities subsidiary or affiliate; (5) a prohibition on the bank making loans to any customer where the purpose of the loan is to acquire securities currently being underwritten or distributed by the bank’s subsidiary or affiliate or accepting such securities as collateral on a loan or other extension of credit; (6) a prohibition on the bank directly or indirectly making loans or other extensions of credit to companies whose securities are currently being underwritten or distributed by the bank’s subsidiary or affiliate if those securities are not rated in the top four rating categories by a nationally recognized rating service; (7) a prohibition on the bank as trustee purchasing in its sole discretion any security currently being underwritten, distributed, or issued by the bank’s subsidiary or affiliate or any security currently being underwritten, distributed, or issued by any investment company advised by the bank’s subsidiary or affiliate; and (8) a prohibition on the bank transacting business through its trust department

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with the bank's securities subsidiary or affiliate unless the transactions are comparable to transactions with an unaffiliated securities company.

Additionally, the May 1983 proposal defined the term "bona fide subsidiary" as a subsidiary of an insured nonmember bank that at a minimum (i) is adequately capitalized; (ii) is physically separate in its operations from the operation of the bank; (iii) maintains separate accounting and other corporate records; (iv) observes separate formalities such as separate board of directors meeting; (v) maintains separate employees who are compensated by the subsidiary; and (vi) conducts business separately from functions independently of, and is not identified with, the banking business of the insured nonmember bank.

The May proposal was published for a sixty-day comment period which ended on July 18, 1983. In addition to inviting written comments during that time period, the FDIC invited oral testimony at a one-day public hearing that was held on June 17, 1983. The FDIC received 35 written comments and heard oral testimony from two witnesses at the June 17 public hearing. Because of the complexity of the issues involved and the relatively small number of comments received during the comment period, the FDIC has determined to issue a revised proposed regulation. The new proposed regulation was formulated after carefully reviewing the written comments as well as testimony given before various congressional committees that was given directly in connection with, or was relevant to, FDIC's rulemaking. The written and oral comments as well as the testimony given before Congress are summarized below where relevant to an explanation of the new proposed regulation.

1. Bona Fide Subsidiary

The term "bona fide subsidiary" as proposed for comment required at a minimum that the subsidiary (i) be adequately capitalized; (ii) be physically separate in its operations from the operation of the bank; (iii) maintain separate accounting and other corporate records; (iv) observe separate formalities such as separate board of directors' meetings; (v) maintain separate employees who are compensated by the subsidiary; and (vi) conduct business separately from, function independently of, and not be identified with, the banking business of the insured nonmember bank.

In proposing the above definition the FDIC indicates that it was not necessarily implying that any association between a bank and its securities subsidiary in the public's mind could harm the reputation of the bank but rather that the FDIC was attempting to ensure the separateness of the subsidiary and the bank. Inasmuch as the bank would be prohibited by the Glass-Steagall Act from engaging in many activities the subsidiary might undertake, the separation is essential. If a bank's subsidiary is not sufficiently distinct from its parent, the subsidiary may be found to be an alter ego or a mere instrumentality of the bank and the bank held to be engaging in securities activities in violation of the Glass-Steagall Act. The definition was also designed to ensure the separateness of the subsidiary from the bank as a means of safeguarding the soundness of the parent bank. As stated in the proposal, "the parent bank is less likely to be harmed if the subsidiary has adequate capital and thus can itself absorb losses as well as liabilities arising from the securities operation."

The proposed regulation adopts a definition of "bona fide subsidiary" that is substantially the same as that which was originally proposed for comment with a few significant revisions. The proposed definition retains the requirement found in the May 1983 proposal that the subsidiary be adequately capitalized. This requirement was generally viewed as proper by those commenting on the May 1983 proposal. The Investment Company Institute ("ICI") in commenting unfavorably on the May 1983 proposal did, however, opine that the parent bank could not be sufficiently insulated from the subsidiary's financial losses nor the possibility of liability under the securities laws regardless of to what degree the subsidiary is capitalized. After considering this comment, we agree that a parent bank may be considered a "controlling person" of the securities subsidiary and thus potentially subject to liability to the same extent as the subsidiary for any violations of the securities laws on the part of the subsidiary. That liability is not absolute, however. The bank as a "controlling person" may not be liable if it had no knowledge of the circumstances which gave rise to the violation, the bank acted in good faith, and the bank did not directly or indirectly induce the violation. We therefore have concluded that it is possible to structure the relationship between a parent bank and its subsidiary to avoid or lessen the bank's exposure under the securities laws for the acts of the subsidiary.

Although the proposed regulation requires that the subsidiary be adequately capitalized, it does not define what constitutes adequate capital. No definition has been incorporated in the proposed regulation as the adequacy of any particular subsidiary's capital can vary from a safety and soundness point of view. The FDIC maintains the position previously stated in the May, 1983 proposal that the bank's subsidiary must, at a minimum, comply with any applicable capital requirements imposed by the Securities and Exchange Commission ("SEC") or imposed under State law. That level of capital is merely a starting point, however, and the FDIC reserves the right to determine that the subsidiary's activities and/or the parent bank's condition warrant that the subsidiary be capitalized over and above any such requirement. It is FDIC's intention to make this assessment during the "once-in-a-lifetime" period (see subsection (d) of the proposed regulation below) and to inform the bank at that time whether in FDIC's opinion the capital position of the subsidiary is adequate. It is FDIC's belief that such a flexible approach will better serve FDIC's supervisory interest in maintaining the safety and soundness of insured nonmember banks.

The proposed definition also retains the requirement found in the May, 1983 proposal that the subsidiary maintain separate accounting and other corporate records and that the subsidiary observe separate formalities such as separate board of directors' meeting. Also retained is the requirement that the subsidiary maintain separate employees who are compensated by the subsidiary. In addition, however, bank employees will be permitted, under the proposal, to perform so-called "back office" operations (such as accounting, data processing, and record keeping) provided the bank is fully compensated for such services in an arm's-length transaction. Comment is specifically directed to whether the language in footnote 4 of the proposed regulation which contains this exception can or should be further clarified.

The separate employee requirement was criticized in a substantial number of comments in response to the May, 1983 proposal. The comments observed that the requirement would be costly and inefficient, would prevent the bank subsidiary from entering the securities area slowly, and would prevent the bank from making available to the subsidiary the expertise of bank personnel already familiar with securities operations. The FDIC acknowledges that the separate employee requirement can produce some additional costs to insured.
nonmember banks but anticipates that the exception contained in the proposed regulation for back office operations (i.e., allowing bank employees to perform administrative, noncustomer contact type activities) reduces the inefficiency and added costs that might otherwise be produced. The requirement, has also been retained in the proposed regulation as it is felt that the use of separate employees in customer contact positions is an extremely important factor in maintaining the separate corporate identity of the subsidiary and the bank. Comment is specifically requested concerning the separate employee requirement and the "back office" exception and the problems, ramifications, and burdens, etc. that might be associated therewith.

The proposed regulation retains the basic requirement as set forth in the May, 1983 proposal that the subsidiary’s operation be separate from the operation of the bank. The wording has been changed to require that "physically separate" operation of a subsidiary means the securities subsidiary is not located on the same floor of a banking building where deposits are received. FDIC’s purpose in changing the wording of the definition is to more clearly demarcate the bank’s depository business from its subsidiary’s securities business and to prevent customer confusion regarding the separation. As several commenters expressed concern over the requirement for a physically separate facility and recommended that a separate facility is not necessary so long as the manner in which the subsidiary’s operation is conducted makes clear to the customer with whom he or she is dealing, we are specifically inviting comment on the problems, ramifications, and burdens that the above restriction might generate. The FDIC also particularly invites comments on whether sufficient separation can be maintained without requiring "physical separation", and, if so, how such a distinction of operations could be maintained if the same physical quarters were used for both operations. Lastly, in order to clearly provide that the subsidiary’s operations be distinct from the parent bank’s, the proposed definition of bona fide subsidiary has been reworded to require that the subsidiary "conduct business pursuant to policies and procedures independent from the bank so that customers of the subsidiary are aware that the subsidiary is a separate organization from the bank and that investments recommended, offered or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are otherwise obligations of the bank."

The proposed definition expressly requires that the subsidiary not share a common name or logo with the bank. Name identification is a factor used by the courts in deciding whether to pierce the corporate veil, is a factor in public identification of the securities operation with the bank, plays a role in the public’s misconception as to the insured status of investments placed with the subsidiary, and plays a role in engendering an expectation that the bank is liable for the obligations of the subsidiary. Additionally, as stated in one comment, a bank may be reluctant to allow a subsidiary to fail if that subsidiary carries the bank’s name. For this reason, the FDIC continues to propose to prohibit the use of a common name or logo with the bank despite comments urging that we not do so. Furthermore, the FDIC does not feel at this time that the above restriction will competitively harm insured nonmember bank subsidiaries. We wish to specifically direct comment, however, to what problem, ramifications, burdens etc. might be generated by prohibiting the use of common names or logos.

Insured nonmember banks should note that if the subsidiary only conducts activities that the bank itself could conduct, the need for the subsidiary to not be identified with the bank in order to avoid a Glass-Steagall Act violation is eliminated. The FDIC, however, still intends at this time to require that there be sufficient differentiation between the bank and its the FDIC continues to propose to prohibit the use of a common name or logo with the bank despite comments urging that we not do so.

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Most of the comments addressing the best-efforts issue (as well as SEC Commissioners Shad and Longstreth in their testimony before Congress) criticized the best-efforts restriction. The criticism was focused on the fact that rather than protecting the parent bank, the best-efforts restriction could potentially harm the bank. That criticism can be summarized as follows:

1. The best-efforts restriction would force nonmember banks to be identified through their subsidiaries with marginal firms that have a greater failure rate and whose securities are typically of lower quality.
2. Underwriting is customary for underwriters to make after-markets, making a separate underwriting to purchase securities even though it is not contractually obligated to do so.
3. The nonmember bank's subsidiary could effectively compete with underwriters to make after-markets of the securities it underwrites.
4. Underwriting will expose the bank's subsidiary to due diligence litigation.

The FDIC also received comments to the May, 1983 proposal as follows:

1. The ban on mutual fund underwriting is too restrictive.
2. The FDIC should permit insured nonmember banks to underwrite mutual funds that invest in top quality equity securities and top quality debt securities.
3. The loss experience associated with underwriting equity issues is no greater than that associated with underwriting debt issues.
4. Several comments (including the comments of SEC Commissioner Shad in his Congressional testimony) indicating that debt issues are not risk free as modest market decline can eliminate the underwriting spreads on investment quality debt issues. With the exception of comments falling within item four, and putting aside the comments that challenged the entire rulemaking posture (the FDIC received nine such comments) FDIC did not receive any comments suggesting that bank subsidiaries should be precluded from underwriting investment quality debt securities.

The FDIC proposed regulation reflects several revisions that are based upon the above comments. The proposed regulation permits an insured nonmember bank to establish or acquire a subsidiary that underwrites investment quality debt securities, underwrites investment quality equity securities, and/or underwrites money market fund type mutual funds. The proposed regulation thus eliminates the catch-all found in the May, 1983 proposal that would have permitted the bank's subsidiary to underwrite any security on a best-efforts basis. The FDIC was convinced upon a reading of the comments that the best-efforts aspect of the May, 1983 proposal would not have provided the insulation to insured nonmember banks that it was intended to provide. Inasmuch as the restriction did not appear to provide any benefit to insured nonmember banks, but in fact may have been detrimental, the restriction has been eliminated in the proposed regulation.

While the proposed regulation still permits equity underwriting, it is actually more conservative than the May, 1983 proposal in that it limits the ability of a subsidiary to underwrite securities solely to investment quality equities. Such securities are normally traded on an exchange thus eliminating the problem raised by several comments that, as an underwriter, the bank subsidiary may be forced to make an after-market for the securities it underwrites. Even if the subsidiary were to do so, as the only securities that may be underwritten are high quality securities, the market-making should not create any undue risk.

By permitting the bank's subsidiary to underwrite mutual funds that invest exclusively in one or both types of investment quality securities the proposed regulation is simply treating the activity as an indirect underwriting of securities eligible for direct underwriting. The proposed regulation would not permit the underwriting of mutual funds that are more speculative in nature; i.e., whose value per share tend to fluctuate due to the nature of the investments (commodities, future contracts, oil leases). Nor would the proposed regulation permit the bank's subsidiary to underwrite any debt or equity security if that security is not of investment quality.

The proposed regulation does not restrict a nonmember bank's affiliation with a securities company depending upon the activities conducted by that company as it does in the case of the bank's subsidiary. The FDIC did receive one comment in response to the May, 1983 proposal stating that the need to limit underwriting is just as important in the case of affiliates as in the case of a bank subsidiary. The FDIC is still of the opinion, however, that there is less of a possibility that losses suffered by the bank's parent or sister affiliate due to underwriting activities will adversely impact the bank. This is so especially if the parent's ability to move funds out of the bank is limited as under the proposed regulation.

3. Investment Quality Debt Security

The May, 1983 proposal defined the term "investment quality debt security" to mean a marketable obligation in the form of a bond, note, or debenture that is rated in the top four rating categories by a nationally recognized rating service. The definition as revised in the proposed regulation reads as follows:

"Investment quality debt security" shall mean a marketable obligation in the form of a bond, note, or debenture that is rated in the top rating categories by a nationally recognized rating service or a marketable obligation in the form of a bond, note, or debenture the investment characteristics of which are equivalent to the investment characteristics of such a top rated obligation. The revised proposed definition responds to comments to the May, 1983 proposal that the phrase "speculative investment characteristics" is overly vague and to comments which indicated that by limiting the definition of investment quality debt securities to rated securities, the FDIC may foreclose access to capital markets by smaller companies. The revised proposed definition allows a bank subsidiary to underwrite debt securities that are of comparable quality to highly rated debt securities. As the nonrated debt obligations must still be of high quality in order for the bank's subsidiary to engage in the underwriting, the FDIC does not feel that the change in the definition will expose the parent bank to any additional risks.

The proposed regulation defines the term "investment quality equity security" to mean a marketable common or preferred corporate stock that is rated medium grade, average, or better by a nationally recognized rating service. As the science of rating equity securities is not as precise as the science of rating debt securities, nor is it as developed, the proposed definition of Investment quality equity security does not contain a similar reference to nonrated equities that have equivalent investment characteristics to top rated equities. Although this definition will permit insured nonmember bank subsidiaries less flexibility in the underwriting of equity securities, the FDIC feels that this prudential restriction is warranted.
4. Filing of Notice

The proposed regulation retains the requirement found in the May, 1983 proposal that the bank give the appropriate FDIC regional office written notice of intent to establish or acquire a subsidiary that engages in any securities activity at least 60 days prior to consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The proposed regulation also requires that in addition to the 60-day advance notice, a bank must file a written follow-up notice with the appropriate FDIC regional office within 10 days after the acquisition is consummated or the subsidiary commences operation, whichever is earlier. The proposed regulation does not specify the content of the written notice of intent. By not specifying the content of the notice, the FDIC is permitting a bank to satisfy the notice requirement in any way it finds most convenient. For example, if the subsidiary will be registered with the SEC, a copy of the SEC filing may simply be forwarded to the appropriate FDIC regional office. The FDIC is thus rejecting several comments in response to the May 1983 proposal which suggested that the content of the notice be specifically set forth in the regulation.

The notice provision in the proposed regulation contains one additional requirement not contained in the May 1983 proposal. Where the 60-day advance notice pertains solely to an instance where a bank transfers to its subsidiary securities activities previously performed by the bank, the bank is required under the proposed regulation to file an additional notice with the regional office if the subsidiary commences any activity covered by subparagraph (b)(1)(i) of the proposed regulation. This notice serves as a supervisory mechanism which will apprise FDIC of which insured nonmember banks are conducting securities activities through their subsidiaries which pose potential risks to which the bank would not otherwise be exposed. The subsequent notice is a one-time notice; i.e., the first time the subsidiary commences any activity covered by subparagraph (b)(1)(i), notice must be filed. No subsequent notice is required if the subsidiary later begins another covered underwriting activity that was not the activity which triggered the above notice.

It is the FDIC's intent to use the notices required by the proposed regulation as a point of reference. The regional office will contact the bank seeking further information if the bank's condition or other facts warrant a closer review. It is for this reason that the proposed regulation requires that the initial notice be received at least 60 days in advance. The 60-day notice can be waived at the FDIC's discretion where such period is impractical; e.g., where the acquisition is the result of a purchase and assumption transaction or an emergency merger. The subsequent notice must be received in the regional office within 30 days after the subsidiary commences the triggering underwriting activity. Prior notice is not required in this instance as it was felt to do so would be too impractical and would interfere unduly in the day-to-day operations of the bank. As the FDIC will not have received a notice under the proposed regulation, the FDIC would not be precluded from intervening in an intended acquisition or establishment of a subsidiary or from objecting to the expansion of activities if such intervention or objection were warranted. For example, if the subsidiary would not appear to meet the requirements for a bona fide subsidiary or the bank's investment in the subsidiary would appear to exceed the limits set by the proposed regulation.

The proposed regulation does not require a written notice when a bank becomes affiliated with a securities company. For the most part, affiliation with a securities company will arise out of a change in bank control or come to FDIC's attention when a bank seeks deposit insurance. As the FDIC will become aware of the affiliation prior to consummation in both instances, there is no need to create an additional notice requirement.

5. Lending Restrictions

The May 1983 proposal contained a number of restrictions designed to prevent abuse of a bank's credit facilities. As stated in the preamble to the May, 1983 proposal, such abuse can arise in several ways: e.g., the making of imprudent loans to companies whose securities are underwritten or distributed by the bank's subsidiary or affiliate in an effort to improve the condition of the company and thus the marketability of the company's securities. The May 1983 proposal would have prohibited a bank from: (1) Making extensions of credit to any company whose securities are currently underwritten or distributed by the bank's subsidiary or affiliate in an effort to improve the condition of the company and thus the marketability of the company's securities. The May 1983 proposal would have prohibited a bank from: (1) Making extensions of credit to any company whose securities are currently underwritten or distributed by the bank's subsidiary or affiliate unless those securities are rated in the top four rating categories by a national recognized rating service, (2) making any extension of credit to a money market fund currently underwritten or distributed by the bank's subsidiary or affiliate, (3) making any extension of credit where the proceeds are to be used to acquire securities currently underwritten or distributed by the bank's subsidiary or affiliate, (4) accepting securities currently underwritten or distributed by the bank's subsidiary or affiliate as collateral on an extension of credit, (5) making any extension of credit to its securities subsidiary or affiliate that does not comport with the restrictions contained in section 23A of the Federal Reserve Act, and (6) making any extension of credit to any investment company advised by the bank's subsidiary or affiliate if the extension of credit does not comport with section 23A of the Federal Reserve Act.

The proposed regulation makes a number of changes in this portion of the May 1983 proposal. The prohibition on a bank lending to companies whose nonrated securities are underwritten or distributed by the bank's subsidiary found in the May 1983 proposal has not been retained. As the proposed regulation does not permit the bank's subsidiary to underwrite securities unless the securities are of investment quality, the restriction as it was earlier proposed is no longer necessary; i.e., the concern that the bank may make imprudent loans to companies whose low quality securities are being underwritten by the bank's subsidiary in order to improve the marketability of the companies' securities is no longer present. The restriction found in the May 1983 proposal on extensions of credit to companies whose low quality securities are underwritten or distributed by the bank's affiliate has been retained, however, as the proposed regulation does not contain a similar requirement that the bank's affiliate solely underwrite investment quality securities. Thus, under the proposed regulation, a bank cannot make any extensions of credit to a company whose securities are currently underwritten or distributed by the bank's affiliate if those securities are not of investment quality.

Five comments received in response to the May, 1983 proposal expressed the opinion that the lending restriction as it was then proposed would serve only to constrict credit sources for smaller firms whose securities are not rated by a nationally recognized rating service. The proposed revision of the definition of investment quality debt security to include unrated debt obligations of comparable quality to highly rated debt obligations is an effort to be responsive to these comments. (See discussion in
FDIC does not feel that the broadened definition will reduce the effectiveness of the lending restriction as the unrated debt securities must still be of high quality in order for the company to be eligible for loans from the bank. The proposed regulation will still prohibit the bank from making extensions of credit to companies whose unrated and/or poorly rated equity securities are underwritten or distributed by the bank's affiliate.

In response to a comment to the May, 1983 proposal, a footnote has been added to the proposed regulation indicating that paragraph (e)(3) is not to be construed to prohibit the bank from honoring a loan commitment or borrowing loan agreement, or funding a line of credit, where such were entered into prior to time in the underwriting or distribution. Finally, all of the restrictions contained in subsection (e) that use the phrase "any security currently being distributed or underwritten" have been footnoted in response to several comments in response to the May, 1983 proposal requesting that the relevant time period be more clearly defined. The footnote provides that in complying with the provisions of the proposed regulation which reference a current distribution or current underwriting, the bank may rely upon the affiliate's or subsidiary's statement that the underwriting or distribution has terminated.

The proposed regulation retains the prohibition found in the May, 1983 proposal on a bank making any extension of credit or loan directly or indirectly to any money market fund or mutual fund whose shares are currently being underwritten or distributed by a subsidiary or affiliate of the bank. For purposes of clarity, both restrictions are expressly set forth in paragraph (e)(4) of the proposed regulation. As stated in the preamble to the May, 1983 proposal, FDIC considered exempting mutual funds and money market funds from the reach of the lending restriction. Such an exemption was rejected, however, inasmuch as the credit needs of such funds are most likely to arise when the fund is having liquidity problems. If interest rates should rise sharply and large numbers of shareholders, especially institutional investors, redeem their shares to put their money directly into higher paying investments, a fund could face a liquidity crisis. A bank may thus be tempted to make an unsound loan to the fund in order to prevent the fund from suffering a loss by selling portfolio assets at a depressed price to meet liquidity needs. As the FDIC received no comments critical of the restriction, and it is still our opinion that the restriction is warranted, it has been retained in the proposed regulation. Money market funds have been targeted within that prohibition despite their relative stability as at present there is no self-regulatory organization such as the National Association of Securities Dealers ("NASD") to watch-dog money market funds.

The May, 1983 proposal contained a prohibition on a bank accepting as collateral on a loan or extension of credit securities of any company whose securities are currently being distributed or underwritten by the bank's subsidiary or affiliate or accepting as collateral any shares currently being distributed or underwritten by an investment company advised by the bank's subsidiary or affiliate. The proposed regulation has deleted the restriction on the acceptance of collateral in response to several comments which indicated that there was no need to impose such a restriction if the loan was in no way connected with the underwriting or the distribution.

The proposed regulation retains the restriction on a bank extending credit for the purpose of acquiring securities currently being underwritten or distributed by the bank's subsidiary or affiliate, securities issued by an investment company advised by a bank's subsidiary or affiliate, or securities issued by the bank's affiliate. The proposed restriction contains a new exception, however, that would permit the bank to extend credit to any employee of the subsidiary or affiliate where the purpose of the loan is to acquire securities of the subsidiary or affiliate through an employee stock bonus or stock purchase plan adopted by the board of directors or board of trustees of the subsidiary or affiliate. This exception, and a footnote indicating that the bank may rely in good faith on the customer's statement as to the purpose of the loan, are being proposed in response to several comments in response to the May, 1983 proposal.

The wording of the purpose lending restriction has been slightly modified in the proposed regulation. It now refers to securities issued by an investment company advised by the bank's subsidiary or affiliate. The reference to securities "underwritten or distributed" by an investment company has been deleted. A comment in response to the May, 1983 proposal pointed out that investment companies normally do not underwrite or distribute their own securities and that therefore the references in the May, 1983 proposal to securities underwritten or distributed by an investment company were inaccurate. Corresponding changes have been made in other portions of the proposed regulation which refer to investment companies advised by the bank's subsidiary or affiliate.

The proposed regulation retains the provision found in the May, 1983 proposal that subjects extensions of credit to the bank's subsidiary or affiliate of the same loan ceiling and other restrictions as would be applicable under section 23A of the Federal Reserve Act if the subsidiary were an affiliate for the purposes of that statute. The proposed regulation also retains the restriction which subjects extensions of credit to an investment company advised by a bank's subsidiary to the same loan ceiling and other restrictions that would be applicable under section 23A of the Federal Reserve if the subsidiary were an affiliate within the meaning of section 23A. As loans or extensions of credit to the bank's affiliate as that term is defined in the proposed regulation are already covered by the language of section 23A, placing affiliates under the restrictions of paragraph (e)(6) will not establish any additional requirements. Additionally, as section 23A covers extension of credit to investment companies advised by the bank's affiliates, placing affiliates under the restriction of paragraph (e)(7) will not establish any additional requirements. In response to comments on these two provisions received in response to the exemptions contained in section 23A as well as the restrictions. Additionally, paragraph (e)(6) has been clarified to indicate that it does not operate to modify the investment restriction contained in paragraph (d)(2) of the proposed regulation. (See discussion in paragraph 7 below.)

6. Trust Department Restrictions

The May, 1983 proposal contained a provision that would have prohibited an insured nonmember bank which has a subsidiary or affiliate that engages in the sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities or acts as an investment adviser to any investment company that sells, distributes, or underwrites any such security, from purchasing in its sole discretion as fiduciary or co-fiduciary any security currently being issued, distributed, or underwritten by that subsidiary or affiliate or purchasing in its sole discretion any security currently being distributed, underwritten, or issued by any investment company.
advised by the subsidiary or affiliate. The May, 1983 proposal also would have prohibited an insured nonmember bank for transacting business through its trust department with its securities subsidiary or affiliate unless the transactions are comparable to transactions with an unaffiliated securities company or a securities company that is not a subsidiary of the bank. This requirement will help to insulate the bank from the possibility that its securities affiliate will drain off profits from the bank by setting a higher than normal fee for executing transactions. The proposed regulation would prohibit a bank trust department from using the broker/dealer services of its subsidiary or affiliate to execute transactions on behalf of its fiduciary accounts. The decision to utilize the related broker/dealer must, however, fully comport with the bank’s fiduciary obligations to its trust department customer and must be fully disclosed.

7. Investment Ceiling

The proposed regulation restricts an insured nonmember bank’s direct and indirect investment in one or more securities subsidiaries to 20% of the bank’s equity capital unless the FDIC approves a greater investment. This provision is essentially the same as was proposed for comment in May, 1983; i.e., the 20% of equity capital test has been retained with one change. The term investment has been clarified by the addition of the phrase “direct and indirect.” The proposed regulation thus places a limit on a bank’s subsequent extensions of credit to its subsidiary. The total figure cannot exceed 20% of the bank’s equity capital. The limit is subject, however, to any lesser investment cap established by State law.

While none of the comments addressing the proposed investment limitation as contained in the May, 1983 proposal criticized restricting a nonmember bank’s investment in a securities company, several expressed the view that a 20% ceiling was high. The 20% ceiling has been retained in the proposed regulation, however, as the limitation covers direct investments as well as subsequent extensions of credit. The provision operates in tandem with paragraph (e)(6) which requires that extensions of credit by an insured nonmember bank to its securities subsidiary conform to the requirements as to amount, collateral, etc. found in section 23A of the Federal Reserve Act. If, for example, the bank’s direct investment in its subsidiary equals 10% of the bank’s equity capital, the bank may make an additional indirect investment in the subsidiary by way of one or more extensions of credit not exceeding in the aggregate an additional 10% of the bank’s equity capital. If, however, the bank’s direct investment
the bank does not share common officers with the affiliate; (3) a majority of the board of directors of the bank is composed of persons who are neither directors nor officers of the affiliate; (4) any employee of the affiliate who is also an employee of the bank does not conduct any securities activities on behalf of the affiliate on the premises of the bank that involve customer contact; (5) the bank and any affiliate do not share a common name or logo; and (6) the affiliate conducts business pursuant to policies and procedures independent from the bank so that customers of the affiliate are aware that the affiliate is a separate organization from the bank and that investments recommended, offered or sold by the affiliate are not bank deposits, are not insured by the FDIC, and are not guarantied by the bank nor are otherwise obligations of the bank.

The restrictions would appear necessary in order to avoid conflicts of interest, to avoid a violation of section 21 of the Glass-Steagall Act. If the FDIC approves any security currently underwritten or distributed by the bank’s subsidiary or affiliate, the bank may itself lawfully pursue underwriting and distributing of a security under the Glass-Steagall Act. Those activities are set forth in 12 U.S.C. 24 (Seventh). The restriction in the proposed regulation fills that gap and serves as a reminder to all insured nonmember banks not to engage in unlawful tying practices. As a large number of insured nonmember banks are held by bank holding companies, the imposition of this requirement would not represent a major change from the status quo.


It is not FDIC’s intent by proposing this regulation to prevent an insured nonmember bank subsidiary from engaging in any securities underwriting activity that the insured nonmember bank may itself lawfully pursue under the Glass-Steagall Act. Those activities are set forth in 12 U.S.C. 24 (Seventh) and include underwriting obligations of the United States, general obligations of any state or political subdivision thereof, and numerous other obligations specifically named therein. Insured nonmember banks should keep in mind that the terms “underwrite” and “distribute”, and the phrase “stocks, bonds, debentures, notes, or other securities” are to be construed consistently with the securities laws and regulations except where the context requires otherwise. A securities subsidiary or affiliate of an insured nonmember bank while engaged in the conduct of securities activities will be subject to the securities laws and regulations, the oversight of the SEC, and oversight by entities such as the NASD. The above terms are therefore to have the meaning proscribed by the securities laws and regulations when used in connection with the subsidiary or affiliate. References in the proposed regulation to these terms as used in conjunction with an insured nonmember bank (see subparagraph [b][11][f], and subsections [f] and [g]) are to be construed consistently with the Glass-Steagall Act.

The courts have repeatedly stated that the prohibitions of the Glass-Steagall Act are to be defined with reference to the purposes of that statute and that the definitions of the terms used therein (i.e.; distribute, underwrite, security) do not necessarily coincide with the definition of the same terms as used in the securities laws. (See A. G. Becker, Inc. v. Board of Governors of the Federal Reserve System, 693 F.2d 136 (D.C. Cir. 1982) cert. granted, 52 U.S.L.W. 3262 (October 4, 1983); National Association of Securities Dealers Inc. v. Securities and Exchange Commission, 420 F.2d 83 (D.C. Cir. 1969); New York Stock Exchange Inc. v. Smith, 404 F.Supp. 1091 (D.D.C. 1975), vacated on other grounds, 502 F.2d 736 (D.C. Cir. 1977).) The FDIC therefore intends to utilize a functional analysis in determining whether a particular activity constitutes underwriting or distributing of a security under the Glass-Steagall Act.

11. Definition of “Affiliate”, “Subsidiary”, and “Extension of Credit”

The proposed regulation defines the term “affiliate” essentially as found in the May, 1983 proposal; i.e., to mean a company that directly or indirectly controls an insured nonmember bank and any company that is in turn controlled by such a company. The proposed regulation has expanded the definition of affiliate, however, from that found in the May, 1983 proposal to cover a company controlled by a person or group of persons that controls an insured nonmember bank. “Control” is defined as the power to directly or indirectly vote 25 percent of a bank’s or company’s stock, the ability to control the election of a majority of a bank’s or company’s directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company. Again, this definition has not changed from the May, 1983 proposal. At a minimum, the proposed regulation treats as affiliates of the bank a bank’s parent company, a company that controls 25 percent or more of the bank’s stock, and companies controlled by either of the above.

The term “subsidiary” is defined in the proposed regulation to mean a company controlled by a bank. The remainder of the definition as proposed in May, 1983 which would have included as a subsidiary any company a majority of whose directors or trustees are
directors or trustees of an insured nonmember bank has been deleted. This language has been dropped inasmuch as the term "bona fide subsidiary" as contained in the proposed regulation prohibits the bank's subsidiary from sharing a majority of its directors and officers with the bank if the subsidiary conducts securities activities that the bank could not itself conduct. As "company" is defined in the proposed regulation to include corporations other than banks, partnerships, business trusts, associations, joint ventures, pool syndicates or other similar business organizations, a securities company operated by several banks in a cooperative effort can be considered a subsidiary of each of the banks. Although it is possible for a mutual fund (i.e., a business trust) to be a subsidiary of the bank if controlled by the bank, we anticipate that this will not generally be the case. The term "extension of credit" has generally the same meaning as found in Federal Reserve Board Regulation O (12 CFR 215.3) which concerns insider transactions. The term as defined herein, however, covers purchases "whether or not under repurchase agreement" of securities, other assets, or obligations. The "whether or not" language has been included in the proposed regulation in an attempt to control the extent to which a bank may indirectly pour money into the subsidiary by means of purchasing securities and other assets from the subsidiary. Lastly, the May, 1983 proposal covered the "grant" of a line of credit as an extension of credit whereas the proposed regulation covers a "draw" upon a line of credit as an extension of credit rather than simply the grant.

12. "Phase Out" Provision

The proposed regulation requires all insured nonmember banks that established or acquired securities subsidiaries prior to the effective date of the regulation or which became affiliated with securities companies prior to the effective date of the regulation to bring themselves into compliance with the regulation within two years. Any bank that established or acquired a securities subsidiary prior to the relevant date must, however, comply with § 337.4(b)(1)(ii) and §§ 337.4(c) and 337.4(e) as soon as practicable. Section 337.4(b)(1)(ii) requires that the subsidiary be a bona fide subsidiary if it conducts activities not permitted to the bank under the Glass-Steagall Act. § 337.4(c) pertains to affiliations with securities companies, and § 337.4(e) places lending and other restrictions on the bank. The proposed regulation also requires that any insured nonmember bank that is subject to the phase-out provisions established by the regulation must inform the FDIC in writing within thirty days from the effective date of the regulation that it has a subsidiary or affiliate that conducts securities activities. This notice will provide FDIC with a mechanism to monitor compliance with the phase out requirement. The FDIC is specifically requesting comment addressing two issues: (1) Is immediate compliance more appropriate than a phase out provision in view of FDIC's stance that the restricted activities may pose a safety or soundness problem, and (2) if a phase out provision is adopted, should it be longer than two years or shorter.

13. Section 337.4(f) and 337.4(g)

These sections of the proposed regulation are being reproposed without change. They serve to remind insured nonmember banks that (1) it is not FDIC's intent to prohibit a bank subsidiary from conducting any securities activity that the bank itself could lawfully conduct under the Glass-Steagall Act, and (2) that the regulation does not authorize the bank to itself conduct any securities activities that are not lawful under the Glass-Steagall Act. We wish to stress that the proposed regulation does not authorize any insured nonmember bank to either directly, or indirectly through a subsidiary, conduct any securities activity. An insured nonmember bank must derive that authority, if at all, from some other source, such as state law.

14. Paperwork Reduction Act

The notice requirements contained in the proposed regulation do not constitute "collections of information" for purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and therefore are not subject to the Office of Management and Budget ("OMB") clearance provisions of that Act. This is because the notice requirements fall within the exception to the definition of "information" set out in § 1320.7(k)(1) of OMB regulations implementing the "collection of information clearance" provisions of the Act (5 CFR Part 1320). It is recognized, however, that the notice requirements do place an affirmative obligation on a bank to notify the FDIC of its intended action and to confirm whether or not the subsidiary was acquired or established. All of the above factors will tend to benefit the U.S. economy as more money flows into the capital markets.

The proposed regulation should not interfere substantially with the realization of these potential benefits. Moreover, it should provide additional benefits in that it reduces the potential for conflicts of interest, helps ensure that banks are adequately insulated from their subsidiaries, and prevents these subsidiaries from engaging in excessive risk taking. Furthermore, the proposed regulation should not, in any way, give certain competitors unfair advantage or work to the detriment of small banks.

There would be an overall cost to the economy if the advent of bank securities subsidiaries could be expected to jeopardize the viability of the nation's banking institutions. That does not appear to be the case, however, and certainly is not the case when the structure of the proposed regulation is taken into consideration. For example, the proposal is structured so as to insulate the bank from the activities of the subsidiary as well as any financial

bank subsidiary will in all likelihood be filing with the SEC, no additional paperwork burdens of any kind should be created.

15. Regulatory Flexibility Analysis

In accordance with FDIC's policy statement entitled "Development and Review of FDIC Rules and Regulations" and the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the FDIC conducted an analysis of the impact of the proposed regulation. The results of that analysis follow.

In general, participation by bank subsidiaries in the underwriting market for new securities issues offers a number of potential benefits. Bank participation will likely lower underwriting costs for issuers in a number of markets. This competitive benefit should be particularly noticeable in local and regional markets where the number of bidders for a new issue is generally small.

Additionally, increased activity in the secondary market for securities will increase the liquidity of any new issue. This will increase the attractiveness of new securities issues to potential investors. The presence of new entrants in the underwriting and discount brokerage markets should increase investor awareness, provide for greater customer convenience and lower brokerage costs to investors (both for users of discount brokerage and full service brokerage services) as fee and service competition increases.

All of the above factors will tend to benefit the U.S. economy as more money flows into the capital markets.

The proposed regulation should not interfere substantially with the realization of these potential benefits. Moreover, it should provide additional benefits in that it reduces the potential for conflicts of interest, helps ensure that banks are adequately insulated from their subsidiaries, and prevents these subsidiaries from engaging in excessive risk taking. Furthermore, the proposed regulation should not, in any way, give certain competitors unfair advantage or work to the detriment of small banks.

There would be an overall cost to the economy if the advent of bank securities subsidiaries could be expected to jeopardize the viability of the nation's banking institutions. That does not appear to be the case, however, and certainly is not the case when the structure of the proposed regulation is taken into consideration. For example, the proposal is structured so as to insulate the bank from the activities of the subsidiary as well as any financial
repercussions generated by losses on the part of the subsidiary. The subsidiary will only be able to underwrite top-rated securities or underwrite shares in money market funds which are recognized as relatively sound investments. Thus, there is less of a likelihood that the subsidiary will incur losses that it could not safely absorb. The bank is further insulated as it will not be able to make purpose loans, prop up companies whose securities are underwritten by the bank’s subsidiary or affiliate, make excessive loans to its securities subsidiary or affiliate, invest an excessive amount of capital in the subsidiary, or move poor issues into the bank’s trust department.

Several provisions of the proposed regulation are designed to address the potential for conflicts of interest. It should be pointed out, however, that conflicts of interest can never be entirely eliminated. Nor would it be desirable to attempt to do so as the costs associated with excessive restrictions and government oversight would far outweigh the potential benefits from any incremental reduction in conflicts of interest.

The proposed regulation should not be detrimental to small banks. Setting the investment cap in the subsidiary at 20 percent of equity capital should enable even relatively small insured nonmember banks to indirectly compete in the securities market through a subsidiary. Moreover, there are no restrictions against joint ventures, i.e., more than one bank or financial institution can join together to form a securities subsidiary. The requirements that the securities business of the affiliate be physically distinct in its operation from the operation of the bank and that a majority of the bank’s officers and directors not be officers or directors of the affiliate should not be an excessive burden on small banks.


List of Subjects in 12 CFR Part 337

Bank, banking, Securities, State nonmember banks.

In consideration of the foregoing, the FDIC hereby proposes to amend Part 337 pursuant to policies and procedures independent from the bank so that customers of the subsidiary are aware that the subsidiary is a separate organization from the bank and that investments recommended, offered or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are otherwise obligations of the bank.

(3) “Company” shall mean any corporation (other than a bank), any partnership, business trust, association, joint venture, pool syndicate, or other similar business organization.

(4) “Control” shall mean the power to directly or indirectly vote 25 percent or more of the voting stock of a bank or company, the ability to control in any manner the election of a majority of a bank’s or company’s directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company.

(5) “Extension of credit” shall mean the making or renewal of any loan, a draw upon a line of credit, or an extending of credit in any manner whatsoever and includes, but is not limited to:

(i) A purchase, whether or not under repurchase agreement, of securities, other assets, or obligations;

(ii) An advance by means of an overdraft, cash item, or otherwise;

(iii) Issuance of a standby letter of credit (or other similar arrangement regardless of name or description);

(iv) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which a natural person or company may be liable as maker, drawer, endorser, guarantor, or surety;

(v) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse;

(vi) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for (A) accrued interest or (B) taxes, insurance, or other expenses incidental to the existing indebtedness; or

(vii) Any other transaction as a result of which a natural person or company becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, by any means whatsoever.

(6) “Investment quality debt security” shall mean a marketable obligation in the form of a bond, note, or debenture.
that is rated in the top four rating categories by a nationally recognized rating service or a marketable obligation in the form of a bond, note, or debenture the investment characteristics of which are equivalent to the investment characteristics of such a top-rated obligation.

(b)(1) shall not exceed in the aggregate 20 per centum of the bank's equity capital as defined by FDIC for capital adequacy purposes unless prior approval for a greater investment is obtained from the FDIC.

(c) Affiliation with a securities company. An insured nonmember bank is prohibited from becoming affiliated with any company that directly or indirectly engages in the securities business of the affiliate in the form of a bond, note, or debenture.

Affiliation with a securities company is prohibited:

(1) An insured nonmember bank may not establish or acquire a subsidiary that engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes or other securities; conducts any activities for which the subsidiary is required to register with the Securities and Exchange Commission as a broker/dealer; acts as an investment adviser to any investment company; or engages in any securities activity unless: (1) the security business of the affiliate is physically separate in its operation from the operation of the bank and does not operate on the same floor of a building on which the bank receives deposits; (2) the bank and affiliate share common officers; (3) a majority of the board of directors of the bank is composed of persons who are neither directors nor officers of the affiliate; (4) any employee of the affiliate who is also an employee of the bank does not conduct any securities activities on behalf of the affiliate on the premises of the bank that involve customer contact; (5) the bank and affiliate do not share a common name or logo; and (6) the affiliate conducts business pursuant to policies and procedures independent from those set by the bank so that customers of the affiliate are aware that the affiliate is a separate organization from the bank and that investments recommended, offered or sold by the affiliate are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are otherwise obligations of the bank.

(d) Filing of notice. Every insured nonmember bank that intends to acquire or establish a subsidiary that: (1) engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes, or other securities; (2) acts as an investment adviser to any investment company; (3) conducts any activity for which the subsidiary is required to register with the Securities and Exchange Commission as broker/dealer; or (4) engages in any other securities activity, shall notify the regional director of the FDIC region in which the bank is located of such intent. Notice shall be in writing and must be received in the regional office at least 60 days prior to consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The bank shall also notify the regional office in writing within 10 days after the consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The 60-day notice requirement may be waived in FDIC's discretion where such notice is impracticable such as in the case of a purchase and assumption transaction or an emergency merger. Where the above notices pertain solely to the transfer of securities activities previously performed by the bank to the subsidiary, an additional written notice must be filed with the regional office if the subsidiary commences any securities activity covered by paragraph (b)(1)(i) of this section. This notice must be received in the regional office within thirty days after the subsidiary commences the new activity.

(e) Restrictions. An insured nonmember bank which has a subsidiary or affiliate that engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes, or other securities, or acts as an investment adviser to any investment company shall not:

(1) Purchase as fiduciary or co-fiduciary any security currently distributed, currently underwritten, or issued by such subsidiary or affiliate or purchase as fiduciary or co-fiduciary any security currently issued by an investment company advised by such subsidiary or affiliate, unless the purchase is expressly authorized by the trust instrument, court order, or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure;

(2) Transact business through its trust department with such subsidiary or affiliate unless the transactions are at least comparable to transactions with an unaffiliated securities company or a securities company that is not a subsidiary of the bank;

(3) Extend credit or make any loan directly or indirectly to any company the stocks, bonds, debentures, notes or other securities of which are currently underwritten or distributed by an affiliate of the bank unless the company's stocks, bonds, debentures, notes or other securities that are underwritten or distributed (i) qualify as investment quality debt securities, or (ii) qualify as investment quality equity securities: 

* An insured nonmember bank's direct investment in a securities subsidiary will not be counted toward the bank's regulatory capital.

* This restriction shall not be construed to prohibit the bank from honoring a loan commitment.
[4] Extend credit or make any loan directly or indirectly to any money market fund or mutual fund whose shares are currently underwritten or distributed by a subsidiary or affiliate of the bank;
[5] Extend credit or make any loan where the purpose of the extension of credit or loan is to acquire (i) any stock, bond, debenture, note, or other security currently underwritten or distributed by such subsidiary or affiliate; (ii) any security currently issued by an investment company advised by such subsidiary or affiliate; or (iii) any stock, bond, debenture, note, or other security issued by such subsidiary or affiliate, except that a bank may extend credit or make a loan to employees of the subsidiary or affiliate for the purpose of acquiring securities of such subsidiary or affiliate through an employee stock bonus or stock purchase plan adopted by the board of directors or board trustees of the subsidiary or affiliate; *  
[6] Make any loan or extension of credit to a subsidiary or affiliate of the bank that (i) distributes or underwrites stocks, bonds, debentures, notes, or other securities, or (ii) advises any investment company, if such loans or extensions of credit would be in excess of the limit as to amount, and not in accordance with the restrictions as to collateral, etc., imposed on “covered transactions” by section 23A of the Federal Reserve Act (12 U.S.C. 371c) and that are not within any exemptions established thereby; however, nothing herein shall be construed as limiting the amount of a bank’s direct investment in such subsidiary other than as set out in paragraph (b)(2) of this section;  
[7] Make any loan or extension of credit to any investment company for which the bank’s subsidiary or affiliate acts as an investment adviser if the loan or extension of credit would be in excess of the limit as to amount, and not in accordance with the restrictions as to collateral, etc., imposed on “covered transactions” by section 23A of the Federal Reserve Act and that are not within any exemptions established thereby; and  
[8] Directly or indirectly condition any loan or extension of credit to any company on the requirement that the company contract with, or agree to contract with, the bank’s subsidiary or affiliate to underwrite or distribute the company’s securities or directly or indirectly condition any loan or extension of credit to any person on the requirement that that person purchase any security currently underwritten or distributed by the bank’s subsidiary or affiliate.  

* An insured nonmember bank in complying with the requirements of §337.4(e)(1), (e)(3), and (e)(4) of this part concerning “current” underwritings and distributions may rely upon the affiliate’s or subsidiary’s statement that the underwriting or distribution of any particular security has terminated.

DEPARTMENT OF TRANSPORTATION  
Federal Aviation Administration  
14 CFR Part 71  
[Airspace Docket No. 84-ACE-03]  
Transition Area-Lebanon, Missouri; Proposed Alteration  
AGENCY: Federal Aviation Administration (FAA), DOT.  
ACTION: Notice of proposed rulemaking (NPRM).  
SUMMARY: This notice proposes to alter the 700-foot transition area at Lebanon, Missouri, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Lebanon/Floyd W. Jones Airport, Lebanon, Missouri, utilizing the Lebanon Non-Directional Radio Beacon (NDB) as a navigational aid.  
DATES: Comments must be received on or before June 7, 1984.  
ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.  
The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.  
An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.  
FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.  
SUPPLEMENTARY INFORMATION: Comments Invited  
Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The
The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a “major rule” under Executive Order 12291; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on April 23, 1984.

Murray E. Smith,
Director, Central Region.

[FR Doc. 84-11625 Filed 4-30-84; 8:45 am]

BILLING CODE 4910-12-4F

CIVIL AERONAUTICS BOARD

14 CFR Part 241

[ Economic Regs. Docket 42114; EDR-472]

Uniform System of Accounts and Reports for Certified Air Carriers


AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to reduce for certificated air carriers the financial and statistical reporting requirements contained in Part 241 of the Economic Regulations by eliminating fourteen reporting schedules contained in the CAB Form 41 report, decreasing the level of detail reported on many of the remaining Form 41 schedules and eliminating the filing of the nine remaining statements of carrier accounting procedures. These actions are intended to modify the data collected to reflect the CAB’s and other Federal agencies’ data needs in anticipation of the CAB’s sunset.

DATE: Comments by: July 5, 1984.

Comments and relevant information received after this date will be considered by the Board only to the extent practicable.

ADRESSES: Twenty copies of comments should be sent to Docket 42114, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Jack M. Calloway or M. Clay Moritz, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-6042.

SUPPLEMENTARY INFORMATION: On September 15, 1981, the Board approved the transmittal of a staff report on “CAB Information Systems and Early Sunset” to the heads of other Federal agencies ¹ for their comments on possible report reductions before rulemaking proceedings were initiated proposing specific reductions. The Departments of Transportation (DOT), Air Force (DOAF), Labor (DOL) and Commerce (DOC), including the Bureau of Labor Statistics (BLS) all submitted comments supporting the retention of various CAB Form 41 schedules. Their comments were analyzed and summarized in a revised staff report “CAB Information Systems and Early Sunset (Analysis of Comments and Staff Recommendations).”¹ The revised report was adopted by the Board on June 8, 1982.

The staff report recommendations and the reductions in certificated carrier reporting that the Board is proposing are discussed below.

Elimination of Certain Schedules

The revised staff report proposed the elimination of twenty-one CAB Form 41 schedules (see Exhibit A).* Of these, nine have already been eliminated by the Board’s adoption of ER-1297 (47 FR 32915, July 26, 1982).²

Before proceeding with developing a proposed rule to eliminate the remaining twelve schedules, the Board decided to re-examine, with the purpose of confirming, the Federal government’s need for those schedules that would be retained based on the staff report recommendations. Conversely, the staff

¹ Agencies were Department of Transportation, Defense, State, Commerce, Labor, Energy, Treasury, and Justice; General Services Administration; General Accounting Office; Office of Management and Budget; and Securities and Exchange Commission.

² Exhibits A-X are filed as part of the original document.

also reviewed the twelve schedules slated for elimination to ensure that their removal would not have an adverse impact on the anticipated post-sunset data needs of either the Board's transferring programs or other Federal programs. During this re-examination of post-sunset data needs, the Board contacted and developed a continuing working relationship with other Federal agencies that have expressed a need for carrier data in order to better pinpoint their specific data requirements and select the best approach to ensure that their needs will continue to met beyond the Board's sunset. The Board's goal in doing this is to avoid placing carriers in the position of having to adjust their information systems twice; once to eliminate data the Board no longer needs; and secondly, to add eliminated data back into their system in response to an information collection by another Federal agency. This would be a needless waste of carrier resources when the Board and ultimately DOT could continue to be a central repository for carrier data at no increase in burden to the carriers.

The Board has also attempted to determine if carrier data from other sources could be used to satisfy Federal data needs. For example, the Securities and Exchange Commission (SEC) requires carriers registered with the SEC to report periodic balance sheet and income statement data. The SEC also requires that these statements be included in the annual report to the shareholders. We are unable to use the carrier financial statements filed with the SEC because the SEC requires financial data to be reported on a consolidated basis while Federal data requirements relate solely to the air transportation operations of the corporate entity.

Based on the staff's review of alternative data sources and input from Board program managers and other affected Federal agencies, the Board has tentatively concluded that, of the current forty-two schedules that comprise the CAB Form 41 Report, twenty-eight of the schedules would be needed to support the post-sunset administration of the Board's transferring and other Federal programs, while the remaining fourteen schedules could be eliminated without adversely affecting any Federal programs. It should be noted that the proposed elimination of fourteen schedules would reduce reporting burden beyond the level recommended by the staff report. Exhibit B contains a list of the twenty-eight schedules that are proposed for retention along with the Federal programs that each schedule supports. The fourteen schedules proposed for elimination are listed below.

<table>
<thead>
<tr>
<th>Schedule No.</th>
<th>Title</th>
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<tbody>
<tr>
<td>B-3</td>
<td>Statement of Changes in Stockholder's Equity.</td>
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<td>B-5</td>
<td>Property and Equipment.</td>
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<tr>
<td>B-7(b)</td>
<td>Flight Equipment Acquired.</td>
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<td>B-10</td>
<td>Unamortized Developmental and Preoperating Costs.</td>
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<td>B-13</td>
<td>Summary of Projected Financial Commitments and Related Deposits.</td>
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<tr>
<td>B-41</td>
<td>Receivables, Payables and Investments Relating to Affiliates and Other Investment Data.</td>
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<td>B-43.1</td>
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<td>B-46</td>
<td>Long-Term and Short-Term Non-trade Debt.</td>
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<tr>
<td>P-3</td>
<td>Transport Revenues; Depreciation and Amortization; Nonoperating Income and Expense Net.</td>
</tr>
<tr>
<td>P-3(b)</td>
<td>Income Taxes.</td>
</tr>
<tr>
<td>P-4</td>
<td>Transport-Related Revenues and Expenses; Explanation of Extraordinary Items and Cumulative Effect of Accounting Changes on Prior Years; Explanation of Prior Period Adjustments and Dividends Declared.</td>
</tr>
<tr>
<td>P-5.1(a)</td>
<td>Statement of Aircraft Operating Expenses for Small Air Carriers.</td>
</tr>
<tr>
<td>P-5(a)</td>
<td>Components of Flight Equipment Depreciation.</td>
</tr>
<tr>
<td>T-2(b)</td>
<td>Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft.</td>
</tr>
</tbody>
</table>

The above schedules are being proposed for elimination because all or a major portion of the data collected on them are no longer needed for either current or transferring Board programs and no other Federal agency has expressed a need for their continuation. To facilitate the elimination of Schedules P-3 and T-2(b), the Board is proposing to transfer a limited number of data elements, which would still be needed after sunset, from these schedules to other Form 41 schedules that are slated for retention.

The difference between the fourteen schedules the Board proposes to eliminate and the twelve remaining schedules6 that the staff report targeted for elimination is caused by adding Schedules B-7(b), B-43.1, P-5.1(a) and T-2(b) to and deleting Schedules B-12 and P-1(a) from the list of schedules to be eliminated. These changes are discussed below.

Schedules B-43.1 and P-5.1(a) were established by ER-1297 and designed to collect a minimum amount of aircraft inventory and operating expense data for small air carriers. Since the Board no longer has a need for the additional aircraft inventory and operating expense data reported by the larger carriers, it is proposing to reduce the level of reporting by large air carriers on B-43 and P-5.1 to coincide with the B-43.1 and P-5.1(a) level. To accomplish this reduction and at the same time avoid the duplication of schedules that would create this Board proposes to eliminate Schedules B-43.1 and P-5.1(a) and extend the applicability of the revised Schedules B-43 and P-5.1 to include the small Group I air carriers.

As part of the modification of Schedule B-43, the Board proposes to require carriers to indicate by footnote on the revised aircraft inventory schedule those aircraft types that are equipped to operate over water under Federal Aviation Administration regulation FAR-121. This information is needed to assist the Board in fulfilling its emergency preparedness planning responsibilities under the War Air Service Program (Executive Order 11490, as amended). This information is used to determine the airlift capacity available for overseas operations in the event of a national mobilization.

The staff report recommended retaining Schedules B-7 and B-7(b) for the benefit of the Department of Commerce's Bureau of Economic Analysis (BEA). Currently, Schedule B-7(b) is required to be filed by all air carriers receiving section 406 subsidy payments, while Schedule B-7 “Airframes and Aircraft Engines Acquired” is required from all Group II and Group III air carriers not receiving such payments. The data reported on these schedules are virtually the same; however, Schedule B-7(b) is more detailed in that it requires carriers to report data on flight equipment other than airframes and engines, such as


6 Small air carriers are Group I air carriers receiving section 406 subsidy, while Schedule B-7(b) is more detailed in that it requires carriers to report data on flight equipment other than airframes and engines, such as...
Relieve carriers from having to report Accounts 73 and 75.6 on two separate schedules; (2) facilitate the elimination of Schedule P-3; and (3) ensure the availability of depreciation and amortization expense data needed by the Board’s subsidy and aircraft costing programs.

Schedule P-1(a), “Interim Operations Report” has been excluded from the list of schedules the staff report targeted for elimination. This schedule is used by the Board in monitoring air carrier unit costs and yield trends. The monthly reporting of the limited financial data on Schedule P-1(a) provides a better measure of the causal relationship between carrier fare changes and their effects on yield and unit costs than quarterly reporting, which obscures monthly cyclical swings.

The number of full-time and part-time employees are also reported on Schedule P-1(a). These data are needed by the Board for monitoring carrier employment levels to determine whether a major contraction in carrier employment has occurred under the provisions of the Employee Protection Program of the Airline Deregulation Act of 1978 (section 43 of Pub. L. 95–504, October 24, 1978). Because of these continuing needs for Schedule P-1(a) data, the Board has decided to retain P-1(a) as a continuing requirement.

Finally, Schedule B-12, “Statement of Changes in Financial Position” has also been removed from the list of schedules to be eliminated. The cash flow data provided by this schedule is used by the Board in monitoring carrier fitness and reviewing carrier applications to provide international service.

Elimination of Accounting Procedures Statements

All certificated air carriers are currently required to file statements describing the accounting and reporting procedures they use for certain activities. These procedures usually involve management discretion like the service lives and residual values used in depreciating property and equipment and the procedures used in allocating revenues and expenses between operating entities. The staff report recommended eliminating six of the nine accounting procedures statements presently required to be filed, leaving only filing requirements for overhauls, depreciation and available capacity.

The Board has re-evaluated the need for all nine statements and concluded that the only information still needed is the determination of the available capacity that is used in computing the available ton-miles that are reported on Form 41 Schedules T-1 and T-2. This element is presently computed and reported on accounting procedures statement AP-12, "Available Capacity Statement." Available capacity is used in verifying the accuracy of carrier Form 41 submissions, keeping a check on periodic changes in aircraft seating configurations, and in monitoring aircraft capacity levels in accordance with the Board’s responsibilities under the War Air Service Program.

So that carriers can achieve the maximum reporting relief possible, the Board is proposing to add a column on the revised annual Schedule B-43, "Aircraft Inventory Data" for the reporting of available capacity by aircraft type, while simultaneously proposing to eliminate all nine of the accounting procedures statements that are currently required to be on file at the Board. Currently, carriers must file an AP-12 for each aircraft type operated; however, including aircraft capacity data on Schedule B-43 will enable carriers to report the capacity of several aircraft types on a single page.

The list of statements the Board is proposing to eliminate is set forth below:

<table>
<thead>
<tr>
<th>CAB form</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>AP-1</td>
<td>Procedures for Assigning or Pricing Profit and Loss Items Between Operating Entities.</td>
</tr>
<tr>
<td>AP-4</td>
<td>Procedures for Establishment of Expense Allocation Allowances.</td>
</tr>
<tr>
<td>AP-5</td>
<td>Procedures for Depreciation of Property and Equipment.</td>
</tr>
<tr>
<td>AP-6</td>
<td>Procedures for Accounting for Airframe and Aircraft Engine Overhauls.</td>
</tr>
<tr>
<td>AP-8</td>
<td>Procedures for the Accrual of Obsolescence and Deterioration Allowances for Flight Equipment Expendable Parts.</td>
</tr>
<tr>
<td>AP-10</td>
<td>Procedures for Adjusting or Pricing Expenses Between Transport Operations and Transport-Related Services.</td>
</tr>
<tr>
<td>AP-12</td>
<td>Procedures for Computing Available Seat-Miles and Available Ton-Miles for each Aircraft Type.</td>
</tr>
<tr>
<td>AP-16</td>
<td>Procedures for Allocating Income Taxes among the Transport Entities of the Air Carrier, its Nontransport Divisions and Members of an Affiliated Group.</td>
</tr>
</tbody>
</table>

Simplification of Reporting Formats

During the review of the Form 41 reporting requirements, the Board attempted to go beyond the staff report recommendations to determine if any of the schedules recommended for retention could be streamlined so as to further reduce reporting burden while still meeting the essential data needs of the Board and other Federal agencies.
The Board has tentatively determined that additional burden reduction could be achieved by consolidating the reporting of certain financial and statistical data elements, and eliminating certain data columns and statistical data elements on several CAB Form 41 schedules. For example, on Schedule B-3, “Balance Sheet” (see Exhibit C), the Board proposes, among other reductions, to decrease from six to three the number of accounts used in reporting nonoperating property and equipment. This would be accomplished by combining: (1) Accounts 1795 “Leased Property under Capital Leases” and 1797 “Property on Operating-Type Lease to Others and Property Held for Lease” and (2) accounts 1796 “Leased Property under Capital Leases—Accumulated Amortization” and 1798 “Property on Operating-Type Lease to Others and Property Held for Lease—Accumulated Depreciation” and including the amounts reported in these combined accounts in account 1791 “Nonoperating Property and Equipment” and account 1792 “Allowance for Depreciation and Amortization,” respectively.

An illustration of statistical data simplification is the proposed consolidation of Schedules T-2(a) and T-2(b) “Traffic, Capacity, Aircraft Operations, and Miscellaneous Statistics by Type of Aircraft” into a single Schedule T-2. This consolidation is being proposed in light of the anticipated post-sunset data needs of the Board’s and other Federal programs, which are significantly less detailed than the current reporting level. The merger of T-2(a) and T-2(b) would be accomplished by either eliminating or consolidating data elements now being reported. For example, the reporting of passenger/cargo and mixed passenger/cargo data would be combined by class of service (i.e., first class or coach). An example of data that would be eliminated are the nonscheduled service data elements now reported on Schedule T-2(a). This includes nonscheduled— revenue passenger-miles, available seat-miles, available ton-miles and revenue aircraft miles flown. The data that would be eliminated are shown in Exhibits R and S.

The Board is also proposing to simplify Schedule B-3, “Property and Equipment Retired” by eliminating the reporting of ground property and equipment. While the Board uses Schedule B-8 to calculate the market value of various types of aircraft for use in economic analyses and BEA uses B-8 data in developing a price index for purchased aircraft to obtain constant dollar estimates of aircraft exports and aircraft purchases by business, the staff has been unable to identify a need for ground property and equipment retirement data.

The above examples and the remaining data simplification proposals are highlighted in the attached Exhibits C through V.

Accounting System Changes

As indicated above, one of the proposed reductions is the reporting of less detailed accounting data. This would be accomplished by consolidating certain accounts within the Board’s uniform system of accounts. While reducing the number of accounts on the Form 41 schedules would reduce reporting burden, it may also cause some confusion over where to report the data contained in those accounts that have been eliminated. The Board has attempted to avoid this problem by proposing to modify the uniform system of accounts to reflect the proposed reporting changes on Schedules B-1, P-1.2 and P-5.2. These modifications would be accomplished by revising the chart of accounts and account descriptions so as to facilitate the flow of data from the accounting system to the Form 41 schedules. For example, accounts 1890 “Unamortized Debt Expense,” 1870 “Property Acquisition Adjustment,” and 1890 “Intangible Assets” would be combined with account 1890 “Other Assets” and reported on Schedule B-1 “Balance Sheet” as a revised account 1890 “Other Assets and Deferred Charges.”

Elimination of Twelve Months-to-Date Data

Certificated route air carriers are currently required to file both quarterly and 12 months-to-date data for the fourth quarter of each calendar year on Schedules P-5.1, P-5.2, P-4, P-7 and P-8, which are used for reporting various air carrier operating expense data. The reasons carriers were required to file 32 months-to-date data were twofold. First, the 12-month data could be used to check the totals of the four quarterly submissions. In doing this, the Board could verify the completeness of the quarterly data since the absence of any subsequent revisions to the quarterly filings would be highlighted in comparison with 12-month totals. Second, the immediate availability of 12 months-to-date data eliminated the cumbersome and time-consuming task of having to add the large number of quarterly data elements to arrive at a 12-month total. It also effectively facilitated the analysis of carrier and industry data by increasing the timeliness of data availability.

The Board now has the on-line computer capability to manipulate quarterly carrier data and generate 12-month totals as needed. Moreover, the capability exists to crosscheck Form 41 schedule data elements and totals to verify the accuracy of quarterly submissions. These events have eliminated the need for carriers to file 12-month data summaries on the above Form 41 schedules. Accordingly, the proposed rule would eliminate this requirement for Schedules P-5.1, P-5.2, P-6, P-7 and P-8.

It should be noted, however, that the proposed rule would retain the current requirement that carriers report twelve months-to-date data on their Statement of Operations, Schedules P-1.1 and P-1.2. These data are used by the staff to check the accuracy of previously reported quarterly data since carriers sometimes revise prior quarters but do not submit revised schedules.

The Board also proposed to eliminate the Schedule B-12 data column that is identified in the reporting instructions for use by carriers in reporting comparative quarterly or annual financial data to the Securities and Exchange Commission (SEC). This column was added to Schedule B-12 by ER-880 (42 FR 13, January 3, 1977) which implemented a CAB/SEC Single Reporting System, giving carriers the opportunity to meet certain CAB and SEC reporting requirements by filing a single set of schedules with both agencies. The system included Schedules B-1 “Balance Sheet,” P-1 “Statement of Operations,” B-12 “Statement of Changes in Financial Position,” B-3 “Statement of Changes in Stockholders’ Equity” and B-2 “General Notes to Financial Statements.” Since carriers have not used this single reporting system and since previously adopted and currently proposed reductions in reporting have effectively terminated the availability of the single reporting option, this proposed rule would eliminate all references to the use of CAB reports for meeting SEC reporting obligations, including the use of Schedule B-12 for reporting comparative financial data.

Reporting Data for MAC Operations

On October 30, 1986, the President issued Executive Order 11490 establishing the Civil Reserve Air Fleet program (CRAF). The authority for administering this program has been delegated to the Department of the Air Force’s Military Airlift Command. Under the CRAF program, MAC awards airlift
service contracts to civil air carriers based upon the level of their commitment to the CRAFT mobilization base in the event of a national emergency. To ensure broad support for the program from the air transportation industry, MAC uses uniform negotiated rates to increase civil air carrier participation in CRAFT.

MAC has informed us that it requires the continued collection of certain air carrier financial and statistical data to ensure the reasonableness of the rates and program participation incentives negotiated with air carriers. As part of these data requirements, MAC has asked us to collect revenue aircraft hours (ramp-to-ramp) in addition to the military charter statistics currently reported on Schedule T-1(c), "Traffic and Capacity Statistics by Class of Service—Nonscheduled Services." Ramp-to-ramp data are needed to coincide with internal block hours that are reported in MAC's integrated computerized tracking system. MAC has also asked that these data be reported for MAC charter operations by aircraft type.

As to the effect of these changes on carrier reporting burden, MAC has stated that the ramp-to-ramp data and the statistical data breakouts by aircraft type are readily available to the carriers and would not represent an additional reporting burden since MAC would have to request the data when performing its rate reviews. Reporting these data on Schedule T-1(c) could also save carriers the potential burden of having to go back and reconstruct the data for each rate review since MAC's data request would come almost a year after the flights were performed.

Based on the above circumstances and the fact that the schedule changes would affect only those carriers performing MAC charter operations, the Board proposes to modify Schedule T-1(c) to collect military charter statistics by aircraft type, including revenue aircraft hours (ramp-to-ramp).

**Reporting Data by Aircraft Type**

At the present time, all certificated air carriers report certain operating expense and traffic data by aircraft type on Schedules P-5, T-2 and T-3. The reporting instructions for these schedules require that each aircraft type reported be identified at the head of each data column. With the significant growth in the number of operating certificated carriers under deregulation, we have been experiencing problems with carriers reporting incomplete aircraft type data. For example, a carrier may report data by aircraft model (B-707) instead of by aircraft model and series (B-707-100). To avoid this problem in the future, the proposed rule clarifies the reporting instructions for the above schedules by referring carriers to the Board's "Manual of ADP Instructions, Outputs, Codes and Related Material," which contains a listing of reportable aircraft type designations.

This document also contains a four digit aircraft code for each aircraft type. The aircraft code is used to consolidate, for reporting purposes, aircraft that are different types but of the same basic design. To avoid confusion by the carriers about which aircraft types should be reported separately and which should be consolidated, the proposed rule would provide a space for reporting aircraft codes on the affected schedules. This should help carriers to avoid the burden of inadvertently allocating operating costs and statistics to more aircraft types than are needed for reporting.

**Reporting of Carrier Operating Expense Data**

The staff report recommended retaining Schedules P-6, P-7 and P-8, which are used for reporting detailed carrier operating expenses such as the various individual expense accounts that are allocated to the aircraft and traffic servicing and general and administrative functions. A need for these data was expressed by MAC, which intends to use the reported operating expense data in an automated ratemaking system that is based on the Board's uniform system of accounts. The Board also uses these data in performing trend analyses of carrier costs and costing international service segments. Since the Board's accounting system provides the framework for MAC's ratemaking system, MAC has requested that we retain the level of expense detail now reported on P-6, P-7 and P-8. However, the Board has concluded in a review of the anticipated post-sunset cost data needs that its information requirements are significantly less detailed. Exhibits W and X show the specific operating expense data needed by the Board. The revised Schedule P-6 and Schedule P-7 would reduce the number of operating expense schedules from three to two and the number of reported data elements by 61%, 78% and 66% for Group I, II and III carriers, respectively.

The revised Schedules P-6 and P-7 were included as exhibits to this proposed rule for discussion purposes only. The Board realizes that replacing the current Schedules P-6, P-7 and P-8 with the revised P-6 and P-7 may hinder MAC's ratemaking functions and seeks public comments on these reduced data requirements, especially from MAC, to enable the Board to determine if further reductions in the current level of reporting are possible without adversely affecting other Federal programs.

The conversion from the current P-6, P-7 and P-8 reporting format to the revised P-6 and P-7 formats would be accomplished by having Group III air carriers file both revised P-6 and P-7 schedules in conjunction with Schedule P-5.2, "Aircraft Operating Expenses," while all Group II air carriers and Group I air carriers with total annual operating revenues of $10 million or more would file the proposed Schedule P-5.1 and revised Schedule P-6. It should be noted that collecting Schedule P-5.1 from Group II carriers instead of Schedule P-5.2, as proposed, would increase the burden on the Board to collect the summary indirect cost data reported on Schedule P-5.1, which it needs for carrier costing analyses. These data would replace the more extensive cost allocations required for the revised Schedule P-7.

In order to better understand the relationship between the current P-6, P-7 and P-8 and the revised P-6 and P-7, Exhibits W and X contain a general guide for converting the present schedules to the revised Schedules P-6 and P-7. However, the Board recognizes that most carriers maintain a more detailed chart of accounts supplementing those provided for by the CAB's Uniform System of Accounts and Reports. Therefore, if the revised schedules were adopted, carriers would be encouraged to use their own detailed account system in developing the new cost allocations on the assumption that this would provide a more precise picture of the objective expense elements outlined on the revised Schedules P-6 and P-7.

**Paperwork Reduction Act**

The collection-of-information requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. These requirements have been submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the collection-of-information requirements to OMB and to the Board. Comments sent to OMB should be addressed to: Office of Information and Regulatory Affairs, ATTN: Desk Officer for Civil Aeronautics Board, Office of Management and Budget, Washington, D.C. 20503.
Federal Register / Vol. 49, No. 85 / Tuesday, May 1, 1984 / Proposed Rules

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act (Pub. L. 96-354), the Board certifies that this rule will not, if adopted as proposed, have a significant economic impact on a substantial number of small entities. Most of the entities affected by this proposal would be large certificated air carriers, and the effect of the proposed changes would be a reduction in reporting burden.

List of Subjects in 14 CFR Part 241

Air carriers, Uniform system of accounts and reports.

Proposed Rule

PART 241—[AMENDED]

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Part 241, Uniform System of Accounts and Reports for Certificated Air Carriers as follows:

1. Section 04 would be amended by revising paragraph (a) to read:

§ 04 Air carrier groupings.

(a) All certificated air carriers are placed into three basic air carrier groupings based upon their level of operations and the nature of these operations. In order to determine the level of operations, total operating revenues for a twelve month period are used. The following operating revenue ranges are used to establish air carrier groupings:

<table>
<thead>
<tr>
<th>Carrier group</th>
<th>Total annual operating revenues</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$0 to $75,000,000</td>
</tr>
<tr>
<td>II</td>
<td>$75,000,001 to $200,000,000</td>
</tr>
<tr>
<td>III</td>
<td>$200,000,001 plus</td>
</tr>
</tbody>
</table>

For reporting purposes, Group I air carriers are further divided into two subgroups: (1) Air carriers with total annual operating revenues between $10,000,000 and $75,000,000 and (2) air carriers with total annual operating revenues below $10,000,000.

2. Section 1–7 would be revised to read:

§ 1–8 Address for reports and correspondence.

Reports, statements, and correspondence submitted in accordance with or relating to instructions and requirements contained herein shall be addressed to the Office of the Administrator, Civil Aeronautics Board, Washington, D.C. 20428, the organizational unit responsible for administering the reporting functions of the Civil Aeronautics Board.

§ 1–9 [Amended]

4. Section 1–9 would be amended by removing paragraph (e).

5. Section 2–1 would be amended by revising paragraph (c) and removing paragraph (e) to read:

§ 2–1 Basis of allocation between entities.

(c) For purposes of this section, investments by the air carrier in resources or facilities used in common by the regulated air carrier and those transport-related revenue services defined as separate nontransport ventures under section 1–6(b) shall not be allocated between such entities but shall be reflected in total in the appropriate accounts of the entity which predominately uses those investments. Where the entity of predominance use is a nontransport venture, the air carrier shall reflect the investment in account 1510.3, Advances to Associated Companies.

(d) * * *

6. Section 2–7 would be amended by revising paragraph (g) to read:

§ 2–7 Extraordinary items, discontinued operations, prior period adjustments, and accounting changes.

(g) The cumulative effect of changes in accounting principles shall be reflected in the account provided for in the determination of net income and clearly and completely described in notes to the income statement (see section 18). The amount of the cumulative effect of a change in accounting principles shall represent the difference between: (a) The amount of retained earnings at the beginning of the period of the change, and (b) the amount of retained earnings that would have been reported at that date if the new accounting principle had been applied retroactively for all prior periods which would have been affected by recognizing only the direct effects of a change and the related income tax effect. Financial statements of prior periods shall not be restated without the prior approval of the Director, Bureau of Carrier Accounts and Audits. Changes in accounting estimates shall be accounted for in: (a) The period of change if the change affects that period only, or (b) the period of change and future periods if the change affects both. Materiality should be measured both in relation to the effects of each change separately and the combined effect of all changes.

7. Section 2–12 would be amended by revising subparagraph (a)(6) to read:

§ 2–12 Acquisition and valuation of assets.

(a)(6) Changes in the valuation allowance for a marketable equity securities portfolio included in current assets shall be included in the determination of net income of the period in which they occur by charging account 8188.3. Accumulated changes in the valuation allowance for a marketable equity securities portfolio included in noncurrent assets shall be included in the equity section of the balance sheet in account 2900, Retained Earnings.

8. Section 2–13 would be amended by revising paragraph (d) to read:

§ 2–13 Establishment of allowances.

(d) Additional allowances over those prescribed in this system of accounts may be established for the purpose of allocating expense charges between calendar quarters of each accounting year in accordance with operations performed, in the event such expenditures are part of a specific program to which the air carrier is demonstrably committed and are of sufficient magnitude to significantly distort the financial results of the current quarter if expensed directly.

§ 2–14 [Amended]

9. Section 2–14 would be amended by removing and reserving paragraph (b).

10. Section 2–17 would be amended by revising paragraph (b) and removing paragraphs (e) and (f) to read:

§ 2–17 Revenue and accounting practices.

(b) Each route air carrier shall physically verify the reliability of its passenger revenue accounting practice at least once each accounting year.

11. Section 2–18 would be amended by revising paragraphs (a), (b), and (c) to read:

§ 2–18 Transactions between members of an affiliated group.

(a) Unless otherwise approved by the Board’s Director, Bureau of Carrier
Accounts and Audits, transactions between the regulated activity of an air carrier and activities conducted by nontransport divisions or other corporate members of an affiliated group shall be recorded by the air carrier as provided in paragraphs (b) through (e) of this section 2-16.

(b) Charges for services and assets purchased by or transferred to a regulated activity of an air carrier from other activities of an affiliated group shall be recorded initially in the accounts of the regulated air carrier at their invoice price, if determined from a prevailing price list held out to the general public in the normal course of business. Where the services and assets received by the regulated activity of the air carrier are not marketed by the affiliated supplier to the general public under a prevailing price list, the charges recorded by the air carrier shall be entered in subaccount 88.1 Intercompany Transaction Adjustment—Credit or in subaccount 89.1 Intercompany Transaction Adjustment—Debit.

12. Section 2-20 would be amended by revising subparagraphs (a)(2), (a)(3), (b)(2)(ii) and (b)(3)(ii) to read:

§ 2-20 Accounting for leases.

(a) * * *

(2) The lessee shall record a capital lease as an asset (Account 1695.1, Capital Leases—Flight Equipment, or Account 1695.2, Capital Leases—Other Property and Equipment) and an obligation (Account 2080, Current Obligations under Capital Leases, or Account 2280, Noncurrent Obligations under Capital Leases), at an amount equal to the present value at the beginning of the lease term of minimum lease payments during the lease term, excluding that portion of the payments representing executory costs such as insurance, maintenance, and taxes to be paid by the lessor, together with any profit thereon. However, if the amount so determined exceeds the fair value of the leased property at the inception of the lease, the amount recorded as the asset and obligation shall be the fair value.

(3) Except for land, leases shall amortize, by charging either Account 7076.1, Amortization—Capitalized Flight Equipment, or Account 7076.2, Amortization—Capitalized Other Property and Equipment, and credit either Account 1996.1, Accumulated Amortization—Capitalized Flight Equipment, or Account 1996.2, Accumulated Amortization—Capitalized Other Property and Equipment, the asset recorded under a capital lease as follows: (i) If the lease either transfers ownership of the property to the lessee by the end of the lease term or contains a bargain purchase option, the asset shall be amortized in a manner consistent with the lessee's normal depreciation policies for owned assets or (ii) if the lease does not meet either of the preceding criteria, the asset shall be amortized in a manner consistent with the lessee's normal depreciation policy except that the period of amortization shall be the lease term.

(b) * * *

(ii) The difference between the gross investment in the lease and the sum of the present values of the two components of the gross investment shall be recorded as unearned income. The net investment in the lease shall consist of the gross investment less the unearned income. The unearned income shall be amortized to income over the lease term so as to produce a constant periodic rate of return on the net investment in the lease. Contingent rentals, including rentals based on variables such as the prime interest rate, shall be credited to income when they become receivable.

* * * * *

13. Section 3 would be revised to read:

BALANCE SHEET CLASSIFICATIONS

Section 3.—Chart of Balance Sheet Accounts

<table>
<thead>
<tr>
<th>Name of account</th>
<th>General classification</th>
</tr>
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<tbody>
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<td>Current assets:</td>
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<tr>
<td>Short-term investments</td>
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<td>Scars and supplies</td>
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<td>Allowance for obsolescence-Spare parts and supplies</td>
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<td>Prepaid items</td>
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<tr>
<td>Other current assets</td>
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</tr>
<tr>
<td>Investments and special funds: Investments in associated companies</td>
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<td>Investments in investor controlled companies</td>
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<td>Advances to associated companies</td>
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<td>Other investments and receivables</td>
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<td>Special funds</td>
<td>1650</td>
</tr>
<tr>
<td>Property and equipment</td>
<td>1640-1700</td>
</tr>
</tbody>
</table>
14. Section 5-3 would be amended by revising subparagraphs (e)(4) and (e)(10) to read:

§ 5-3 Property and equipment.

8 (e) **

4 (f) If property and equipment is acquired as part of a business from another air carrier through consolidation, merger, or reorganization, pursuant to a plan approved by the Civil Aeronautics Board, the costs and related allowances for depreciation as carried on the books of the predecessor company at the date of transfer shall be entered by the acquiring air carrier in the appropriate accounts prescribed for recording investments in tangible assets. Any difference between the purchase price of the property and equipment acquired and its depreciated cost at date of acquisition shall be recorded in balance sheet account 1890 Other Assets and Deferred Charges. Property acquired from an associated company shall also be accounted for in accordance with this paragraph unless otherwise approved by the Board. **

10. When operating property or equipment is retired from air transportation or transport-related operations and retained by the air carrier, its cost, together with applicable allowances for depreciation, shall be transferred to balance sheet classification 1700 Nonoperating Property and Equipment. If property is transferred for exclusive use of nontransport divisions, the cost less related allowances for depreciation shall be recorded in balance sheet account 1910.9 Advances to Associated Companies. **

§ 5-4 Property and equipment depreciation and overhaul.

* * * * *

(2) When overhauls are performed, the related costs of labor, materials, outside overhauls, and maintenance burden shall be charged to the applicable direct maintenance and maintenance burden objective expense accounts as incurred. With respect to those airframe or aircraft engine types for which overhauls are being deferred and amortized, a project cost ledger shall be maintained to control and identify overhauls costs, and the accumulated overhauls costs shall be debited each month to appropriate subaccounts of the related airframe, aircraft engine, or leasehold improvement accounts with a corresponding credit to account 72.3 Airframe Overhauls Deferred or account 72.8 Aircraft Engine Overhauls Deferred.

13. Upon completion of each overhaul phase or project, the deferred costs shall be amortized to account 72.3 Airframe Overhauls Deferred or to account 72.8 Aircraft Engine Overhauls Deferred over the authorized interval until the related overhaul procedures are required to be performed again.

16. Section 5-5 would be revised to read:

§ 5-5 Other assets.

Include in this classification all debit balances in general clearing accounts, including charges held in suspense pending receipt of information necessary for final disposition, prepayments chargeable against operations over a period of years, capitalized expenditures of an organizational or developmental character, unamortized debt expense, property acquisition adjustments, the cost of patents, copyrights and miscellaneous intangibles, and other noncurrent assets which cannot be recorded elsewhere within the chart of accounts. Deferred charges having a definite time incidence shall be amortized over the periods to which they apply.

17. Section 5-9 would be amended by revising paragraphs (b) and (g) to read:

§ 5-9 Stockholder equity.

* * * * *

(b) The general classification "Stockholders' Equity," shall be subdivided between:

1. "Total Paid-in Capital," which represents direct contributions of the stockholders;
2. "Retained Earnings," which represents the amount of income
retained from the operation of the air carrier; and

(3) "Treasury Stock," which represents the cost to the air carrier of capital stock issued by the air carrier that has been reacquired and is held for disposition.

* * * * *

(g) The "Retained Earnings" balance sheet classification shall reflect the balance of net profits, income, and gains of the air carrier from the date of incorporation after deducting losses, distributions to stockholders, and the net unrealized loss on marketable equity securities included in noncurrent assets. In cases where a deficit has been absorbed by a reduction of "Additional Capital Invested" as a result of a restatement of capital stock or retained earnings, a new retained earnings account shall be established, dated to show that it runs from the effective date of the restatement and this dating shall be disclosed in financial statements until such time as the effective date no longer possesses special significance.

38. Section B, Objective Classification of Balance Sheet Elements, would be amended by:

A. Revising paragraph (b) of Accounting 1200 to read:

1200 Notes receivable.

(b) Balances of notes payable to associated companies shall not be offset against amounts carried in this account. Balances with associated companies which are not normally settled currently shall not be included in this account but in balance sheet account 1510.3 Advances to Associated Companies.

B. Revising paragraph (d) of Account 1270 to read:

1270 Accounts receivable.

(d) Balances payable to associated companies shall not be offset against amounts carried in this account. Balances with associated companies which are not normally settled currently shall not be included in this account but in balance sheet account 1510.3 Advances to Associated Companies.

C. Removing the account number, account title and account description of Account 1400, Unamortized Debt Expense.

D. Revising the account title and account description of Account 1570, Investment in Leverage Leases.

I. Removing the account number, account title and account description of Account 1580, Net Investment in Direct Financing and Sales-Type Leases—Noncurrent.

J. Revising the account description of Account 1695 to read:

1695 Leased property under capital leases.

(a) Record here the total cost to the air carrier for all property obtained under capital leases as provided in section 2-20(a).

(b) This account shall be subdivided by all air carrier groups as follows:

1695.1 Capital leased—Flight equipment.

1695.2 Capital leased—Other property and equipment.

K. Revising the account description of account 1696 to read:

1696 Leased property under capital leases—Accumulated amortization.

(a) Record here accruals for amortization of leased property obtained under capital leases as provided in section 2-20(a).

(b) This account shall be subdivided by all air carrier groups as follows:

1696.1 Accumulated amortization—Capitalized flight equipment.

1696.2 Accumulated amortization—Capitalized other property and equipment.

L. Removing the account number, account title and account description of Account 1840, Unamortized Debt Expense.

M. Removing the account number, account title and account description of Account 1870, Property Acquisition Adjustment.

N. Removing the account number, account title and account description of Account 1880, Intangible Assets.

O. Revising the account title and account description of Account 1880, Other Assets, to read:

1890 Other assets and deferred charges.

(a) Record here other assets and deferred charges not provided for elsewhere.
(b) Record here debits, the proper final disposition of which cannot be determined until additional information has been received. This account shall include the accumulated cost of labor, materials and supplies for stock, the accumulated cost of jobs in process for other projects to be charged to expense upon completion. This account shall also include unamortized debt expense, property acquisition adjustments and intangible assets.

Keep this account charged with property loss and other costs related to casualties and credited with recoveries from purchased insurance and salvage. A debit or credit balance in this account related to property retired as a result of a casualty shall be recorded in profit and loss account 83.5 Capital Gains and losses—Operating Property or 88.6 Capital Gains and Losses—Other; however, balances related to property not retired or to other casualties shall be recorded in profit and loss account 58 Injuries, Loss and Damage. Proceeds from purchased insurance for property damage, received prior to repair of such damage, shall not be credited to this account but to balance sheet account 2390 Other Deferred Credits pending repair. The records for each major casualty shall be kept in such manner as to clearly disclose insurance recoveries and the total costs, which shall include charges for the depreciated cost of property damaged or destroyed, costs for clearing wrecks and damaged property and equipment, including salaries and wages for the repair thereof, and payments for damages to property of others. The cost of casualties shall not be charged directly against retained earnings or appropriations thereof, but shall be cleared through the applicable profit and loss accounts in accordance with the foregoing.

(d) Record here the unamortized debt expense related to the assumption by the air carrier of debt of all types and classes. Amounts recorded shall be amortized to profit and loss account 84 Amortization of Debt Discount, Premium and Expense.

(e) Unamortized debt expense shall not include the excess of the par value of debt securities over the cash value of consideration received. Instead, discounts shall be recorded in a subaccount of the related liability.

(f) Record here the cost of patents, copyrights and other intangible properties, rights and privileges acquired as a part of a business from other air carriers and other intangibles not provided for elsewhere. This account shall be subdivided to reflect the nature of each intangible asset included in this account.

(g) Record here the difference between the purchase price to the air carrier of property and equipment acquired as a part of a business from another air carrier through consolidation, merger, or reorganization, pursuant to a plan approved by the Civil Aeronautics Board, and the depreciated cost to the predecessor company at date of acquisition. Record here also such differences relating to purchases of property and equipment from associated companies unless other treatment is approved by the Board. Separate subaccounts shall be established to record the amounts applicable to each such acquisition.

(h) Balances in this account relating to property acquisition adjustments shall be amortized by charges to profit and loss account 89.9 Other Miscellaneous Nonoperating Debts unless otherwise directed or approved by the Civil Aeronautics Board.

(i) Revising the account number of Account 2290, Other Noncurrent Liabilities.

Record here noncurrent liabilities not provided for in balance sheet accounts 2210 to 2280, inclusive, such as the liability for installments received on capital stock from company personnel who are not bound by legally enforceable subscription contracts, accruals for personnel dismissal liability, and accruals of other demonstrable miscellaneous noncurrent liabilities.

S. Revising the account number of Account 2340.1 to read: 2340 Deferred income taxes.

T. Removing the account number, account title and account description of Account 2340.2, Deferred Taxes Arising from Leverage Loans.

U. Removing the title and description of Commitments and Contingent Liabilities which immediately follows Account 2390, Other Deferred Credits.

V. Adding a new paragraph (e) to Account 2900 to read:

2900 Retained earnings.

(e) A separate subaccount to this account shall be maintained to record changes in the valuation of marketable equity securities included in noncurrent assets. Such changes shall be reflected in this subaccount to the extent the balance in this subaccount represents a net unrealized loss as of the current balance sheet date.

19. Section 7 would be amended by revising sections 25, 26, 42, 43, 46, 59, 72, and 78; combining accounts 80, 87 and 89; and combining accounts 82, 83 and 84 to read:

PROFIT AND LOSS CLASSIFICATION

SECTION 7.—CHART OF PROFIT AND LOSS ACCOUNTS

<table>
<thead>
<tr>
<th>Objective classification of profit and loss elements</th>
<th>Functional or financial activity to which applicable (DD)</th>
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<tr>
<td>Operating Revenues and Expenses</td>
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</tr>
<tr>
<td>Transport revenues:</td>
<td>06 Property:</td>
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<td>06.1 Freight</td>
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<tr>
<td>06.2 Excess passenger baggage</td>
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<tr>
<td>25 Maintenance labor</td>
<td>52</td>
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<tr>
<td>25.1 Labor-airframes and other flight equipment</td>
<td>52</td>
</tr>
<tr>
<td>25.2 Labor-aircraft engines</td>
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<td>25.4 Labor-flight equipment</td>
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<tr>
<td>25.8 Labor-ground property and equipment</td>
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<td>42 General services purchased-associated</td>
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<tr>
<td>companies</td>
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</tr>
<tr>
<td>42.1 Airframe and other flight equipment</td>
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</tr>
<tr>
<td>repairs-associated companies</td>
<td>52</td>
</tr>
<tr>
<td>42.2 Aircraft engine repairs-associated</td>
<td>52</td>
</tr>
<tr>
<td>companies</td>
<td>52</td>
</tr>
<tr>
<td>42.6 Flight equipment repairs-associated</td>
<td>52</td>
</tr>
<tr>
<td>companies</td>
<td>52</td>
</tr>
<tr>
<td>42.7 Aircraft interchange charges-associated</td>
<td>51, 52</td>
</tr>
<tr>
<td>companies</td>
<td>51, 52</td>
</tr>
<tr>
<td>42.9 General interchange service charges</td>
<td>52, 66</td>
</tr>
<tr>
<td>associated companies</td>
<td>66, 68</td>
</tr>
<tr>
<td>42.9 Other services-associated companies</td>
<td>52, 53, 65, 68</td>
</tr>
<tr>
<td></td>
<td>52, 55, 64, 67, 68</td>
</tr>
<tr>
<td></td>
<td>65, 66, 69</td>
</tr>
</tbody>
</table>
SECTION 7.—CHART OF PROFIT AND LOSS ACCOUNTS—Continued

Objective classification of profit and loss elements

<table>
<thead>
<tr>
<th>Functional or financial activity to which applicable (00)</th>
<th>Group I carriers</th>
<th>Group II carriers</th>
<th>Group III carriers</th>
</tr>
</thead>
<tbody>
<tr>
<td>43 General services purchased-outside:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>43.1 Aircraft and other flight equipment repairs-outside.</td>
<td>52</td>
<td>52</td>
<td>52</td>
</tr>
<tr>
<td>43.2 Aircraft engine repairs-outside</td>
<td>52</td>
<td>52</td>
<td>52</td>
</tr>
<tr>
<td>43.3 Flight equipment repairs-outside</td>
<td>52</td>
<td>52</td>
<td>52</td>
</tr>
<tr>
<td>43.4 Aircraft interchange charges-outside</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>43.5 Right equipment repairs-outside</td>
<td></td>
<td>52</td>
<td>52, 53, 66, 67, 68</td>
</tr>
<tr>
<td>43.6 Aircraft interchange service charges-outside</td>
<td>52, 60</td>
<td>51, 52</td>
<td>51, 52</td>
</tr>
<tr>
<td>43.7 Foreign exchange gains and losses</td>
<td>52, 55, 61, 62, 63, 65, 66, 68</td>
<td></td>
<td></td>
</tr>
<tr>
<td>43.8 Other services-outside</td>
<td>52, 53, 55, 64, 67, 68, 69</td>
<td>52, 53, 55, 61, 62, 63, 65, 66, 68</td>
<td></td>
</tr>
</tbody>
</table>

NONOPERATING INCOME AND EXPENSE

| Interest expense, long-term debt                         | 81               | 81               | 81                |
| Interest expense, capital lease                          | 81               | 81               | 81                |
| Interest expense, capital lease                          | 81               | 81               | 81                |
| Other interest:                                          | 82               | 82               | 82                |
| Interest expense, short-term debt                        | 81               | 81               | 81                |
| Interest expense, short-term debt                        | 81               | 81               | 81                |
| Imputed interest capitalized-credit                      | 81               | 81               | 81                |
| Imputed interest capitalized-credit                      | 81               | 81               | 81                |
| Imputed interest deferred-debit                         | 81               | 81               | 81                |
| Imputed interest deferred-debit                         | 81               | 81               | 81                |
| Imputed interest deferred-credit                        | 81               | 81               | 81                |
| Imputed interest deferred-credit                        | 81               | 81               | 81                |
| Imputed interest capitalized-credit                      | 81               | 81               | 81                |
| Imputed interest capitalized-credit                      | 81               | 81               | 81                |
| Amortization of discount and expense on debt             | 81               | 81               | 81                |
| Amortization of premium on debt                          | 81               | 81               | 81                |
| Foreign exchange gains and losses                        | 81               | 81               | 81                |
| Other nonoperating income and expense:                   |                  |                  |                   |
| Interest income                                          | 83               | 83               | 83                |
| Income from nontransport ventures                        | 83               | 83               | 83                |
| Income from nontransport ventures                        | 83               | 83               | 83                |
| Equity in income of investor controlled companies        | 87               | 87               | 87                |
| Intercompany transaction adjustment-credit               | 88               | 88               | 88                |
| Dividend income                                          | 88               | 88               | 88                |

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20. Section 9, Functional Classification—Operating Revenues, would be amended by revising functions 3100 and 3200 to read:

3100 Scheduled services.

This subclassification shall include revenues from the transportation by air of individual passengers or cargo shipments (as opposed to charter flights) pursuant to published schedules, including extra sections and other flights performed as an integral part of published flight schedules.

3200 Nonscheduled services.

This subclassification shall include revenues from the transportation by air of traffic applicable to the performance of aircraft charters, and other air transportation services not part of services performed pursuant to published flight schedules (but shall not include data applicable to flights performed as extra sections to published flight schedules, which shall be reported in the subclassification 3100 Scheduled Services).

21. Section 10, Functional Classification—Operating Expenses of Group I Air Carriers, would be amended by:

A. Revising paragraph c. of function 5300 to read:

5300 Maintenance burden.

<table>
<thead>
<tr>
<th>Maintenance burden.</th>
<th>81</th>
<th>81</th>
<th>81</th>
</tr>
</thead>
<tbody>
<tr>
<td>c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Maintenance burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines, shall be allocated to such projects in accordance with the provisions of section 2—8(b). Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier’s maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual cost incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be effected through the individual maintenance burden objective accounts, except that the air carrier may effect such allocations by credits to profit and loss account 77 Uncleared Expense Credits under circumstances in which the use of that account will not undermine the significance of the individual maintenance burden objective accounts in terms of the expense levels associated with the air carrier’s air transport services. Maintenance burden allocated to overhauls shall be credited to profit and loss accounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

B. Revising function 7000 to read:

7000 Depreciation and amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs as well as losses in serviceability occasioned by obsolescence, supersession, discoveries, change in popular demand or action by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases and other intangible assets applicable to the performance of air transportation. (See sections 2—20, 5—5 and 6—1696, 1830 and 1890).

C. Removing paragraph (d) of function 7100 Transport-Related Expenses.

22. Section 11, Functional Classification—Operating Expenses of Group II and Group III Air Carriers, would be amended by:

A. Revising paragraph c. of function 5300 to read:
5300 Maintenance burden.

for the amortization of capitalized developmental and preoperating costs, leased property under capital leases, and other intangible assets applicable to the performance of air transportation. (See section 2-20, 5-5 and sections 6-1666, 1830 and 1980).

C. Removing paragraph (d) of function 7100, Transport-Related Expenses.

23. Section 12, Objective Classification—Operating Revenues and Expenses, would be amended by:

A. Revising paragraph (c) of account 06 to read:

06 Property.

(c) This account shall be subdivided as follows by all air carrier groups:

06.1 Freight.

Record here revenue from the transportation by air of property other than passenger baggage.

06.2 Excess Passenger Baggage.

Record here revenue from the transportation by air of passenger baggage in excess of fixed free allowance.

B. Revising paragraph (c) of account 07 to read:

07 Charter.

(c) This account shall be subdivided as follows by all air carrier groups:

07.1 Passenger.

Record here revenue from the transportation of passengers and their personal baggage.

07.2 Property.

Record here revenue from the transportation of property.

C. Revising account 06 to read:

08 Public service revenues (Subsidy).

Record here amounts of compensation received pursuant to the provisions of section 419 of the Federal Aviation Act under rates established by the Civil Aeronautics Board for the provision of essential air service to small communities.

D. Revising paragraph (b) of account 25 to read:

25 Maintenance labor.

(b) This account shall be subdivided as follows:

Group II and Group III Air Carriers

25.1 Labor—Airframes and Other Flight Equipment.

Record here the direct labor expended upon airframes, spare parts related to airframes, and other flight equipment (Other than aircraft engines and spare parts related to aircraft engines). Other flight equipment shall include instruments, which encompass all gauges, meters measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines which are maintained separately from airframes and aircraft engines.

25.2 Labor—Aircraft Engines.

Record here the direct labor expended upon aircraft engines and spare parts related to aircraft engines.

Group I Air Carriers

25.6 Labor—Flight Equipment.

Record here the direct labor expended upon flight equipment of all types and classes.

All Air Carrier Groups

25.9 Labor—Ground Property and Equipment.

Record here the direct labor expended upon ground property and equipment of all types and classes. Direct labor expended upon general ground property shall be charged to subfunction 5320 Direct Maintenance, and direct labor expended upon maintenance buildings and equipment shall be charged to subfunction 5300 Maintenance Burden.

E. Amending paragraph (c) of account 42 by revising the account title and account description of subaccount 42.1 and removing subaccount 42.3 to read:

42 General services purchased—Associated companies.

(c) This account shall be subdivided as follows by each air carrier group:

Group II and Group III Air Carriers

42.1 Airframe and Other Flight Equipment Repairs—Associated Companies.

Record here charges by associated companies for maintenance or repair of airframes and spare parts related to airframes owned or leased by the air carrier. Charges by associated companies for maintenance or repair of other flight equipment (including instruments) owned or leased by the air carrier, excluding aircraft engines and spare parts related to aircraft engines, shall also be recorded here.

Instruments shall include all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines, which are maintained separately from airframes and aircraft engines. Charges by associated companies for maintenance of airframes and other flight equipment provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 42.7 Aircraft Interchange Charges—Associated Companies.

F. Amending paragraph (c) of account 43 by revising the account title and account description for subaccount 43.1 and removing subaccount 43.3 to read:

7000 Depreciation and amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs, as well as losses in serviceability occasioned by obsolescence, supersession, discoveries, change in popular demand or action by public authority. It shall also include charges upon airframes, spare parts related to airframes, and other flight equipment (Other
43 General services purchased—Outside.

(c) This account shall be subdivided by each air carrier group as follows:

Group II and Group III Air Carriers

43.1 Airframe and Other Flight Equipment—Outside

Record here charges for maintenance or repair of airframes and spare parts related to airframes owned or leased by the air carrier. Charges for maintenance or repair of other flight equipment (including instruments) owned or leased by the air carrier, exclusive of aircraft engines and spare parts related to aircraft engines, shall also be recorded here. Instruments shall include all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft or aircraft engines, which are maintained separately from airframes and aircraft engines. Charges by others for maintenance of flight equipment provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges—Outside.

G. Amending paragraph (b) of account 46 by revising the account title and account description of subaccount 46.1 and removing subaccount 46.3 to read:

46 Maintenance materials.

(b) This account shall be subdivided as follows:

46.1 Materials—Airframes and Other Flight Equipment.

Record here the cost of materials and supplies consumed directly in maintenance of airframes and spare parts related to airframes. Other flight equipment (including instruments), excluding aircraft engines and spare parts related to aircraft engines, shall also be recorded here. Instruments shall include all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines, which are maintained separately from airframes and aircraft engines.

H. Revising the account title and account description of account 59 to read:

59 Schedules and timetables.

Record here the production and distribution cost, excluding compensation of air carrier personnel, of all operating schedules, timetables, circulars and related quick reference charts.

I. Revising paragraph (b) of account 72 to read:

72 Aircraft overhauls.

(b) This account shall be subdivided as follows by all carrier groups:

72.1 Airworthiness Allowance Provisions—Airframes.

Record here current provisions for effecting an equitable distribution of airframe overhaul costs between different accounting periods. Record here also credits for airframe overhaul costs incurred in the current period which have been charged against related airworthiness allowances.

72.2 Airworthiness Allowance Provisions—Aircraft Engines.

Record here current provisions for effecting an equitable distribution of aircraft engine overhaul costs between different accounting periods. Record here also credits for aircraft engine overhaul costs incurred in the current period which have been charged against related airworthiness allowances.

72.3 Airframe Overhauls Deferred.

Record here airframe overhauls of the current period transferred to subaccount 1601.2, Unamortized Airframe Overhauls, and the amount of deferred airframe overhaul costs amortized for the current period.

72.4 Aircraft Engine Overhauls Deferred.

Record here aircraft overhauls of the current period transferred to subaccount 1602.2, Unamortized Aircraft Engine Overhauls, and the amount of deferred aircraft engine overhaul costs amortized for the current period.

J. Revising account 76 to read:

76 Amortization expense—Capital leases.

(a) Record here amortization charges applicable to assets recorded under capital leases in Account 1695—Leased Property under Capital Leases.

(b) This account shall be subdivided as follows by all air carrier groups:

76.1 Amortization—Capitalized Flight Equipment.

Record here amortization charges applicable to flight equipment acquired under capital leases.

76.2 Amortization—Capitalized Other Property and Equipment.

Record here the amortization charges applicable to property and equipment, other than flight equipment, acquired under capital leases.

24. Section 14, Objective Classification-Nonoperating Income and Expenses, would be amended by:

A. Revising the account description of account 80, to read:

80 Interest income.

Included under account 80 Other Nonoperating Income and Expense—Net.

B. Revising the title and account description of account 82, Other Interest Expenses, to read:

82 Other interest.

(a) This account shall be subdivided as follows by all air carrier groups:

82.1 Interest Expense—Short-Term Debt.

Record here interest on all classes of short-term debt.

82.2 Imputed Interest Capitalized-Credit.

Record here credits related to imputed interest capitalized pursuant to section 2-10 and recorded in assets accounts.

82.3 Imputed Interest Deferred—Debit.

Record here debits related to imputed interest deferred pursuant to section 2-10 in balance sheet account 2300 Other Deferred Credits.

82.4 Interest Capitalized—Credit.

Record here interest which is capitalized pursuant to section 2-10 and recorded in asset accounts.

84 Amortization of discount and expense on debt.

Record here for all classes of debt the amortizations of discount and expense on short-term and long-term obligations.

84.1 Amortization of discount and expense on short-term obligations.

Record here for all classes of short-term debt the amortizations of premium on short-term and long-term obligations.

87 Equity in income of investor controlled companies.

Included under account 89 Other Nonoperating Income and Expense—Net.

F. Amending paragraph (b) of account 89 by adding new subaccounts 89.0 and 89.1, and revising the account descriptions of subaccounts 89.0 and 89.1 to read:

89.0 Interest Income.

Included under account 89 Other Nonoperating Income and Expense—Net.

(b) This account shall be subdivided as follows by all air carrier groups:

89.0.0 Interest Income.

(a) Record here interest income from all sources. This account shall include as an increase or reduction of interest received the proportionate amortization of any discount or
premium on the purchase price of securities of others held by the air carrier. 
(b) This account shall not include interest on securities issued or assumed by the air carrier and subsequently reacquired.

§ 19-1 Chart of operating statistical elements.

<table>
<thead>
<tr>
<th>Service classes</th>
<th>Air transport traffic and capacity elements</th>
</tr>
</thead>
<tbody>
<tr>
<td>A, C, E, G.</td>
<td>521 Scheduled aircraft departures scheduled</td>
</tr>
<tr>
<td>Z.</td>
<td>420 Revenue aircraft miles flown.</td>
</tr>
<tr>
<td>Z.</td>
<td>620 Nonrevenue aircraft hours (airborne).</td>
</tr>
<tr>
<td>Z.</td>
<td>630 Aircraft hours (ramp-to-ramp).</td>
</tr>
<tr>
<td>Z.</td>
<td>513 Revenue aircraft hours (ramp-to-ramp).</td>
</tr>
<tr>
<td>Z.</td>
<td>514 Revenue aircraft hours (ramp-to-ramp).</td>
</tr>
<tr>
<td>Z.</td>
<td>515 Revenue aircraft hours (ramp-to-ramp).</td>
</tr>
<tr>
<td>Z.</td>
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<tr>
<td>Z.</td>
<td>518 Revenue aircraft hours (ramp-to-ramp).</td>
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<td>Z.</td>
<td>520 Revenue aircraft departures scheduled.</td>
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</table>

B. Removing paragraph (g) of Section 19-2, Maintenance of Data.

C. Revising paragraph (a) 19-3 to read:

§ 19-3 Accessibility and Transmittal of data.

(a) Each air carrier shall maintain its prescribed operating statistics in a manner and at such locations as will permit ready availability for examination by representatives of the Board. All Group III carriers shall transmit to the Board on a monthly basis individual flight stage data for scheduled services as prescribed in Section 19-5, summarized by flight number, service class and aircraft type. Group III air carriers shall utilize either ADP tapes or ADP punched cards for transmitting the prescribed data to the Board unless otherwise specifically permitted by the Board’s Office of Comptroller to provide flight stage data on Schedule T-9. All Group I carriers and Group II carriers shall transmit to the Board on a monthly basis individual flight data for scheduled services as prescribed in the reporting instructions for Schedule T-9 in Section 25 of this Part.

D. Revising paragraphs (a) and (b) of section 19-4 to read:

§ 19-4 Service classes.

(a) Scheduled services. For scheduled services, which shall include traffic and capacity elements, applicable to air transportation performed pursuant to published schedules, extra sections and other flights performed as an integral part of the published flight schedules, the following classifications shall be maintained, as applicable:

A000 Scheduled First Class Passenger—Cargo Service.
C000 Scheduled Coach Passenger—Cargo Service.
E00 Scheduled Mixed Passenger—Cargo Service.

G00 Scheduled Cargo Service.

(b) Nonscheduled services. For nonscheduled services, which shall include all traffic and capacity elements applicable to the performance of aircraft charters, and other air transportation services not constituting an integral part of services performed pursuant to published flight schedules (but shall not include data applicable to flights performed as extra sections to published flight schedules, which shall be reported in the appropriate classification of scheduled services), the following classifications shall be maintained, as applicable:

L00 Nonscheduled Civilian Passenger—Cargo Service.

N00 Nonscheduled Military Passenger—Cargo Service.

P00 Nonscheduled Civilian Cargo Service.

R00 Nonscheduled Military Cargo Service.

E. Paragraph (e) of section 19-5 is amended by removing and replacing the introductory paragraph and elements Z501 through X250 under the heading "Airport-to-Airport Traffic and Capacity Data" and by revising the elements under the headings "Aircraft Operations" and "Miscellaneous Operating Elements" to read as follows:

§ 19-5 Air transport traffic and capacity elements.

(c) The elements, by category and alpha-numeric code, for which data are to be maintained in accordance with the above are as follows:

Airport-To-Airport Traffic and Capacity Data

Z501 Interairport distance. The great circle distance, in statute miles, between airports served by each flight stage. Official interairport miles are available from the Board’s Data Services Section, Information Management Division, Office of Comptroller. X110 Revenue passengers enplaned. The number of revenue passengers enplaned. Data shall be maintained with respect to such enplanements to show for each airport subsequently served by each flight, the number of deplaning revenue passengers, i.e., the on-flight origin and destination thereof. Separate data shall be maintained as follows:

X111 First class.

X112 Coach.

X210 Revenue cargo tons enplaned. The total revenue cargo tons enplaned. Data shall be maintained with respect to such enplanements to show for each airport subsequently served by each flight, the tons of deplaning revenue traffic, i.e., the on-flight origin and destination thereof. For each of the following classes:

X213 U.S. mail—priority.

Z240 Nonrevenue aircraft miles flown. The nonrevenue aircraft miles flown based upon the airborne time of each aircraft movement. X610 Revenue aircraft hours (airborne). The revenue aircraft hours flown based upon the airborne time of each aircraft movement. X620 Nonrevenue aircraft hours (airborne). The aircraft hours flown in nonrevenue service based upon the "airborne" time of each aircraft movement. X630 Aircraft hours (ramp-to-ramp). The aircraft hours flown in both revenue and nonrevenue service, based upon the "ramp-to-ramp" time of each aircraft movement.

Miscellaneous Operating Elements

Z310 Aircraft days assigned to service-carrier’s equipment. The number of aircraft days that owned or rented aircraft are in the possession of the air carrier and assigned to services of the reporting air carrier or assigned to services of other carriers under aircraft interchange agreements. Aircraft days shall be allocated between operating entities as follows:

(1) Aircraft assigned exclusively to a particular operation shall be recorded for the operation to which they were assigned and to the reporting entity to which more closely related.

(2) Aircraft used interchangeably in two or more operating entities shall be prorated between entities on the basis of the ramp-to-ramp time the individual aircraft was in operation in each entity.

(3) The time of aircraft in maintenance or overhaul, or in reserve status, shall be assigned between operating entities on the basis of the relative ramp-to-ramp time all aircraft of the same type were in operation in each entity.

Z280 Aircraft days assigned to service-carrier’s routes. The number of aircraft days that owned or rented aircraft and aircraft of others under interchange agreements are assigned to services performed by the air carrier.

Z380 Hours on other carriers’ interchange equipment (airborne). The airborne hours flown with interchange in both revenue and nonrevenue services of the air carrier under aircraft interchange agreements.

Z291 Aircraft fuels issued (gallons). The gallons of aircraft fuels issued during the current accounting period for both revenue and nonrevenue flights.

Z292 Aircraft oils issued (gallons). The gallons of aircraft engine oils issued during the current accounting period for both revenue and nonrevenue flights.

28. Section 21 would be amended by revising paragraphs (k) and (l) to read:

§ 21 Introduction to systems of reports.

(k) Generally, route air carriers nonscheduled services shall be treated as an integral part of the reporting entity to which most closely related without regard to the geographic area in which such nonscheduled services may actually be performed. However, supplemental reports shall be made of nonscheduled services (including service for the Department of Defense) in areas not encompassed by the prescribed reporting entity in any month in which the available ton-miles of such nonscheduled services exceed 5 percent of the available ton-miles of the reporting entity. Such supplemental reports shall continue until waived by the Board upon a showing that such nonscheduled operations will not in the subsequent 12-month period exceed the 5-percent limit. The supplemental reports to be filed each month or calendar quarter, as applicable, shall be comprised of report Schedules P-5, T-1, and T-2. Transport and nontransport revenues pertaining to such separately reported nonscheduled services shall be reported on Schedule P-2 each quarter.

(l) When and as required in the national interest, any air carrier which performs nonscheduled transport services for the Department of Defense shall, when directed by the Board, make separate reports for such services as if they were conducted by a physically separate transport entity, such reports shall consist of Schedules P-1 through P-4, T-1, and T-2. The letter "D" shall be inserted on such reports, following the schedule number of each P and T schedule. When a carrier has more than one reporting entity, nonscheduled transport and nonscheduled Defense services shall be assigned to the reporting entity to which more closely related.

27. Section 22 would be amended by revising the List of Schedules in CAB Form 41 Report and the Due Dates of Schedules in CAB Form 41 Report in paragraph (a), by revising subparagraph...
§ 22 General reporting instructions.

### LIST OF SCHEDULES IN CAB FORM 41 REPORT—Continued

<table>
<thead>
<tr>
<th>Schedule No.</th>
<th>Title</th>
<th>Filing frequency</th>
<th>Applicability by carrier group</th>
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<tr>
<td>T-3(a)</td>
<td>Airport Activity Statistics. Scheduled Revenue Service.</td>
<td>Q</td>
<td>X</td>
<td>X</td>
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<td>T-3(b)</td>
<td>Airport Activity Statistics. Scheduled Revenue Service.</td>
<td>Q</td>
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<td>T-3(c)</td>
<td>Airport Activity Statistics. Non-scheduled Revenue Service.</td>
<td>A</td>
<td>Q</td>
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M= Monthly; Q= Quarterly; S= Semiannually. A= Annually; X= All Carriers.

* Applicable to Group I air carriers with annual operating revenues below $10 million or more.

§ 23 General reporting instructions.

### DUE DATES OF SCHEDULES IN CAB FORM 41 REPORT

<table>
<thead>
<tr>
<th>Due dates</th>
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<tbody>
<tr>
<td>Jan. 20</td>
<td>P-12(a)</td>
</tr>
<tr>
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<td>P-13(a), T-1, T-2, T-3, T-9, T-9.</td>
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<td>Feb. 10</td>
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<td>Mar. 1</td>
<td>P-11(a), T-1, T-9.</td>
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<td>P-12(a)</td>
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<td>P-13(a), B-43, P-14(a), G-41, T-1, T-8, T-9.</td>
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<td>Apr. 20</td>
<td>P-14(a)</td>
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<td>P-15(a), T-1, T-2, T-3, T-9.</td>
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<td>May 10</td>
<td>P-16(a), A, B-1, B-7, B-8, B-12, P-12, P-2, P-5, P-5, P-6, P-7, P-8, P-8.</td>
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<td>P-18(a), T-1, T-9.</td>
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<td>June 20</td>
<td>P-19(a)</td>
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<td>P-20(a), T-1, T-9.</td>
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<td>P-21(a)</td>
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<td>P-30(a)</td>
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<td>Dec. 20</td>
<td>P-31(a)</td>
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<tr>
<td>Dec. 30</td>
<td>P-32(a), T-1, T-9.</td>
</tr>
</tbody>
</table>

1 Due dates falling on a Saturday, Sunday or national holiday will be extended effective the following working day.

2 B and P reporting due dates are extended to March 30 if preliminary schedules are filed as the Bixed by February 10.

(1) The time for filing B and P report schedules for the final quarter or semiannual period of each calendar year may be extended to the following March 30 if the preliminary Schedules B-1 or B-11 and P-4 or P-1.2 are submitted, as applicable, and are received on or before their respective due dates.

(d) (Reserved.)

(k) (Reserved.)

28. Section 23, Certification and Balance Sheet Elements, would be amended by:

A. Revising the reporting instructions of Schedule B-1 to read:

Schedule B-1—Balance Sheet

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(b) This schedule shall reflect the balances at the close of business on the last day of each calendar quarter for the overall or system operations of each air carrier in conformance with the provisions of sections 4, 5 and 6.

(c) Individual proprietors or partners shall report the aggregate capital contributed by the proprietor or partners in account 2860 Additional Capital Invested.

B. Revising the title and paragraph (a) of the reporting instructions for Schedule B-1.1, Balance Sheet for Small Air Carriers to read:

Schedule B-1.1—Balance Sheet

(a) This schedule shall be filed semiannually by Group I air carriers with annual operating revenues below $10 million.

C. Removing the title and reporting instructions for Schedule B-3, Statement of Changes in Stockholder's Equity.

D. Removing the title and reporting instructions for Schedule B-5, Property and Equipment.

E. Revising the reporting instructions for Schedule B-7 to read:

Schedule B-7—Airframes and Aircraft Engines Acquired

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) The indicated data shall be reported for each individual airframe, identified by type, model, and design of cabin as to use for passengers exclusively, cargo exclusively, or both passengers and cargo in combination.

Data pertaining to aircraft engines shall
be reported in aggregate for each type or model; however, aircraft engines obtained under capitalized leases shall be separately reported under a caption entitled: Capital Leases-Aircraft Engines. Airframe units leased from others for a period of more than 90 days shall be reported in a separate subsection of this schedule, captioned as follows: Capital Leases-Airframe Units; and Operating Leases-Airframe Units. In addition, a notation shall be made by license number of airframe units of the air carrier returned after lease to others for a period of more than 90 days. Airframe units obtained through interchange lease arrangements shall not be so reported.

(c) All dates shall indicate the day, the month and the year; shall be provided on a unit basis for airframes only; and, shall be reported for each aircraft engine group by date of transaction.

(d) Report shall be made in the quarter in which each airframe and each group of aircraft engines is actually acquired irrespective of whether the cost thereof is reflected in the property and equipment accounts during the current quarter or a subsequent quarter. If the cost data are not reflected in the current quarter a footnote to that effect shall accompany the report of acquisition. The costs shall be reported during the quarter in which determined and the equipment to which related shall be listed again in this schedule, with complete information, and shall be identified as being the same equipment reported at the earlier date.

(e) Column 2, “Date Placed in Transport Service” shall relate to airframes only and shall be the date on which each airframe was or will be placed in regular service by the reporting entity. If this date is not known at the time of submission of the report, an estimated date bearing the notation “estimate” shall be provided with the exact date shown by footnote on a subsequent Schedule B-7 in which the airframe is reidentified by license number, type of aircraft and date acquired.

(f) Column 8, “Maximum Seat Capacity” shall reflect the number of passenger seats installed in each airframe acquired. When the configuration of airframes provides sleeping accommodations, the passenger capacity shall be shown in terms of a sleeper version and non-sleeper version. When aircraft are designed for multiple adjustable seating configurations, the maximum number of seats for which designed shall be reported. When the seating configuration of airframes is modified subsequent to original acquisition, the revised passenger capacity of each airframe shall be reported in the quarter in which modified and referenced to identify original capacity reported.

(g) Column 9, “Cost” shall reflect the book cost of airframes and aircraft engines acquired and the cost of improvements, betterments or other additions made to the acquired equipment.

F. Removing the title and reporting instructions of Schedule B-7(b), Flight Equipment Acquired.

G. Revising the title and reporting instructions of Schedule B-8, Property and Equipment Retired to read:

Schedule B-8—Flight Equipment Retired

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) The indicated data shall be reported for the sale or retirement of each aircraft engine type of aircraft engine (stating the number of units retired) and, to the extent retired along with airframes and engines, in aggregates by accounts, for operating property and equipment included in Accounts 1603 through 1606 and nonoperating property and equipment included in Accounts 1703 through 1706. Disposition of properties in Accounts 1603 and 1703 not related to airframe and aircraft engine retirements shall be reported in a separate group for each account. Airframe units leased from others for a period of more than 90 days shall be reported, upon return to the lessor, in a separate subsection of this schedule, with complete information, and shall be identified as being the same equipment reported at the earlier date.

(c) In determining working capital generated by operations, net income as reported on Schedule P-1.1 or Schedule P-1.2 shall be increased by expenses not requiring working capital in the current period and shall be decreased by income not generating working capital in the current period such as gains on property retirements and undistributed earnings of investor controlled companies. Those items which do not generate working capital in the current period shall be included net on line 8 “Other.” If the amount reported on line 6, line 12, or line 18 exceeds 5 percent of the total sources or applications, a footnote shall be added to this schedule disclosing the component amounts.

(d) Generally, all items shall be reported in gross amounts. Items not resulting in net working capital changes such as exchanges of bonds or capital stock for fixed assets shall be reported as a source of working capital from the incurrence of debt or issuance of stock and a concurrent application of working capital for the asset acquisition. Likewise, the conversion of debt for capital stock shall be reported as a source of working capital for capital stock issued and an application of working capital for the debt retired.

(f) Column 9, “Realization” shall reflect the proceeds from disposition, including any insurance proceeds.

(g) Column 10, “Disposition” shall reflect the name of the person or organization to which airframes and aircraft engine are sold or a notation as to the nature of the retirement and the account to which any depreciated cost has been charged, if not sold. Items included in accounts 1607, 1608, 1707, and 1708, sold as a part of airframe or aircraft engine sales transactions, shall also be identified by the name of the buyer. Other sales of items included in these accounts shall be reported in a separate group in aggregate for each property account affected.

H. Removing the title and reporting instructions of Schedule B-10, Unamortized Developmental and Preoperating Costs.

I. Revising the reporting instructions for Schedule B-12 to read:

Schedule B-12—Statement of Changes in Financial Position

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(b) This schedule shall be filed for the overall or system operations of the air carrier.

(c) In determining working capital generated by operations, capital generated by operations, net income as reported on Schedule P-1.1 or Schedule P-1.2 shall be increased by expenses not requiring working capital in the current period and shall be decreased by income not generating working capital in the current period such as gains on property retirements and undistributed earnings of investor-controlled companies. Those items which do not generate working capital in the current period shall be included net on line 8 “Other.” If the amount reported on line 6, line 12, or line 18 exceeds 5 percent of the total sources or applications, a footnote shall be added to this schedule disclosing the component amounts.

(d) Generally, all items shall be reported in gross amounts. Items not resulting in net working capital changes such as exchanges of bonds or capital stock for fixed assets shall be reported as a source of working capital from the incurrence of debt or issuance of stock and a concurrent application of working capital for the asset acquisition. Likewise, the conversion of debt for capital stock shall be reported as a source of working capital for capital stock issued and an application of working capital for the debt retired.
J. Removing the title and reporting instructions of Schedule B-13, Summary of Projected Financial Commitments and Related Deposits.

K. Removing the title and reporting instructions of Schedule B-41, Receivables, Payables and Investments Relating to Affiliates and Other Investment Data.

L. Revising the reporting instructions for Schedule B-43 to read:

Schedule B-43—Inventory of Airframes and Aircraft Engines

(a) This schedule shall be filed by all Group I, Group II and Group III air carriers.

(b) The indicated data shall be reported for each individual airframe, identified by type, model and design of cabin as to use for passengers exclusively, cargo exclusively, or both passengers and cargo in combination. Data pertaining to aircraft engines shall be reported on a group basis by type of engine and aircraft to which related. Airframes that are authorized for operation over water under FAA instructions of Schedule B-43 shall be reported, by type of lease, in a group of aircraft engines.

(c) Data in this schedule shall be grouped and subtotaled as data pertaining to airframes and data pertaining to aircraft engines. Data pertaining to nonoperating airframes and aircraft engines shall be reported in a group below the data for operation equipment. Data pertaining to airframes and aircraft engines obtained under operating and capital leases shall be reported, by type of lease, in a separately captioned grouping below nonoperating airframes and aircraft engines and subgrouped within those groups according to operating and nonoperating.

(d) The data to be reported shall include owned and leased airframes and aircraft engines currently in operation or in conversion. Data pertaining to airframes and aircraft engines obtained under operating and capital leases shall be captioned, by type of lease, separately from owned equipment.

(e) Data pertaining to airframes and aircraft engines obtained under operating leases shall be listed in columns 1 through 6 and in column 11: the cost of improvements to equipment under operating leases shall be reported in columns 6 through 10.

(f) Column 6 “Acquired Cost or Capitalized Value” shall include (1) the acquisition cost of owned airframes and aircraft engines; (2) the total capitalized cost of obtaining airframes and engines under capital leases; and (3) the cost of improvements to airframes and engines obtained under operating leases.

(g) Column 7 “Allowance for Depreciation or Amortization” shall include (1) the accumulations of all provisions for losses due to use and obsolescence that are applicable to owned airframes and aircraft engines and (2) the amount of amortization recorded for amortizing the value of airframes and engines obtained under capital leases.

(h) Column 8 “Depreciated Cost or Amortized Value” shall be calculated as either (1) Acquired Cost (column 6) less the Allowance for Depreciation (column 7) or (2) Capitalized Value (column 6) less Amortization (column 7).

(i) Column 9 “Estimated Residual Value” shall state in dollars the residual asset assigned to owned and capitalized-leased airframes and aircraft engines, including any overhaul value not subject to depreciation.

(j) Column 10 “Estimated Depreciable or Amortizable Life (Months)” shall state the estimated depreciable or amortizable life from the date of acquisition of each airframe and each group of aircraft engines.

(k) Column 11 “Available Capacity (Weight)” shall reflect, for each reported aircraft type, the available capacity (stated in pounds) that is used in computing the available ton-miles reported on Schedules T-1 and T-2.

L. Removing the title and reporting instructions of Schedule B-43.1, Aircraft Inventory Data—Small Air Carriers.

N. Removing the title and reporting instructions of Schedule B-46, Long-Term and Short-Term Nontrade Debt.

29. Section 24, Profit and Loss Elements, would be amended by:

A. Revising the title and paragraph (a) of the reporting instructions of Schedule P-1.1, Statement of Operations for Small Air Carriers to read:

Schedule P-1.1—Statement of Operations

(a) This schedule shall be filed semiannually by Group I air carriers with annual operating revenues below $10 million. Data reported on this schedule shall be for the overall or system operations of the air carrier.

B. Revising paragraphs (a) and (d) and removing and reserving paragraph (e) of the reporting instructions of Schedule P-1.2 to read:

Schedule P-1.2—Statement of Operations

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(d) Data reported in the “12 Months-Date” column shall represent for each item the sum of amounts reported in the “Quarter” column for the current and next previous three quarters.

(e) [Reserved]
respectively. Semiannual reports are due on August 10 and February 10.

(c) Each carrier shall indicate in the space provided its full corporate name and an "X" shall be inserted in the appropriate box to indicate whether the data being reported are quarterly or six months. The period-ending data shall be indicated in the space provided.

(d) Route and charter air carriers subject to the quarterly filing requirement shall file this schedule for each operating unit of the air carrier. Air carriers subject to the semiannual filing requirement shall file this schedule for the overall or system operations of the air carrier.

(e) This schedule shall show the direct and indirect expenses incurred in aircraft operations. Direct expense data applicable to each aircraft type operated by the carrier shall be reported in separate columns of this schedule. Each aircraft type reported shall be identified at the head of each column in the space provided. "Aircraft Type" refers to aircraft models such as B-707-100, B-707-300, DC-10-30, Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the Manual of ADP Instructions, Outputs, Codes and Related Material, which is available from the Board's Information Management Division. In the space provided for "Aircraft Code" carriers shall insert the four digit code which is prescribed in the Manual of ADP Instructions, Outputs, Codes and Related Material for the reported aircraft type.

(f) Each aircraft type operating expenses shall be reported in the following categories:

1. Line 1 "Flying Operations (Less Rental)" shall be subdivided as follows:
   (i) Line 2 "Pilot and Copilot" expense shall include salaries of pilots and copilots, related fringe benefits, and related employee benefits.
   (ii) Line 4 "Aircraft Fuel and Oil" expense shall include the cost of fuel and oil used in flight operations and nonrefundable aircraft fuel and oil taxes.
   (iii) Line 5 "Other" expenses shall include general ( hull) insurance, and all other expenses incurred in the in-flight operation of aircraft and holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status that are not provided for otherwise on this schedule.

2. Line 6 "Total Flying Operations (Less Rentals)" shall equal the sum of lines 3, 4 and 5.

3. Line 7 "Maintenance-Flight Equipment" shall include the cost of labor, material and related overhead expended by the carrier to maintain flight equipment, general services purchased for flight equipment maintenance from associated or other outside companies, and provisions for flight equipment overhauls.

4. Line 8 "Depreciation and Rental-Flight Equipment" expense shall include depreciation of flight equipment, amortization of capitalized leases for flight equipment, provision for obsolescence and deterioration of spare parts, and rental expense of flight equipment.

5. Line 9 "Total Direct Expense" shall equal the sum of lines 6, 7 and 8.

6. Line 10 Indirect aircraft operating expenses shall be reported only in total for all aircraft types and shall be segregated according to the following categories:

   (i) Line 10.1 "Flying Operations (Less Rentals)" shall equal the sum of lines 1-3.

   (ii) Line 10.2 "Pilot and Copilot" expenses shall include flight and traffic solicitor salaries, traffic commissions, passenger food expense, traffic liability insurance, advertising and other promotion and publicity expenses, and the fringe benefit expenses related to all salaries and expenses applicable to aircraft of the same type as those owned or operated by the air carrier.

   (iii) Line 10.3 "Departure Related (Station) Expense" shall include salaries and fringe benefits for ground personnel, traffic solicitor salaries, landing fees, clearance, customs and duties, related fringe benefits, and maintenance and depreciation on ground property and equipment.

   (iv) Line 10.4 "Capacity Related Expense" shall include salaries and fringe benefits for general management personnel, recordkeeping and statistical personnel, lawyers and law clerks, and purchasing personnel; legal fees and expenses; stationery; printing; uncollectible accounts; insurance purchased generally; memberships; corporate and fiscal expenses; and all other expenses which cannot be identified or allocated to some other specifically identified indirect cost category.

   (v) Line 10.5 "Other Expense" shall equal the sum of lines 10-3 and 10-4.

   (vi) Line 10.6 "Indirect Expense" shall include the sum of lines 10-3, 10-4, and 10-5.

   (vii) Line 10.7 "Total Indirect Expense" shall equal the sum of lines 6, 7, 8 and 10.

(f) Item 79.6 "Applied Maintenance Burden" shall reflect a memorandum allocation by each air carrier of the total expenses included in subfunction 5300 - "Maintenance Burden" between maintenance of flight equipment, by aircraft type, and maintenance of ground property and equipment in accordance with item (g) of the instructions for Schedule P-6. The amount reported for this item, in aggregate for all aircraft types, shall include general ( hull) insurance, and all other expenses incurred in the in-flight operation of aircraft and holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status that are not provided for otherwise on this schedule.

(g) Each aircraft type for which a report is being made shall be identified at the head of each column in the space provided. Data applicable to aircraft designed primarily for cargo services and only incidentally used for passenger services shall be reported in separate columns, and the word "cargo" shall be inserted after the aircraft type at the head of the column. The prescribed reporting by aircraft types may be reviewed from time to time upon request by individual air carriers, or upon the initiative of the Board, and groupings of aircraft types for reporting purposes may be prescribed or amended in specific instances.

(h) Italized codes and item titles do not constitute accounts or account numbers prescribed for air carrier accounting, but shall be used for reporting purposes only.

(i) Item 79.6 "Applied Maintenance Burden" shall reflect a memorandum allocation by each air carrier of the total expenses included in subfunction 5300 - "Maintenance Burden" between maintenance of flight equipment, by aircraft type, and maintenance of ground property and equipment in accordance with item (g) of the instructions for Schedule P-6. The amount reported for this item, in aggregate for all aircraft types, shall
agree with the amount reported for the same item reflected on Schedule P-6.

(g) Item 73 “Obsolescence and Deterioration-Expendable Parts” shall reflect (for obsolescence and deterioration of flight equipment expendable parts) the gross provisions for losses in value of expendable parts during the current accounting period offset by any credits applicable to the current period for adjustments for excess inventory levels determined pursuant to section 6-1311.

(h) The total of function 5100 “Flying Operations” reported on this schedule shall agree with corresponding amounts reported on Schedule P-1.2 and the total of item 5276 “Total Direct Maintenance—Flight Equipment” shall agree with the corresponding amount reported in Schedule P-6.

I. Removing the title and reporting instructions of Schedule P-5.1 (a), Statement of Aircraft Operating Expenses for Small Air Carriers.

J. Removing the title and reporting instructions of Schedule P-5(a), Components of Flight Equipment Depreciation.

K. Revising paragraphs (a) and (e), and removing and reserving paragraphs (c) and (d) of Schedule P-6 to read:

Schedule P-6—Maintenance, Passenger Service and General Services and Administration Subfunctions

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(c) (Reserved)

(d) (Reserved)

(e) Group I air carriers shall report the indicated data for all except function 5500 Passenger Service.

L. Revising the reporting instructions of Schedule P-7 to read:

Schedule P-7—Aircraft and Traffic Servicing, Promotion and Sales, and General and Administrative Expense Functions

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.

(c) Group II air carriers and Group III charter carriers shall report the indicated data for all except subfunction 6100 Aircraft Servicing.

(d) Group III air carriers shall report the indicated data for subfunction 6100 Aircraft Servicing and function 6800 General and Administrative and shall disregard the data indicated for functions 6400 Aircraft the Traffic Servicing and 6700 Promotion and Sales.

M. Revising the reporting instructions of Schedule P-8 to read:

Schedule P-8—Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions

(a) This schedule shall be filed by each Group III air carrier only.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.

(c) The sum of the totals reported in this schedule for subfunctions 6200 Traffic Servicing and 6300 Servicing Administration, together with 6100 Aircraft Servicing in Schedule P-7 shall agree with the corresponding amount reported for function 6400 Aircraft and Traffic Servicing in Schedule P-1.2. The sum of the totals reported in subfunctions 6500 Reservations and Sales and 6600 Advertising and Publicity shall agree with the corresponding amount reported for function 6700 Promotion and Sales in Schedule P-1.2.

N. Removing the title of Schedule P-9.1, Distribution of Ground Servicing Expenses by Geographic Location—Group I Air Carriers.

O. Revising paragraph (a) of the reporting instructions of Schedule P-12(a) to read:

Schedule P-12(a)—Fuel Consumption by Type of Service and Entity

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

30. Section 25, Traffic and Capacity Elements, would be amended by:

A. Revising paragraph (b) of the general instructions to Section 25 to read:

(b) Schedules T-1, T-2, and T-3 shall be in a form prescribed by the Board or in the form of approved machine listings. The same information reported in Schedule T-1 shall also be submitted on magnetic tape or punched cards at the time the hardcopy schedules are submitted; however, those air carriers not having access to automatic data processing equipment shall submit only hardcopy reports to the Board.

B. Revising paragraph (d) of the reporting instructions for Schedules T-1(a), T-1(b) and T-1(c) to read:

Schedule T-1(a)—Traffic and Capacity Statistics by Class of Service

Schedule T-1(b)—Traffic and Capacity Statistics by Class of Service-Scheduled Services

Schedule T-1(c)—Traffic and Capacity Statistics by Class of Service-Nonscheduled Services

(d) A description of each item shall be given in the left margin, and separate columns shall be used to present the codes and data as applicable for each classification of service prescribed in section 19-4, namely, Scheduled Cargo Service, Nonscheduled Civilian Passenger-Cargo Service, Nonscheduled Military Passenger-Cargo Service, Nonscheduled Civilian Cargo Service, Nonscheduled Military Cargo Service and All Services. In addition, columns are provided for airlines not having access to automatic data processing equipment shall submit only the data for those of the columns of the report.

Nonscheduled Military Passenger-Cargo Service and Nonscheduled Military Cargo Service shall be reported by aircraft type. Each aircraft type reported shall be identified by the head of each column in the space provided. “Aircraft Type” refers to models provided in the Manual of ADP Instructions, Outputs, Codes and Related Material, which is available from the Board’s Office of Management Services.

In the space provided for “Aircraft Code” carriers implied shall insert the four digit code which is prescribed in the Manual of ADP Instructions, Outputs, Codes and Related Material for the reported aircraft type. The schedule shall include the following items:

<table>
<thead>
<tr>
<th>Code</th>
<th>Elements</th>
</tr>
</thead>
<tbody>
<tr>
<td>X110</td>
<td>Revenue passenger enplaned.</td>
</tr>
<tr>
<td>X140</td>
<td>Revenue passenger-miles.</td>
</tr>
<tr>
<td>X141</td>
<td>First class.</td>
</tr>
<tr>
<td>X142</td>
<td>Coach.</td>
</tr>
<tr>
<td>X160</td>
<td>Nonrevenue passenger-miles.</td>
</tr>
<tr>
<td>X240</td>
<td>Revenue ton-miles.</td>
</tr>
<tr>
<td>X241</td>
<td>Passenger.</td>
</tr>
<tr>
<td>X242</td>
<td>U.S. mail-priority.</td>
</tr>
<tr>
<td>X244</td>
<td>U.S. mail-nonpriority.</td>
</tr>
<tr>
<td>X245</td>
<td>Foreign mail.</td>
</tr>
<tr>
<td>X247</td>
<td>Freight.</td>
</tr>
<tr>
<td>X280</td>
<td>Nonrevenue ton-miles.</td>
</tr>
<tr>
<td>X320</td>
<td>Available seat-miles.</td>
</tr>
<tr>
<td>X321</td>
<td>First class.</td>
</tr>
<tr>
<td>X322</td>
<td>Coach.</td>
</tr>
<tr>
<td>X410</td>
<td>Revenue aircraft miles flown.</td>
</tr>
<tr>
<td>X411</td>
<td>Revenue aircraft miles scheduled.</td>
</tr>
<tr>
<td>X412</td>
<td>Schedules aircraft miles completed.</td>
</tr>
<tr>
<td>X510</td>
<td>Revenue aircraft departures performed.</td>
</tr>
<tr>
<td>X520</td>
<td>Revenue aircraft hours performed.</td>
</tr>
<tr>
<td>X530</td>
<td>Nonrevenue aircraft hours (airborne).</td>
</tr>
<tr>
<td>XXXX</td>
<td>Revenue aircraft hours (temp-to-temp).</td>
</tr>
</tbody>
</table>
C. Revising the title and paragraphs (a) and (d) of the reporting instructions of Schedules T-2(a) and T-2(b) to read:

Schedule T-2—Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft

(a) This schedule shall be filed quarterly by all carrier groups.

(d) A description of each item and the identifying code shall be given in the left margin, and separate columns shall be used for the data applicable to each type of aircraft as identified for reporting purposes in the Manual of ADP Instructions, Outputs, Codes and Related Material, which is available from the Board’s Information Management Division. In the space provided for “Aircraft Code” carriers shall insert the four digit code which is prescribed in the Manual of ADP Instructions, Outputs, Codes and Related Material for the reported aircraft type. Aircraft of the same basic structure, but different cabin design shall be classified accordingly as passenger or cargo aircraft types. The schedule shall include the following items:

<table>
<thead>
<tr>
<th>Scheduled Services—Continued</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code</td>
</tr>
<tr>
<td>2600</td>
</tr>
<tr>
<td>2601</td>
</tr>
<tr>
<td>2602</td>
</tr>
</tbody>
</table>

D. Revising the titles of Schedules T-3(a) and T-3(b), adding a new paragraph (e) to and revising paragraph (d) of the reporting instructions of Schedules T-3(a), T-3(b) and T-3(c) to read:

Schedule T-3(a)—Airport Activity Statistics—Scheduled Revenue Service

Schedule T-3(b)—Airport Activity Statistics—Scheduled Revenue Service

Schedule T-3(c)—Airport Activity Statistics—Scheduled Revenue Service

(d) Data shall be reported and listed in alphabetical sequence for each airport at which a carrier has conducted either scheduled service or charter operations during the report period. However, data applicable to international airports that are served only on a charter basis may be grouped and reported in total following the listing of individual airports. The schedule shall include the following items:

<table>
<thead>
<tr>
<th>Item</th>
<th>Scheduled service</th>
<th>Non-scheduled service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Scheduled service</td>
<td>Non-scheduled service</td>
</tr>
<tr>
<td>K200</td>
<td>Revenue passenger-miles (000)</td>
<td></td>
</tr>
<tr>
<td>K310</td>
<td>Revenue aircraft departures performed total by aircraft type.</td>
<td></td>
</tr>
<tr>
<td>K320</td>
<td>Revenue passengers enplaned.</td>
<td></td>
</tr>
<tr>
<td>K330</td>
<td>Revenue cargo tons enplaned.</td>
<td></td>
</tr>
<tr>
<td>K340</td>
<td>U.S. mail-priority.</td>
<td></td>
</tr>
<tr>
<td>K350</td>
<td>U.S. mail-nonpriority.</td>
<td></td>
</tr>
<tr>
<td>K360</td>
<td>Foreign mail.</td>
<td></td>
</tr>
<tr>
<td>K370</td>
<td>Freight.</td>
<td></td>
</tr>
</tbody>
</table>

(e) Where data are required to be reported by aircraft type, separate columns shall be used for the data applicable to each type of aircraft as identified for reporting purposes in the Manual of ADP Instructions, Outputs, Codes and Related Material, which is available from the Board’s Information Management Division. For each reported aircraft type, carriers shall also insert at the head of each column the four digit “Aircraft Code” which is prescribed in the Manual of ADP Instructions, Outputs, Codes and Related Material for the reported aircraft type.

F. Revising paragraph (a) of the reporting instructions of Schedule T-9 to read:

Schedule T-9—Nonstop Market Report

(a) This schedule shall be filed monthly by all Group I and Group II air carriers providing scheduled service and may be used, with the approval of the Board’s Comptroller, by new entrants and others without Automatic Data Processing capability that would otherwise be required to comply with the requirements of Section 19-9.

31. Section 26, General Corporate Elements, would be amended by revising paragraph (a) of the reporting instructions of Schedule G-41 to read:

Schedule G-41—Persons Holding More than 5 Per Centum of Respondent's Capital Stock or Capital

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.


By the Civil Aeronautics Board.

Phyllis T. Kaylor, Secretary.

[FR Doc. 84-11467 Filed 4-30-84; 8:45 am]
BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 812 3195]

California-Texas Oil Co., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Glendale, Calif. company and its corporate president, among other things, to cease making mileage or emission improvement claims for the “AWECO Mileage Extender” or any gasoline additive or automotive device, unless the claims can be substantiated by competent and reliable scientific tests. The company would also be required to

1 Exhibits C through V are filed as part of the original document.
prominently disclose any material limitations or inferences that can be drawn from test results that substantiate fuel economy improvement or emission reduction claims. The order would further bar the company from making any fuel economy or automotive emissions performance claims using the phrase "up to" or words of similar import, unless a substantial number of consumers, under normal driving circumstances, can achieve the maximum level of performance claimed.

DATE: Comments must be received on or before July 2, 1984.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.


SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 45 and 2.34 of the Commission’s Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission’s Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13
Automobile retrofit devices, Trade practices.

Before the Federal Trade Commission
[File No. 812 3159] Agreement Containing Consent Order to Cease and Desist

In the Matter of California-Texas Oil Company, a California Corporation, and Eileen M. Robertson, individually and as an officer and director of California-Texas Oil Company.

The Federal Trade Commission, having initiated an investigation of certain acts and practices of California-Texas Oil Company, a California corporation ("Cal-Tex"), Eileen M. Robertson ("Robertson"), individually and as an officer and a director of Cal-Tex, hereinafter sometimes referred to as "proposed respondents," and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Cal-Tex, by its authorized officers, and Robertson, individually and as an officer and director of Cal-Tex, and counsel for the Federal Trade Commission that:

1. Proposed respondent Cal-Tex is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 1173 North Westmoreland Avenue, Los Angeles, California 90029. Proposed respondent Robertson is Chairman of the Board and President of Cal-Tex. She formulates, directs and controls the policies, acts and practices of said Cal-Tex. Her address is the same as that of Cal-Tex.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:
   a. Any further procedural steps;
   b. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
   c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint [in such form as the circumstances may require] and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission’s Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceedings and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. This order shall become final upon Service of the complaint and decision containing the agreed-to order to proposed respondent’s address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order of the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

It is ordered that respondent California-Texas Oil Company, a corporation, its successors and assigns, and its officers, and respondent Eileen M. Robertson, individually and as an officer and director of the corporate respondent, and respondents’ agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of the gas additive known as AWECO Mileage Extender ("AWECO"), any other fuel additive, any engine oil additive, or any automobile retrofit device, as "automobile retrofit device" is defined in section 301 of the Energy Policy and Conservation Act of 1975, 15 U.S.C. 2011, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

a. Representing, directly or by implication, that any such additive or device will or may result in fuel economy improvement when installed in
an automobile, truck, recreational vehicle or other motor vehicle unless:
1. Such representation is true;
2. At the time of making such representation, respondents possess and rely upon, as substantiation for the representation, written results of competent and reliable scientific testing that isolate the effects of the additive or device. Respondents may use such tests as the then current urban dynamometer driving schedule 40 CFR Part 86, Appendix I or the then current highway fuel economy driving schedule (40 CFR Part 60, Appendix I) or the then current urban dynamometer driving schedule 40 CFR Part 86, Appendix I established by the Environmental Protection Agency or other tests of an equivalent competency and reliability; and
3. Respondents, when using the results of any test(s) required by this Part, clearly and prominently disclose with such representation any material limitation upon the test results or inferences that can be drawn from the results.

a. Representing, directly or by implication, that any such additive or device will or may result in a reduction in automotive emissions from the operation of an automobile, truck, recreational vehicle or other motor vehicle when installed in such vehicle unless:
   1. Such representation is true;
   2. At the time of making such representation, respondents possess and rely upon written results of competent and reliable scientific testing, as substantiation for the representation, done by a laboratory using tests such as, or equivalent in competency and reliability to, a chassis dynamometer test performed according to the 1975 Federal Test Procedure; and
   3. Respondents, when using the results of any test(s) required by this Part, clearly and prominently disclose with such representation any material limitation upon the test results or inferences that can be drawn from the results.

b. Making any fuel economy or automotive emissions performance claim which uses the phrase “up to” or words of similar import, unless the maximum level of performance claimed can be achieved by an appreciable number of consumers under circumstances normally and expectably encountered by consumers.

c. Representing, directly or by implication, that any performance claim about any such additive or device is based upon any competent and reliable test(s) or survey(s), unless such representation is true.

d. Misrepresenting, in any manner, the purpose, content, or conclusion of any test or survey pertaining to any such additive or device.

For the purposes of Part I, a competent and reliable test means one in which persons qualified to do so conduct the test and evaluate its results in an objective manner using procedures that ensure accurate and reliable results.

II

It is further ordered that respondents, in connection with the advertising, labeling, offering for sale, sale or distribution of any product of service in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain accurately the following records, which shall be available for inspection by Commission staff upon request: copies of and dissemination schedules for all advertisements and labels, other sales promotional materials, and post-purchase materials disseminated by respondents directly or through any business entity; copies of all documents generated by the requirements of Parts III and IV of this order. Such documentation shall be retained by respondents for a period of three (3) years from the last date any such advertising or material is disseminated, except that documentation relating to Parts III and IV of the order shall be retained by respondents for a period of three (3) years from the last date a copy of three (3) years from the last date a copy of this order is disseminated.

III

It is further ordered that respondents do forthwith distribute a copy of this order to all operating divisions of the corporate respondent, and to all present or future personnel, agents or representatives of respondents having sales, advertising, or policy responsibilities with respect to the subject matter of this order, and that respondents secure from each such person a signed statement acknowledging receipt of said order.

IV

It is further ordered that respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

V

It is further ordered that the individual respondent named herein promptly notify the Commission of the discontinuance of her present business or employment. In addition, for a period of 5 years from the date of service of this order, the individual respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the individual respondent’s new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of the individual respondent’s duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VI

It is further ordered that respondents shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from California-Texas Oil Company and Eileen M. Robertson. The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

The Complaint charges that California-Texas Oil Company and Eileen M. Robertson made certain automobile mileage improvement claims about the use of their gasoline additive product, “AWECO,” that were false and unsubstantiated. The Complaint also charges that the respondents falsely represented that such claims were based on competent and reliable evidence.

The Order prohibits the respondents from making mileage or emissions improvement claims about any gasoline additive or automotive device unless the claim is true and backed up by competent and reliable scientific testing. If there is any material limitation on the applicability of the tests those limitations must also be disclosed.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to
constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock, Secretary.

[FR Doc. 84-11900 Filed 4-30-84; 8:45 am]
BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6526; IC-13903; S7-14-84]

Amendments to the Offering Exemption Under Regulation E of the Securities Act of 1933

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing for comment amendments to Regulation E, an exemption from registration under the Securities Act of 1933 for small offerings by small business investment companies registered under the Investment Company Act of 1940, and an amendment to Regulation A, an exemption from registration under the Securities Act of 1933 for small offerings by certain other issuers. Specifically, the Commission is proposing to: (i) Increase the aggregate offering price of all securities of an issuer that may be sold within a twelve month period under Regulation E from $500,000 to $2,500,000; (ii) increase the aggregate offering price of all securities of an issuer that may be sold under Regulation E without the use of an offering circular from $50,000 to $100,000; (iii) permit the use of a preliminary offering circular in certain underwritten public offerings under Regulation E; (iv) permit certain investment companies which elect to be treated as business development companies under the Investment Company Act of 1940 to use Regulation E, and preclude business development companies from using Regulation A; and (v) revise Schedule A of Regulation E for small business investment companies and add Schedule B to that regulation for use by business development companies. The objective of the proposed amendments is to increase the ability of small business investment companies and business development companies to raise capital utilizing the offering exemption under Regulation E by expanding the companies eligible to use Regulation E and by facilitating the process for making small offerings under that regulation.

DATE: Comments on the proposed amendments should be received on or before June 25, 1984.

ADDRESS: Three copies of all comments should be submitted to George A. FitzSimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-14-84. All comments received will be available for public inspection on copying in the Commission’s Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.


SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed amendments to Regulation E [17 CFR 230.601-230.610a] and Regulation A [17 CFR 230.251-230.294] under the Securities Act of 1933 (“Securities Act”) [15 U.S.C. 77a et seq.]. The amendments would (i) increase the aggregate offering price of all securities of an issuer that may be sold within a twelve month period under Regulation E from $500,000 to $2,500,000; (ii) increase the aggregate offering price of all securities of an issuer that may be sold under Regulation E without the use of an offering circular from $50,000 to $100,000; (iii) permit the use of a preliminary offering circular in underwritten public offerings under Regulation E between the date of filing the notification and the date on which the company’s securities may be sold; (iv) permit certain investment companies which elect to be treated as business development companies under the Investment Company Act of 1940 to use Regulation E, and preclude business development companies from using Regulation A; and (v) revise Schedule A of Regulation E for small business investment companies and add Schedule B to that regulation for business development companies.

Background

Small Business Investment Companies

In 1958, Congress enacted the Small Business Investment Act (“SBIA”) in order to improve and stimulate the flow of private equity capital and long-term loan funds needed by small businesses for financing, expansion and growth. At that time, Congress also amended the Securities Act by adding section 3(c) [15 U.S.C. 77c(e)] to enable the Commission to exempt from the registration provisions of the Securities Act, completely or conditionally, securities issued by small business investment companies (“SBICs”). Pursuant to section 3(c), the Commission adopted Regulation E [17 CFR 230.601-230.610a] under the Securities Act.

Regulation E exempts from registration under the Securities Act securities issued by an SBIC that is to increase the ability of small business investment companies to raise capital utilizing the offering exemption under Regulation E and by facilitating the process for making small offerings under that regulation. In order to improve and stimulate the flow of private equity capital and long-term loan funds needed by small businesses for financing, expansion and growth, Congress also amended the Securities Act by adding section 3(c) [15 U.S.C. 77c(e)] to enable the Commission to exempt from the registration provisions of the Securities Act, completely or conditionally, securities issued by small business investment companies (“SBICs”). Pursuant to section 3(c), the Commission adopted Regulation E under the Securities Act. That is why the Commission is proposing for comment amendments to Regulation E, an exemption from registration under the Securities Act of 1933 for small offerings by small business investment companies registered under the Investment Company Act of 1940, and an amendment to Regulation A, an exemption from registration under the Securities Act of 1933 for small offerings by certain other issuers. Specifically, the Commission is proposing to: (i) Increase the aggregate offering price of all securities of an issuer that may be sold within a twelve month period under Regulation E from $500,000 to $2,500,000; (ii) increase the aggregate offering price of all securities of an issuer that may be sold under Regulation E without the use of an offering circular from $50,000 to $100,000; (iii) permit the use of a preliminary offering circular in underwritten public offerings under Regulation E between the date of filing the notification and the date on which the company’s securities may be sold; (iv) permit certain investment companies which elect to be treated as business development companies under the Investment Company Act of 1940 to use Regulation E, and preclude business development companies from using Regulation A; and (v) revise Schedule A of Regulation E for small business investment companies and add Schedule B to that regulation for business development companies.

15 U.S.C. 77c et seq.


* Section 3(c) provides that the Commission “may from time to time by its rules and regulations subject to such terms and conditions as may be prescribed therein, add to the securities exempted as provided in this section any class of securities issued by small business investment company under the Small Business Investment Act of 1958 if it finds, having regard to the purposes of that Act, that the enforcement of this Act with respect to such securities is not necessary in the public interest and for the protection of investors.”

The legislative history of section 3(c) indicates that the debate centered on the question of whether to exempt securities issued by SBICs from registration under the Securities Act automatically or to give the Commission discretionary power to exempt SBICs. S. 3643 and H.R. 12057, introduced on April 21, 1958, would have automatically exempted securities issued by SBICs from registration under the Securities Act by adding a section 3(e)(2). The bill that was eventually enacted, S. 3051, was introduced on the same day and contained the language currently in section 3(c). The Commission favored having discretionary power to exempt SBICs. Financing Small Business: Hearings on S. 3643 and S. 3651 Before the Subcomm. on Small Business of the Senate Com. on Banking and Currency, 85th Cong., 2d Sess. 234-35 (1958). In its report, the Senate Committee on Banking and Currency stated: “The Committee is convinced that it would not be wise to exempt such investment companies outright from the securities laws.” S. Rep. No. 1652, 86th Cong., 2d Sess. 23 (1959).

* Securities Act Release No. 4005 (December 17, 1956) [29 FR 10493 (December 30, 1956)].

* As used in Regulation E, the term “small business investment company” means “any company which is licensed as a small business investment company under the Small Business Investment Act of 1958 or which has received the preliminary approval of the Small Business Administration and has been notified by the Administration that it may submit a license application.” [17 CFR 230.602(e)].
registered under the 1940 Act, provided certain conditions are met. 5 Regulation E requires, among other things, that the SEC file with the Commission a notification of its initial offering and, in many cases, an offering circular. 6

When Regulation E was adopted in 1958, the maximum aggregate offering price of securities that could be offered under the regulation within a twelve month period was $300,000. In 1971, the Commission increased the aggregate offering price ceiling to its current level of $500,000. 6

Regulation E was patterned after Regulation A under the Securities Act [17 CFR 230.251-230.264], 6 as it was initially adopted pursuant to section 3(b) of the Securities Act [15 U.S.C. 77c(b)]. 10 Regulation A provides a conditional exemption from registration under the Securities Act for small offerings of securities other than those of registered investment companies and certain fractional interests in mineral rights. In 1940, the maximum aggregate offering price of securities was $500,000. 8

In September, 1978, the Commission amended Regulation A to (i) increase the aggregate offering price of all securities of an issuer that could be sold within a twelve month period pursuant to that regulation or any other exemption under section 3(b) of the Securities Act from $500,000 to $1,500,000, and (ii) increase the aggregate offering price of all securities of an issuer that could be sold under Regulation A without the use of an offering circular from $50,000 to $100,000. 11

The Commission further amended Regulation A to permit the use of a preliminary offering circular in underwritten public offerings under the regulation between the date of filing the notification and the date on which the securities may be sold when the offering will be sold by one or more underwriters which are broker-dealers registered under Section 15 of the Exchange Act. 12

In September, 1981, the Commission amended Regulation A to provide for a comprehensive revision of the Regulation A disclosure provisions. 13

**Business Development Companies**

In October, 1980, the Small Business Investment Incentive Act of 1980 ("1980 Act") was signed into law. The purpose of the 1980 Act is to stimulate the flow of capital to small, growing or financially troubled business enterprises. 15

To achieve this goal, the 1980 Act provides that certain closed-end investment companies electing to be treated as "business development companies" ("BDCs") under the 1940 Act are exempt from certain specific provisions of the 1940 Act and subject instead to a pattern of regulation specifically designed for BDCs.

A BDC is defined as a closed-end management investment company 16 that is operated for the purpose of making certain types of investments 17 that makes available significant managerial assistance 18 to the companies in which it invests.

Generally, an investment company that elects to be treated as a BDC, or intends within 90 days to so elect, 19 is exempt from certain provisions of sections 1 through 53 of the 1940 Act [15 U.S.C. 80a-1 to 80a-52], 21 but is subject to the provisions of sections 55 through 65 of the 1940 Act [15 U.S.C. 80a-54 to 80a-64]. The 1980 Act, however, did not provide any exemptions BDCs from registration under the Securities Act. 22

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6 See Rule 602(a) under the Securities Act which provides that securities issued by an SBIC "which is registered under the Investment Company Act of 1940" may be exempt from registration under the Securities Act, subject to the terms and conditions of that regulation or any other regulations adopted thereunder. The statement of additional information is not necessary to SBICs for initial public offerings of their securities, as a practical matter, SBICs probably would use Form N-5 for their initial public offerings. Regulation E most likely would be used by SBICs for subsequent public offerings meeting the conditions of that regulation.

7 If the offering is less than a stated amount, the SEC is not required to file an offering circular with the Commission. However, if the SEC finds that the enforcement of this section would be impracticable because of the costs of regulation, to the extent that it can be done without sacrificing necessary investor protection, the SEC may exempt the offering from registration.


9 Section 3(b) provides: The Commission may from time to time prescribe by rule or regulations and subject to such terms and conditions as may be prescribed in this section, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds $5,000,000.

Discussion

Congress created SBICs and BDCs to stimulate the flow of capital to small and growing businesses. The Commission is proposing amendments to Regulation E that will, if adopted, increase the ability of SBICs and BDCs to obtain needed equity capital by (1) raising the ceilings for offerings under the regulation, (2) making the disclosure requirements clearer and easier to meet, (3) permitting BDCs to use the regulations, and (4) permitting the use of a preliminary offering circular for underwritten offerings under the regulation.

Aggregate Offering Price Limits

The proposed amendments would increase the aggregate offering price of all securities of an issuer that may be offered under Regulation E within a twelve month period from $500,000 to $2,500,000. In addition, the aggregate offering price of all securities of an issuer for which an offering circular would not be required under Regulation E would be increased from $50,000 to $100,000.

As previously discussed, the SBIA and the 1980 Act were enacted to stimulate capital formation for SBICs and BDCs and the small companies in which they invest. Regulation E, which provides a conditional exemption from registration under the Securities Act, is a natural vehicle for accomplishing the objective of these legislative programs. However, Regulation E has been infrequently used in recent years, due in large part to the low offering ceiling currently in place. Raising the offering ceiling to $2,500,000 would facilitate capital-raising by SBICs and BDCs consistent with the purposes of the SBIA and the 1980 Act, while maintaining the investor protections traditionally afforded smaller offerings.

Preliminary Offering Circular

The proposed amendments would parallel amendments to Regulation A that permit the use of a preliminary offering circular in an underwritten offering between the date of filing the notification and the date securities may be sold. Currently, under Rule 604 [17 CFR 230.604], an offering under Regulation E may not be commenced until at least ten business days after the original notification is filed with the Commission, unless acceleration is requested by the issuer and granted by accredited persons or a limited number of purchasers. Rule 242 was the predecessor of Rule 505 of Regulation D [17 CFR 230.505] which was adopted in Securities Act Release No. 6369 [Mar. 8, 1982] [47 FR 11251 (Mar. 10, 1982)].

However, a sale of the security is not permitted.87 If the preliminary offering circular is inaccurate or inadequate in any material respect, a revised preliminary offering circular or the final offering circular must be furnished to all persons to whom the securities are to be sold.48 The 10-day waiting period would be extended by Rule 506 by 48 hours to the mailing of any confirmation of the sale or receipt by such persons under circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale.88 If the preliminary offering circular is not inaccurate or inadequate, the final offering circular, as provided in Rule 605(f)(4), must be sent to each purchaser of the security either before sending a confirmation of the sale or when the confirmation is sent.

Schedule A: Small Business Investment Companies

The Commission is proposing to revise Schedule A of Regulation E for SBICs to make it clearer and easier to use. Schedule A has not been changed significantly since 1958. Currently, Schedule A requires information relating to the offering, the business and investment policies of the issuer, the issuer’s management and certain unaudited financial information concerning the issuer. The proposed revision of Schedule A would not materially change these basic requirements, but would simplify the Schedule to emphasize disclosure of information that is most important to the average investor.

As proposed, Schedule A would provide more precise guidance to issuers in preparing a Regulation E offering circular. The format of the proposed Schedule A would be condensed to six items,89 but would provide expanded descriptions and explanations of the information required. For example, the revised Schedule A would specify the exact information and tables required on the cover page of the offering circular. In addition, the revised Schedule A would focus on disclosure about the significant and active investment objectives and policies of the issuer. Recitals of negative or dormant investment policies and practices would not be required. Further, the present

87 See proposed Rule 605(b).
88 Schedule B for BDC’s would contain seven disclosure items.
disclosures under Schedule A would be slightly expanded to require certain additional information about the business experience of directors, officers and certain shareholders of the issuer who are significantly involved in the investment decisions of the issuer, or who own or control a controlling portfolio company of the issuer. In addition, information on the investment adviser of the issuer would be required if applicable. The proposed amendments would require a profit and loss or income statement for the two fiscal years preceding the date of filing (and any subsequent period up to the date of the balance sheet) instead of the current requirement of including the profit and loss or income statement for the last three fiscal years (and any subsequent period up to the date of the balance sheet). The amendments also would require that the financial statements for the issuer’s latest year be certified in accordance with Regulation S-X if the issuer has filed or is required to file certified financial statements with the Commission for that fiscal year.

These revisions will make the Schedule simpler and easier to use and will lead to clearer and more readable offering circulars, without increasing the burdens on issuers using the regulation.

Schedule B: Business Development Companies

Registered investment companies are precluded from using Regulation A, which was specifically designed for operating companies. Since BDCs are more similar in structure and operations to registered investment companies than to operating companies, the Commission believes that these companies also should not be permitted to use Regulation A. Consequently, pursuant to its authority under section 3(b) of the Securities Act, the Commission is proposing to allow BDCs to use Regulation E. To this end, the Commission is proposing to add Schedule B to Regulation E for use by BDCs.

Schedule B will be the format for the offering circular used by BDCs, as required by rule 605 of Regulation E, and is very similar to Schedule A for SBICs, except that certain items are directed to the special characteristics of BDCs.

The Commission is also making technical modifications to Form 1-B so that BDCs can use this for the notification required by Rule 604 of Regulation E. In addition, the Commission is proposing an amendment to Regulation A to preclude BDCs from using that regulation.

List of Subjects in 17 CFR Parts 230 and 239

Reporting and reconekeeping requirements, Securities.

Text of Proposed Amendments

The Commission is publishing for comment amendments to Part 230 and Part 239 of Chapter II, title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. Paragraph (a) of §230.602 is revised to read as follows:

§230.602 Securities exempted.

(a) Except as hereinafter provided in this rule, securities issued by any small business investment company which is registered under the Investment Company Act of 1940, or any closed-end investment company that has elected to be regulated as a business development company under the Investment Company Act of 1940 or has notified the Commission that it intends to elect to be regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940, will be exempt from registration under the Securities Act of 1933, subject to the terms and conditions of §§230.601 to §230.610a. As used in this paragraph, the term "small business investment company" means any company which is licensed as a small business investment company under the Small Business Investment Act of 1954 or which has received the preliminary approval of the Small Business Administration and has been notified by the Administration that it may submit a license application. As used in this paragraph, the term "business development community" means any closed-end investment company which meets the definitional requirements of section 2(a)(48) (A) and (B) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)).

2. Introductory text to paragraph (a) of §230.603 is revised to read as follows:

§230.603 Amount of securities exempted.

(a) The aggregate offering price of all of the following securities of the issuer shall not exceed $2,500,000.

3. Paragraphs (a) and (c) of §230.604 are revised as follows:

§230.604 Filing of notification on Form 1-E.

(a) At least 10 days (Saturdays, Sundays and holidays excluded) prior to the date on which the initial offering or sale of any securities is to be made under §§230.601 to §230.610a, there shall be filed with the Commission four copies of a notification on Form 1-E. The Commission may, however, in its discretion, authorize the commencement of the offering or sale prior to the expiration of such 10-day period upon a written request for such authorization. At the time of filing the notification, the applicant shall pay to the Commission a fee of $100, no part of which shall be refunded.

(c) Any amendment to the notification shall be signed in the same manner as the original notification. Four copies of such amendment shall be filed with the Commission at least 10 days prior to any offering or sale of the securities subsequent to the filing of such amendment, or such shorter period as the Commission, in its discretion, may authorize upon a written request for such authorization.

4. Paragraphs (a) introductory text and (a)(4) are revised and paragraph (f) is added to §230.605 as follows:
§ 230.605 Filing and use of the offering circular.

(a) Except as provided in paragraphs (b) or (f) of this rule and in § 230.606:

(1) No written offer of securities of any issuer shall be made under §§ 230.601 to 230.610a unless an offering circular containing the information specified in Schedule A or Schedule B, as appropriate, is concurrently given or specified in Schedule A or Schedule B, as the case may be, to the person to whom the offer is made, or has been sent to such person under such circumstances that it would normally have been received by him at or prior to the expiration of the 10-day waiting periods for offerings provided for in § 230.604(a) and (c) and paragraph (e) of this section and such distribution may be accompanied or followed by oral offers related thereto, provided that the requirements of paragraphs (f)(1) through (f)(4) are met. For the purposes of this section, any offering circular distributed prior to the expiration of the ten day waiting period is called a Preliminary Offering Circular. Such Preliminary Offering Circular may be used to meet the requirements of paragraph (a)(2) of § 230.605, provided that if a Preliminary Offering Circular is inaccurate or inadequate in any material respect, a revised Preliminary Offering Circular or an offering circular of the type referred to in paragraph (a)(2) shall be furnished to all persons whom the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or shall be sent to such persons under such circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of sale.

(1) Such Preliminary Offering Circular contains substantially the information required by this section to be included in an offering circular, or contains substantially that information except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price.

(2) The outside front cover page of the Preliminary Offering Circular shall bear the caption “Preliminary Offering Circular,” the date of its issuance, and the following statement which shall run along the left hand margin of the page and printed perpendicular to the text, in boldface type at least as large as that used generally in the body of such offering circular:

A notification pursuant to Regulation E relating to these securities has been filed with the Securities and Exchange Commission. Information contained in this Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time an offering circular which is not designated as a Preliminary Offering Circular is delivered. This Preliminary Offering Circular shall not constitute an offer to sell or solicitation of an offer to buy nor shall there be any sales of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

(3) The Preliminary Offering Circular relates to a proposed public offering of securities that is to be sold by or through one or more underwriters, which are broker-dealers registered under Section 15 of the Securities Exchange Act of 1934, each of which has furnished a signed Consent and Certification in the form prescribed as a condition to the use of such offered circular.

(4) An offering circular which contains all of the information specified in Schedule A or Schedule B (17 CFR § 230.610a) and which is not designated as a Preliminary Offering Circular is furnished with or prior to delivery of the confirmation of sale to any person who has been furnished with a Preliminary Offering Circular pursuant to this paragraph.

5. The introductory paragraph and paragraph (a) of § 230.606 are revised to read as follows:

§ 230.606 Offering not in excess of $100,000.

No offering circular need be filed or used in connection with an offering of securities under §§ 230.601 to 230.610a if the aggregate offering price of all securities of the issuer offered or sold without the use of such an offering circular does not exceed $100,000 computed in accordance with § 230.603, provided the following conditions are met:

(a) There shall be filed as an exhibit to the notification four copies of a statement setting forth the information (other than financial statements) required by Schedule A or Schedule B to be set forth in an offering circular.

6. § 230.610a is revised.

§ 230.610a Schedule A—Contents of offering circular for small business investment companies; Schedule B—Contents of offering circular for business development companies.

Schedule A—Contents of Offering Circular for Small Business Investment Companies

General Instructions

1. The information in the offering circular should be organized to make it easier to understand the organization and operation of the company. The required information need not be in any particular order, except that items 1 and 2 must be the first and second items in the offering circular.

2. The offering circular, including the cover page, may contain more information that is called for by this Schedule, provided that it is not incomplete, inaccurate, or misleading. Also, the additional information should not, by its nature, quantity, or manner of presentation, obscure or impede understanding of required information.

Item 1. Cover Page

The cover page of the offering circular shall include the following information:

(a) The name of the issuer;

(b) The mailing address of the issuer's principal executive offices including the zip code and the issuer's telephone number;

(c) The date of the offering circular;

(d) A list of the type and amount of securities offered (e.g., if the securities offered include redemption or conversion features, so state); and

(e) The following statement in capital letters printed in boldface roman type at least as large as ten-point modern type and at least two points leaded:

"THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE SECURITIES AND EXCHANGE COMMISSION; HOWEVER, THE COMMISSION HAS NOT MADE AN INDEPENDENT DETERMINATION THAT THE SECURITIES BEING OFFERED ARE EXEMPT FROM REGISTRATION. THE SECURITIES AND EXCHANGE COMMISSION DOES NOT PASS UPON THE MERITS OF OR GIVE ITS APPROVAL TO ANY SECURITIES OFFERED OR THE TERMS OF THE OFFERING, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SOLING LITERATURE."

(f) The name of the underwriter or underwriters, if applicable;

(g) A cross-reference to the place in the offering circular discussing the material risks involved in purchasing the securities, printed in boldface roman type at least as large as ten-point modern type and at least two points leaded;

(h) The approximate date when the proposed sale to the public will begin; and

(i) The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the offering circular as to all securities being offered (estimate, if necessary):

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
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<tbody>
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Also, the additional information should not, by its nature, quantity, or manner of presentation, obscure or impede understanding of required information.
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Per share or other unit basis-------------------------
any minimum required sale, and any
efforts basis, the cover page should set forth
offered should be combined with the table
understandings with or for the benefit of any
value, paid, to be set aside, disposed of, or
other persons in which any underwriter is
of such security.
Commissions paid by other persons or any
is to be made.
cash, state the basis upon which the offering
which the price is to be determined.
underwriting expenses to be borne by the
owned after the offering.
Include the following:
whose laws it is organized:
of the issuer as specified in sections 4 and 5
small business investment company; and
the issuer and the name of the state under
(a) Concisely discuss the organization and
stockholders and underwriters (including any
affiliates thereof). If a "finder" is not
registered with the Commission as a broker
or dealer, disclose that fact.
(b) Outline briefly the plan of distribution
of any securities being issued which are to be
offered through the selling efforts of brokers
or dealers or otherwise than through
underwriters.
(e)(1) Describe any arrangements for the
return of funds to subscribers if all of the
securities to be offered are not sold; if there
are no such arrangements, so state.
(2) If there will be a material delay in the
payment of the proceeds of the offering by
the underwriter to the issuer, the nature of
the delay and the effects on the issuer should
be briefly described.
Item 4. Management and Certain Security
Holders of the Issuer
(a) Give the full names and complete
addresses of all directors, officers, members
of any advisory board of the issuer and any
person who owns more than 5 percent of any
class of securities of the issuer (other than
the Small Business Administration) if the
issuer is a small business investment
company as defined in section 230.602(a) of
this chapter).
(b) Identify each person who as of a
specified date no more than 30 days prior to
the date of filing of this registration
statement, controls the issuer as specified in
section 2(a)(9) of the Investment Company
Act of 1940.
(c) Give the business experience over the
last five years of any person named in (a)
above who is or is expected to be
significantly involved in the investment
decisions of the issuer or in providing
advisory services, direction or control of
portfolio companies of the issuer.
(d) State the aggregate annual
remuneration of each of the three highest-
paid persons who are officers or directors of
the issuer and all officers and directors as a
group during the issuer's last fiscal year.
State the number of persons in the group
referred to above without naming them.
(e) Describe all direct and indirect interests
(by security holdings or otherwise) of each
person named in (a) above in the issuer
and (ii) in any material transactions within
the past two years or in any material
proposed transaction to which the issuer was
or is to be a party. Include the cost to such
persons of any assets or services for which
any payment by or for the account of the
issuer has been or is to be made.
(f) Provide, if applicable, for each
investment adviser of the issuer as defined in
section 2(20) of the Investment Company
Act of 1940:
(i) the name and address of the investment
adviser and a brief description of its
experience as an investment adviser, and, if
the investment adviser is controlled by
another person, the name of that person and
the general nature of its interest. (If the
investment adviser is subject to more than
one level of control, it is sufficient to give
the name of the ultimate control person.)
(ii) a brief description of the services provided by the investment adviser. (If, in addition to providing investment advice, the investment adviser or persons employed by or associated with the investment adviser are, subject to the authority of the board of directors, responsible for overall management of or investment in other business affairs, it is sufficient to state that fact in lieu of listing all services provided.)

(iii) a brief description of the investment adviser's compensation. (If the issuer has been in operation for a full fiscal year, provide the compensation paid to the adviser for the most recent fiscal year as a percentage of average net assets. No further information is required in response to this item if the adviser is paid on the basis of a percentage of net assets and if the issuer has neither changed investment advisers nor changed the basis on which the adviser was compensated during the most recent fiscal year. If the fee is paid in some manner other than in this manner, provide a description of the basis of payment. If the registrant has not been in operation for a full fiscal year, state generally what the investment adviser's fee will be as a percentage of average net assets, including any break-even point where it is not necessary to include precise details as to how the fee is computed or paid.)

Item 5. Capital Stock and Other Securities

(a) Describe concisely the nature and most significant attributes of the security being offered, including: (i) a brief discussion of voting rights; (ii) restrictions, if any, on the right freely to retain or dispose of such security; (iii) conversion rights, if applicable; and (iv) any material obligations or potential liability associated with ownership of such security (not including investment risks).

(b) If the rights of holders of such security may be modified otherwise than by a vote of majority or more of the shares outstanding, voting as a class, so state and explain briefly.

c) If the issuer has any other classes of securities outstanding (other than bonds and notes) that are senior securities under Section 18(g) of the 1940 Act (15 U.S.C. 80a-18(g)), identify them and state whether they have any preference over the security being offered.

(d) Describe briefly the issuer's policy with respect to dividends and distributions, including any options shareholders may have as to the receipt of such dividends and distributions.

(e) Describe briefly the tax consequences to investors of an investment in the securities being offered. Such description should not include detailed discussions of applicable law. If the issuer intends to qualify for treatment under Subchapter M, it is sufficient, in the absence of special circumstances, to state briefly that in that case: (1) the issuer will distribute all of its net income and gains to shareholders and that such distributions are taxable income or capital gains; (ii) shareholders may be properly liable for taxes on income and gains of the issuer but that shareholders not subject to tax on their income will not be required to pay tax on amounts distributed to them; and that (iii) the issuer will inform shareholders of the amount and nature of such income or gains.

(f) Where there is a material disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons for shares acquired by them in a transaction during the past three years, or which they have a right to acquire, there should be included a comparison of the public contribution under the proposed public offering and the effective cash contribution of such persons. In such cases, and in other instances where the extent of the dilution makes it appropriate, the following shall be given: (1) the net tangible book value per share before and after the distribution; (2) the amount of the increase in such net tangible book value per share attributable to the cash payment made by purchasers of the shares being offered; and (3) the amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

Item 6. Financial Statements

Furnish appropriate financial statements of the issuer as required below. Such statements shall be prepared in accordance with generally accepted accounting principles and practices. The statements required for the issuer's latest fiscal year shall be certified by an independent public accountant or certified public accountant in accordance with Regulation S-X if the issuer has filed or is required to file with the commission certified financial statements for such fiscal year; the statements filed for the period or periods preceding such last year need not be certified.

(a) A balance sheet as of a date within 90 days prior to the date of filing the notification with the commission.

(b) A profit and loss or income statement for each of the last two fiscal years and for any subsequent period up to the date of the balance sheet furnished pursuant to (a) above.

Schedule B—Contents of Offering Circular for Business Development Companies

General Instructions

Same as General Instructions to Schedule A.

Item 1

Same as Item 1 of Schedule A.

Item 2. General Description Issuer

(a) Concisely discuss the organization and operation or proposed operation of the issuer. Include the following:

(i) basic identifying information, including:

(A) The date and form of organization of the issuer and the name of the state under the laws of which it is organized; and

(B) A brief description of the nature of a business development company.

Note.—A business development company having a wholly-owned small business investment company subsidiary should disclose how the subsidiary is regulated, e.g., as a small business investment company registered under the Investment Company Act of 1940, and what percentage of the parent company's assets are held by such subsidiary. The business development company should also describe the small business investment company's operations, including any material difference in investment policies between the business development company and its small business investment company subsidiary.

(ii) A concise description of the investment objectives and policies of the issuer, including:

(A) Those objectives may be changed without a vote of the holders of the majority of the voting securities, a brief statement of such effect; and

(B) A brief discussion of how the issuer proposes to achieve such objectives, including:

(1) The types of securities (for example, bonds, convertible debentures, preferred stocks, common stock) in which it may invest, indicating the proportion of the assets which may be invested in each such type of security.

(2) If the issuer proposes to have a policy of concentrating in a particular industry or group of industries, identification of such industry or industries. (Concentration, for purposes of this item, is deemed to be 25 percent or more of the value of the issuer's total assets invested or proposed to be invested in a particular industry or group of industries).

(3) Investment in companies for the purpose of exercising control or management;

(4) The policy with respect to any assets that are not required to be invested in eligible portfolio companies or other companies qualifying under section 55 of the Investment Company Act of 1940;

(5) The policy with respect to excluding significant managerial assistance to eligible portfolio companies or other companies qualifying under section 55 of the Investment Company Act of 1940;

(6) The policy with respect to investing as part of a group.

(C) Identification of any other policies of the issuer that may not be changed without the vote of the majority of the outstanding voting securities, including the policy not to withdraw its election as a business development company without approval by the majority of the outstanding voting securities.

(D) A concise description of those significant investment policies or techniques (such as investing for control or management) that are not described pursuant to subparagraphs (B) or (C) above that the issuer employs or has the current intention of employing in the foreseeable future.

(b) Discuss briefly the principal risk factors associated with investment in the issuer, including factors peculiar to the issuer as well as those generally attendant to investment in a business development company with investment policies and objectives similar to the issuer.

Item 3

Same as Item 3 of Schedule A.

Item 4

Same as Item 4 of Schedule A.
Item 5. Portfolio Companies

Furnish the following information, in the tabular form indicated, with respect to the portfolio companies of the issuer, as of a specified date within 90 days prior to the date of filing the notification with the Commission pursuant to an offering of securities under Regulation E.

<table>
<thead>
<tr>
<th>Name and address of portfolio companies</th>
<th>Nature of its principal business</th>
<th>Title of securities owned, controlled or held by issuer</th>
<th>Percentage of class owned, controlled or held by issuer</th>
<th>Amount of loan to portfolio company (footnote general terms of loan)</th>
</tr>
</thead>
</table>

Circular and (b) if such Preliminary Offering Circular is inaccurate or inadequate in any material respect, to furnish a revised Preliminary Offering Circular or an offering circular of the type referred to in Rule 605(f)(4) to all persons to which the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons. If the offering circular is adequate in any material respect, to provide the funds paid in by investors for the securities to be offered will be returned to them in the event such license is not obtained.

Item 6

Same as Item 5 of Schedule A.

Item 7

Same as Item 6 of Schedule A.

8. Paragraph (b)(2) of § 230.252 of Regulation A is revised to read as follows:

§ 230.252 Securities exempted.

(2) Securities of any investment company registered or required to be registered under the Investment Company Act of 1940, or any company which has elected to be regulated as a small business development company under the Investment Company Act of 1940 or has notified the Commission that it intends to elect to be regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

9. Section 239.200 is revised and paragraph (e)(3) is added and paragraph (f) is revised of Item 9 of Form 1-E described in § 239.200 as follows:

§ 239.200 Form 1-E—Notification under Regulation E.

This form shall be used for notification pursuant to Rule 604 (§ 230.604 of this chapter) of Regulation A (§§ 230.601–230.610a of this chapter) by a small business investment company or business development company described in Rule 602 (§ 230.602 of this chapter).

Form 1-E—Notification under Regulation E

Item 9. Exhibits

(e) * * *

(3) If a Preliminary Offering Circular will be distributed as permitted by Rule 605(f), the Consent and Certification by Underwriter shall include the following additional paragraph:

The undersigned hereby undertakes, in connection with any distribution of the Preliminary Offering Circular as permitted by Rule 605(f), (a) to keep an accurate and complete record of the name and address of each person furnished such Preliminary Offering Circular and (b) if such Preliminary Offering Circular is inaccurate or inadequate in any material respect, to furnish a revised Preliminary Offering Circular or an offering circular of the type referred to in Rule 605(f)(4) to all persons to which the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons. If the offering circular is inadequate in any material respect, to provide the funds paid in by investors for the securities to be offered will be returned to them in the event such license is not obtained.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments to Regulation E and Regulation A proposed herein. The analysis notes that the proposed amendments would raise the offering ceilings, permit use of a preliminary offering circular and revise the disclosure requirements under Regulation E. The amendments would also permit business development companies to use Regulation E, and preclude them from using Regulation A. The objective of the proposed amendments is to increase the ability of small business investment companies and business development companies to raise capital utilizing the offering exemption under Regulation E by expanding the companies eligible to use Regulation E and by facilitating the process for making small offerings under that regulation.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Stephen C. Beach, Office of Disclosure Legal Services, Securities and Exchange Commission, (202) 272-3040, Room 5104, 450 Fifth Street, NW., Washington, D.C. 20549.

Statutory Authority

The Commission is proposing these amendments to Regulation E and Regulation A under the Securities Act of 1933 pursuant to sections 3(b) and 3(c) of the Securities Act of 1933 [15 U.S.C. 77c (b), (c)] and section 38 of the Investment Company Act of 1940 [15 U.S.C. 80a–37].

By the Commission.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-11724 Filed 4-30-84; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM84-12-000]

Revisions to the PGA Regulations;
Notice of Inquiry

April 27, 1984.


ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this Notice of Inquiry to obtain information to determine to what extent, if any, the purchased gas adjustment (PGA) regulations in § 154.38(d)(4) should be revised. In particular, the Commission seeks comments on whether changes may be appropriate in light of the deregulation of certain wellhead prices on January 1, 1985. In addition, the Commission requests comments on whether it should propose general revisions to the format, methodology, or components of PGA filings.

DATES: The deadline for written comments is May 31, 1984.

ADDRESS: An original and fourteen copies of written comments should reference Docket No. RM84-12-000 and should be submitted to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20424.

FOR FURTHER INFORMATION CONTACT:

Barbara Christin, Office of the General Counsel, (202) 357-8033
Warrum Edmunds, Chief, Gas Pipeline and Rates Adjustments Branch, Office of Pipeline & Producer, Regulation, (202) 357-5379.
I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing this Notice of Inquiry to obtain information and views that will aid the Commission in determining to what extent, if any, the purchased gas adjustment (PGA) regulations in § 154.38(d)(4) should be revised. The Commission requests comments on whether changes may be appropriate in light of the deregulation of certain wellhead prices on January 1, 1985. In addition, the Commission requests comments on whether it should propose general revisions to the format, methodology, or components of PGA filings.

II. Revisions Due to Partial Decontrol

Under the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301-3432), wellhead price controls will be removed on a substantial portion of natural gas on January 1, 1985. There is concern that there will be sharp fluctuations in the average cost of natural gas to pipeline purchasers occurring immediately after decontrol in 1985. Indefinite price escalation clauses in purchase gas contracts will qualify certain production contracts will qualify certain production.

The Commission is concerned that the present PGA regulations may not transmit market signals soon enough to enable pipelines to respond to changes in gas costs due to this expanded deregulation. Because of the semi-annual nature of the PGA, major changes in a pipeline's purchased gas costs due to increases in wellhead prices, contract renegotiations, or unilateral actions taken by the pipeline to reduce its gas costs may not be reflected quickly in the pipeline's rates. Thus, if prices for deregulated gas change rapidly, the use of historical prices in PGAs could lead to large under- or over-recoveries of gas costs which could adversely affect pipelines' markets and cause recovery problems.

C. Method of Valuation

Section 154.38(d)(4)(iv)(a) of the PGA regulations provides that a pipeline's PGA may reflect change in the price of deregulated supplies, in pipeline rates, or in purchase mix.

3. Monthly revisions. Alternatively, a pipeline could be permitted to make monthly revisions to the current adjustment if a significant change occurs in purchased gas costs for deregulated and pipeline supplies. The Commission requests comments on this approach and on how a "significant change" might be defined.
PGA. As a result, under the current regulations, in January 1985 a pipeline may be faced with the problem of large under- or over-recovered gas costs.

The Commission, therefore, requests comments on whether it should propose amendments to the regulations to permit a pipeline to estimate prices for deregulated supplies that are priced under independent price escalation clauses based on the prices it anticipates paying during the PGA period. Alternatively, the regulations could be amended to specify that the price for deregulated supplies would be either the price in effect on the effective date of the PGA, if the pipeline knows what the price will be, or the last actual prices paid by the pipeline prior to the filing date of the PGA.

These options could be proposed in combination with the other options listed above. The Commission is concerned, however, that the ability to estimate prices for deregulated supplies in quarterly adjustment could result in a pipeline's using its PGA as a marketing tool rather than as a tracker of actual costs. For example, a pipeline may underestimate the price of deregulated supplies in order to make its rates for that quarter more competitive, and then attempt to recover the resulting undercollections from less price sensitive customers in a subsequent period.

The Commission also requests comments on the related issue of whether a pipeline should be required to use actual prices it knows will occur during an adjustment period or whether it should be allowed to use estimated prices.

D. Price Information

Pipeline currently are required to provide information in their PGA filings on the NGPA category and subcategory for each purchase. After January 1, 1985, the categories and subcategories for decontrolled supplies will not be the primary factor determining their price. The Commission requests comments on whether additional information will be needed to adequately review a filing for compliance, for purchasing practices, and, where appropriate, for a determination under section 601(c)(2) of the NGPA. The Commission, for example, could require a pipeline to include information relating to the contractual basis for the prices of the deregulated supplies.

E. Nature of Revisions

The Commission is considering whether any of the changes to the PGA procedures discussed above should be implemented on a permanent or a temporary basis. At present, it is not known how quickly prices will change after deregulation. Prices may change slowly and may stabilize after a short time, thus reducing the need for more frequent PGA filings. Changes in procedures for a limited period of time, such as one year, may be preferable. The Commission could then consider, based on the year of experience, whether to continue the changes, let them expire, or propose these or other permanent changes to the PGA format.

Accordingly, the Commission seeks comments on whether any of the above suggestions should be implemented on a temporary basis, such as by a waiver of portions of the PGA regulations, or by permanent amendments to the regulations.

III. General Revisions to the PGA

In addition to the above changes that are being considered in view of partial decontrol, the Commission also requests comments on whether to make other revisions to the PGA regulations. The PGA regulations, which are fairly general, were promulgated in 1972 and have not been changed substantially since that time.

The Commission believes that it may be appropriate to update the regulations to include established Commission policy, to standardize procedures, and to clarify some of the terminology. Listed below are the areas being considered for revision by the Commission.

A. Revisions to Deferred Account Surcharges

1. Treatment of minimum bill costs and revenues. The regulations do not address specifically the treatment of minimum bill costs and revenues in a pipeline's PGA. The Commission is concerned that, because the regulations are general, some pipelines might be confused as to how they should treat these costs and revenues in Account No. 191 and in gas purchase accounts.

The purchase of PGA clauses is to permit pipelines to track their purchased gas costs semi-annually. Overcollections and undercollections of purchased gas costs are reconciled through the use of Account No. 191, thus keeping a pipeline's revenues and expenses in balance. Any revenues relating to gas costs should be accounted for in Account No. 191 balances. Thus, a pipeline is not entitled to minimum bill revenues attributable to gas costs.

In addition, while a pipeline may include minimum bill charges paid to its pipeline suppliers in Account No. 191 balances, the Commission, in individual cases, has not permitted the pipeline to include unpaid minimum bill costs in Account No. 191 balances.

The Commission, therefore, requests comments on the following questions: 2

a. Should the regulations be amended to specify the treatment of minimum bill costs and revenues in a PGA, or are there situations that would warrant treating these costs and revenues on a case by case basis?

b. Should the regulations specify the accounts or subaccounts that should be used for these minimum bill costs?

2. Carrying charges. Section 154.38[d][4][iv][c] of the regulations allows but does not require the imposition of carrying charges on deferred account balances. In Account No. 191, if a pipeline's deferred account balances in Account No. 191 are in an overcollected status, the inclusion of carrying charges compensates the pipeline's customers for paying the higher costs. However, when a PGA surcharge adjustment reflects undereollection balances in Account No. 191, the imposition of carrying charges compensates the pipeline for the undereollections. The Commission requests comments on whether the regulations should be amended to require carrying charges on the deferred account balances.

3. Refunds. Section 154.38[d][4][vii] of the PGA regulations requires that the jurisdictional portion of all supplier refunds (including interest received) shall be flowed through Account No. 191 to the pipeline's jurisdictional customers. Under this procedure, pipelines that make semi-annual PGA filings pass through a refund over a six-month period.

The Commission believes that, generally, this procedure is the most equitable and least burdensome. However, problems with this six-month flowthrough requirement may arise, depending on the amount of the refund, the number of jurisdictional customers affected by the refund, and the pattern in which the overpayments were assessed on the customers.

For example, the flowthrough of a large refund from a period substantially longer than six months may result in an unfair competitive advantage for the customers. 3

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2 For example, the flowthrough of a large refund from a period substantially longer than six months may result in an unfair competitive advantage for the customers. Such questions may or may not be relevant to the proceeding depending on Commission action in Docket No. RM85-71-000, Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, 46 FR 39,238 (August 30, 1983)
pipeline. The proposed PGA adjustment will reflect the refund, but not accrued increases in gas costs. Thus, the refunding pipeline's commodity rate could temporarily undercut a competing pipeline's rate, despite the fact that the refunding pipeline's underlying cost of gas is higher than its competitors.

Another potential refund problem with the PGA mechanism as presently structured is that the distribution of refunds will be based on actual sales during the period the refunds are being made, while the overpayments were collected during a different period. Customers' sales levels and the ratio of those levels to total jurisdictional sales are often different for the two periods. Thus, due to the seasonal demand for natural gas or the expiration of a service agreement, some consumers who made the overpayments may not be on the system when the refunds are made.

One alternative to the PGA approach, particularly where a large refund is involved, is a lump sum cash payment based either on actual volumes sold during the period of overpayment or on total volumes sold during the most recent twelve months of actual sales. This procedure has several advantages. First, it provides an immediate benefit to the pipeline's customers to the full extent of the refund. Second, if the refund is based on volumes associated with the period of overpayment, it benefits those who actually made the overpayments. Third, a lump sum cash refund avoids distortion of market signals and unfairness to the pipeline's competitors. Finally, it enables the pipeline's customers to receive the refunds to which they are entitled and, at the same time, to purchase gas at a lower cost from an alternate supplier.

However, there are often administrative disadvantages to this approach. For example, where several interstate pipelines sell to one another, a refund by an upstream pipeline would trigger several downstream refund checks to be sent to various downstream customers. A distribution company may, therefore, receive a refund that has been passed through several pipelines. The amount of the refund received may be so small as to have little or no effect on the distribution company's rates. However, the pipelines may have incurred significant administrative costs in making the lump sum refunds to that company.

Another alternative refund methodology is a combination of the

PGA passsthrough and the lump sum cash refund. Pipelines could use Account No. 191 surcharge identification and disbursement up to an agreed-upon amount for each pipeline. Refunds exceeding that level would be distributed as cash payments within a specified period of time and would be based on historical sales volumes. Accumulated refunds would be cleared with each scheduled PGA filing.

A fourth approach would allow the pipeline to retain the refund under certain conditions as an offset against future rate increases. For example, a pipeline might be permitted to retain refunds if it agreed not to increase its rates for a specified period of time. The pipeline would use the refund to offset purchase gas cost increases occurring during that period. A pipeline could use this method to maintain rate stability for extended periods.

Finally, the Commission believes that a deferred account surcharge adjustment based on a twelve-month recovery period, instead of a six-month period, may alleviate some of these problems without creating the administrative burdens associated with the lump sum methodology.

In addition to the refund options described above, the Commission also requests comments on the following questions.

a. How should anticipated refunds be treated in the context of the above described refund options?

b. Should pipelines be permitted to include, in the surcharge adjustment, refunds received after the close of the deferral period but before the effective date of the PGA adjustment?

c. Should specific accounting methodologies be mandated for refunds?

d. Should all refunds be flowed through under one methodology or should different procedures apply to producer, pipeline supplier, and pipeline self-generated refunds?

e. Should all pipelines be required to follow the same refund procedure? This requirement would insure that unfair competitive advantages do not occur between competing pipelines as a result of differing refund treatment.

4. Timing of surcharge adjustment.

The Commission is concerned that problems similar to those discussed above relating to refunds may occur because of the timing of the surcharge adjustment. Under the Commission's current PGA regulations, the months of the year during which the Account No. 191 surcharge is collected do not correspond to the months of the year in which the over- or under-recoveries of gas costs were incurred. For example, if a pipeline over-recover its gas costs during the winter months, these overrecoveries are refunded to the pipeline's summer industrial customers. Because of seasonal demand, the pipelines customers who were overcharged during the winter months may not benefit from the surcharge credit in effect for the summer months. Therefore, the Commission requests comments and suggestions on possible solutions to this problem.

5. Treatment of exchange transactions. The regulations permit a pipeline to reflect in Account No. 191 actual costs associated with nonconcurrent exchange transactions. A nonconcurrent transaction exists when one pipeline delivers gas several months or more before the other pipeline will redeliver the gas. This is in contrast to most exchange transactions where both pipelines deliver equal volumes of gas each month, or, if the deliveries are unequal, where the resulting imbalance usually will be corrected within 30-90 days. A pipeline recovers its actual costs from these concurrent exchange transactions through its Account Nos. 800-803, where it should reflect the actual purchased gas costs of the gas it delivers. Presently, only the noncurrent exchange transactions are passed through Account No. 806 and adjusted for computation of the over- or under-collected gas costs recorded in Account No. 191. If all exchange transactions are flowed through Account No. 806 into Account No. 191, the purchase gas costs would be further adjusted to reflect assigned values for both the noncurrent and concurrent exchange gas rather than the actual original cost of the gas exchanged. The Commission requests comments on whether it should amend the PGA regulations to permit this type of treatment of exchange costs.

6. Costs. Purchased gas costs ordinarily should not be included in Account No. 191 until they are actually paid. It is the Commission's policy that the costs reflected in the Account No. 191 surcharge calculation should only be outstanding due to normal billing and accounts payable payment cycles. This policy is meant to insure that unpaid accruals are not flowed through a pipeline's purchased gas adjustment as a surcharge resulting in precollections of gas costs from the pipelines customers. The Commission requests comments on whether it should amend its PGA regulations to codify this policy.

B. Other Revisions

1. Change to notice period. Section 154.38(d)(3), the regulations require a pipeline to file its PGA at least 30 days prior to the effective date.
before the PGA rate is to become effective. In recent years, PGA rate filings have become more complex. The 30-day notice period makes it difficult for the Commission, as well as a pipeline’s customers or other interested parties, to conduct a preliminary evaluation of the pipeline’s PGA rate filing. Accordingly, the Commission is considering, and requests comments on, whether to add, as a condition to a pipeline’s being permitted to continue to include a PGA clause in its tariff, a requirement that a pipeline give the Commission, customers, and interested parties at least 45 days notice (or some longer period) for their PGA rate adjustments instead of the present 30-day minimum notice period.

1. Changes to tariff sheets. Most pipelines identify adjustments to their current average cost of gas (current adjustment) separately from their surcharge adjustment on their tariff sheets and in their PGA filings. However, several pipelines combine the current and the surcharge adjustments to show a total change in gas costs. The Commission is considering whether to require all pipelines to calculate and show their current and their surcharge adjustments separately on their tariff sheets and in their PGA filings.

Although pipelines reflect their average cost of gas on the rate sheet included in their tariff, many do not specify if the calculations are based on a unit of sales or a unit of purchase methodology. The Commission requests comments on whether it should require a pipeline to specify on its tariff sheet the methodology it uses to calculate its average cost of gas.

4. Lost and unaccounted for gas. Many pipelines currently compute their average cost of purchased gas using a unit of sales methodology. Under this methodology, a pipeline is able to recover costs expended for all gas that is either used by the pipeline in its operations or is lost or unaccounted for. Moreover, the amount of lost or unaccounted for gas may not correspond with amounts normally reflected in the pipeline’s rates. The Commission is concerned that a pipeline using this methodology may not have a sufficient incentive to minimize expenses or costs for gas that is lost or unaccounted for. The Commission requests comments on whether it should limit the amount that a pipeline can collect through its PGA, a pipeline would be able to seek recovery of appropriate additional amounts through its next general section 4 rate filing.

4. Miscellaneous. Finally, in addition to all the issues discussed in this Notice, the Commission requests comments and suggestions on any other problems or changes that should be considered in this proceeding.

IV. Request for Public Comment

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this Notice. An original and 14 copies of comments must be received by the Commission before 5:00 p.m., May 31, 1984. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should reference Docket No. RM84-12-000.

All written submissions will be placed in the Commission’s public files and will be available for public inspection through the Commission’s Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours.

By direction of the Commission.

Kenneth F. Plumb, Secretary.


date: Comments must be received on or before July 2, 1984.

date: May 1, 1984.

address: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

for further information contact: Legal Aspects: Donald F. Cahill, Classification and Value Division [202-665-8161]; Operational Aspects: Alex Olenick, Duty Assessment Division [202-566-2957]; U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

supplementary information: Background

Invoices of merchandise imported into the United States are required by section 481, Tariff Act of 1930 (19 U.S.C. 1401), to include certain specified information and “any other facts deemed necessary to a proper appraisement, examination, and classification of the merchandise that the Secretary of the Treasury may require.” Section 141.89(a), Customs Regulations (19 CFR 141.89(a)), requires additional information on invoices of footwear classifiable under schedule 7, part 1A, Tariff Schedules of the United States (19 U.S.C. 1202). The additional information assists Customs in establishing the correct tariff classification and value of imported footwear for duty and/or quota purposes.

Footwear manufacturing methods have change since the additional reporting requirements were established. Approximately seven new distinctions in footwear construction which result in classification differences are effective for footwear exports since July 1, 1981 [Pub. L. 96-39, July 26, 1979, section 223(b)(2)]. As a result, much of the information now required, which generally is descriptive of footwear, no longer is necessary, and other information, relating to the construction of footwear, is needed. Accordingly, Customs proposes to amend §141.89(a) to reflect those changes and to update the information reporting requirements.

original proposal

A notice proposing to amend §141.89(a) concerning the additional information required to be reported by importers of footwear, was published in the Federal Register on July 28, 1978 (43 FR 32619). Essentially, that proposal requested comments on the following eleven (11) questions concerning the
material(s) used in the manufacture of imported footwear, and the nature of the manufacturing process itself:

(1) The manufacturer's style number.
(2) The importer's style number.
(3) Component materials of upper with percentage (value) of each component (if fiber, and if fiber plus rubber and/or plastic is less than 50 percent, state the percentage by weight and value of each fiber used).
(4) Component material of entire article with percentage (value) of each component. If the materials in (3) and (4) are primarily of leather, answer only (10) and (11). Otherwise, answer all questions.
(5) Component materials of sole with percentage (value) of each component.
(6) Percentage of weight of entire article.
(a) Fiber.
(b) Rubber and/or plastic.
(c) Other (specify material).
(7) Percentage of exterior surface area of the upper:
(a) Leather.
(b) Rubber and/or plastic.
(c) Other (specify material).
(8) Whether there is a foxing-like band around bottom of upper:
(a) Yes.
(b) No.
(9) Whether the upper extends over the ankle:
(a) Yes.
(b) No.
(10) Type of construction:
(a) Cement.
(b) Molded or vulcanized.
(c) Turned.
(d) Unsoled moccasin.
(e) Welt.
(f) Other.
(11) If the component material of chief value of the entire article is leather, state if made on a male or female last.
Customs Form 5523 may be used for furnishing the additional information.

Discussion of Comments
In response to the previous proposal we received 17 comments. Many parties commented on the need to retain Customs Form 5523 as the means to record the required additional information. Customs agrees that continued use of this form for that purpose is warranted and a statement to that effect is included in this proposal.
Other parties commented on the information required on the invoices. In accordance with one request, a "type of construction" category has been included and slip-lasted (California construction) included within that category. Another suggestion that a distinction be made between molded, injection-molded, and vulcanized construction has also been included. In response to a request that the various types of construction be defined, the new proposal includes definitions of "cement footwear," "turned," and "welt." Because attempts to define "molded or vulcanized construction" could cause confusion, these terms are not defined.

Another commenter requested that instructions be provided for questions 3, 4, 5, and 7 in the original proposal, as they believe those questions requested information not previously required.
To assist importers in furnishing the requested information; question 3 in the original proposal (question 4 in the new proposal) has been clarified. Questions 6 and 8 in the new proposal basically elicit the same information as questions 6 and 8 of present §141.69, except for the value percentage of component materials of the sole. Further, because "material in chief value" is included in the new proposed definitions, Customs does not believe those questions require further clarification.
In response to a request for clarification of several other terms, the new proposal also includes a definition of "upper". However, Customs believes that to try to define the term "wedge cover" would not be helpful and rather could create confusion.
The new proposal retains the question concerning the use of foxing or a foxing-like band in footwear construction. For an explanation as to what constitutes foxing or a foxing-like band around the bottom of the upper, reference should be made to T.D. 83-116, published in the Federal Register of May 23, 1983 (48 FR 22904), in which Customs addressed this issue. That document also sets forth guidelines relating to the characteristics of foxing and a foxing-like band.

New Proposal
After consideration of the comments received in response to the initial proposal and further review of the matter, Customs has prepared a new expanded proposal to ensure that the information received will be adequate and complete and will aid in the correct classification of imported footwear. In addition to providing certain definitions to be used in completing footwear invoices, the new proposal clarifies the question concerning materials chief value. The new proposal also will result in a revision of Customs Form 5523, titled "Invoice Details For Footwear."

Comments
Customs invites written comments from all interested parties on this expanded proposal. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

DRAFTING INFORMATION
The principal author of this document was Susan S. Terranova, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Executive Order 12291
It has been determined that the proposed amendment is not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

Regulatory Flexibility Act
The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this amendment because the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.
Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act
The collection of information requirements contained in this document have been submitted to the Office of Management and Budget pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96-641). Comments on these requirements should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.
Attention: Desk Officer for the U.S. Customs Service. Copies of these comments should also be sent to Customs.

Authority
This amendment is proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), sections 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 1481, 1484, 1824), and 77A Stat. 14 (19 U.S.C. 1202) (General Headnote 11, Tariff Schedules of the United States)).

List of Subjects in 19 CFR Part 141
Customs duties and inspection, Imports.
Proposed Amendment

It is proposed to amend § 141.89(a), Customs Regulations (19 CFR 141.89(a)), by revising the paragraph for footwear to read as follows:

§ 141.89 Additional information for certain classes of merchandise.

(a) * * *

Footwear; classifiable under schedule 7, part 1A, Tariff Schedules of the United States (19 U.S.C. 1202)—

(1) Manufacturer’s style number.
(2) Importer’s style number.
(3) Type of shoe:
(i) After-ski boot
(ii) Basketball shoe
(iii) Beachcomber
(iv) Boat shoe
(v) Clog
(vi) Dissolvable, not rubber or plastic
(vii) Exquadrille
(viii) Field (Football/Soccer/Astromurf) shoe
(ix) Hiking boot
(x) Inner liner
(xi) Jogger/Training shoe
(xii) Kung-Fu shoe
(xiii) Moccasin/Soled moccasin
(xiv) Oxford
(xv) Ponsicle
(xvi) Pump
(xvii) Rubber/Plastic Protective and Waterproof footwear
(xviii) Rubber/Plastic Ski boot
(xix) Slipper
(xx) Slipper sock
(xxi) Spiked Track shoe
(xxii) Tennis slip on
(xxiii) Workboot
(xxiv) Woven bootee
(xxv) Zori
(xxvi) Other (specify)

(4) Component materials of upper with value percentage of each component. If chief value of upper is fiber, and weight of entire shoe is neither 50 percent fiber and/or rubber or plastic nor over 10 percent rubber or plastic, state the percentage by weight and value of each fiber used in the upper.

(5) Component materials of entire article with value percentage of each component. If the materials in (4) and (5) are primarily of leather, answer only (6) and (12). Otherwise answer all questions.

(6) Component materials of sole with value percentage of each component.

(7) Percentage of weight of entire article:
(i) Fiber
(ii) Rubber and/or plastic
(iii) Other (specify material)

(8) Percentage of exterior surface area of the upper:
(i) Leather
(ii) Rubber and/or plastic
(iii) Other (Specify material)

(9) Is there a foxing or foxing-like band around bottom of upper? If so, specify component materials of the band.

(10) Does the sole overlap the upper? If so, specify the part(s) of the upper overlapped.

(11) Does the upper extend over the ankle?

(12) Type of construction:
(i) Stitched-Turned
(ii) Stitched-Goodyear Welt
(iii) Stitched-Welt other than Goodyear
(iv) Stitched-Slip-lasted (California)
(v) Stitched-Other (specify method)
(vi) Exclusively Adhesive (Cement)
(vii) Shell molded bottom cemented and/or stitched to upper
(viii) Unit molded bottom cemented to upper
(ix) Rolled Sole
(x) Sole simultaneously molded and attached to upper (Simultaneous Injection)
(xi) Vulcanized
(xii) Riveted, Nailed or Stapled
(xiii) Unsoled Moccasin
(xiv) Combination of the above (specify types combined)
(xv) Other (specify)

(13) Is the shoe of the slip-on type, i.e., no laces, buckles or other fasteners?

(14) Does the upper have either an open toe or an open heel?

Customs Form 5523 may be used to furnish the additional information required above.

Definitions: For the purposes of this section, the following terms will have the meaning indicated when used in the classification of footwear:

(a) Turned. “Turned” means that construction in which the upper is sewn to the outsole while the shoe is turned inside out.

(b) Material in chief value. “Material in chief value” means that material which, including cost of all fabrication and improvement prior to act of assembly of shoe, is of higher cost than any other single material used in that section of the shoe which is specified in the question.

(c) Upper. “Upper” means everything above insole level.

(d) Fiber. “Fiber” means a material made up of threads or monofilaments, e.g., cloth or jute. Note: cork, wood, and cardboard are not fibers.

(e) Welt. “Welt” means a separate strip between sole and upper which is sewn to both sole and a lip on the innersole.

(f) Cement footwear. “Cement footwear” means footwear in which the outsole (or midsole, if any) is attached to the upper by adhesive without sewing. Does not include footwear having vulcanized soles or injection molded shoes.

(g) Boots. “Boots” means footwear designed to be worn next to the sock rather than over the shoe.

Approved: April 6, 1984.

William von Raab,
Commissioner of Customs.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 84-11608 Filed 4-30-84; 8:45 am]

BILLING CODE 4520-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436, 440, 442, 444, 446, 448, 450, 452, and 455

[Docket No. 83N-0301]

Clarification of Potency Standards for Certain Antibiotic Drugs; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to June 1, 1984, the comment period for the proposed rules making to amend the antibiotic regulations to clarify the potency standards for certain antibiotic drugs. FDA is taking this action in response to a request for an extension of the comment period.

DATE: Comments by June 1, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-42, 5000 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologies (formerly National Center for Drugs and Biologies) (HFN-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 201-423-4250.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 2, 1983 (48 FR 54864), corrected December 22, 1983 (48 FR 56060) and December 27, 1983 (48 FR 56965), FDA issued a proposed rule to amend the antibiotic drug regulations to clarify the potency standards for certain antibiotic drugs. FDA is proposing to amend the antibiotic drug regulations (monographs) so as to clarify that the potency standard stated as micrograms or units per milligram (in addition to the potency standard stated in terms of minimum and, in some cases, maximum percentages of the number of milligrams per container) applies to a bulk drug packaged for dispensing.

The proposal gave interested persons and opportunity to submit written comments by January 31, 1984. It also announced that interested persons could submit a request by January 3, 1984, for an informal conference on the proposal, and that, if a conference were granted,
an extension of the comment period would be provided.

In response to the proposal, Beecham Laboratories requested that an informal conference be held on the proposal. In the Federal Register of March 6, 1984 (49 FR 8260), FDA issued a notice of informal conference and extension of comment period. The notice announced that an informal conference would be held on April 2, 1984, and extended the period for submission of written comments to May 2, 1984.

On April 17, 1984, FDA received from Beecham laboratories a request for a 30-day extension of the comment period. Beecham states that it is now compiling the data and information requested by the agency at the informal conference but will be unable to complete a comprehensive and detailed response in the comment period specified in the notice.

Beecham also stated that the delay in the availability of the written transcript of the informal conference has decreased the time for a sufficient review of information presented at the informal conference and to prepare and submit written comments.

FDA has carefully considered the request. The agency has determined that additional time for the preparation and submission of meaningful information and data is in the public interest. Accordingly, the comment period for submissions by any interested person is extended to June 1, 1984.

Interested persons may, on or before June 1, 1984, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.


Sammie R. Young,
Deputy Director, Office of Compliance.

FOR FURTHER INFORMATION CONTACT:
Mr. Michael Melburn, 202-697-3135.

SUPPLEMENTARY INFORMATION:

This proposed rule establishes policy to conform with the Arms Export Control Act as amended, and the Council on International Economic Policy Decision Memorandum No. 23 for calculating and assessing nonrecurring cost (NC) recoupment charges on sales of defense articles or technology to non-U.S. government customers; and assigns responsibilities, and prescribes procedures.

§ 221.1 Purpose.

This proposed rule establishes policy to conform with the Arms Export Control Act as amended, and the Council on International Economic Policy Decision Memorandum No. 23 for calculating and assessing nonrecurring cost (NC) recoupment charges on sales of defense articles or technology to non-U.S. government customers; and assigns responsibilities, and prescribes procedures.

§ 221.2 Applicability and scope.

(a) This rule applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) Its provisions shall be applied contractually to corporations and private parties who sell defense articles or technology developed with DoD appropriations or funds (and in special cases, customer funds) or use such technology to manufacture items sold commercially to a foreign government, international organization, foreign commercial firm, or domestic organization.

§ 221.3 Definitions.

(a) Major Defense Equipment. Any item of equipment on the United States Munitions List having a nonrecurring RDT&E costs of more than $50 million or a total production cost of more than $200 million.

(b) Government Sale. A sale of articles or services, or both, to customers by and DoD Component under authority of appropriate legislative acts.

(c) Direct Sale. A commercial sale to a customer by a defense contractor of products, technology, material, services, or development or production techniques that were originally...
developed, improved, or produced using DoD appropriations or funds.

(d) Domestic Organization. Any U.S. nongovernmental organization or private commercial firm.

(e) Technology. Information of any kind that can be used or adapted for use in the design, production, manufacture, utilization or reconstruction of articles or materiel. The data may take a tangible form, such as a scale model, prototype, blueprint or an operating manual, or may take an intangible form, such as technical advice.

(f) Nonrecurring Research, Development, Test and Evaluation (RDT&E) costs. Those costs funded by an RDT&E appropriation to develop or improve the product or technology under consideration either through contract or in-house effort. This includes costs of any engineering change proposal initiated before the date of the contract with the customer as well as projections of such costs to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either procurement or operations and maintenance appropriations.

(g) Nonrecurring Production Costs. Those one-time costs incurred in support or previous production of the model specified and those costs specifically incurred in support of the total projected production run. These nonrecurring costs include DoD expenditures for preproduction engineering, rate and special tooling, special test equipment, production engineering, product improvement, destructive testing, and pilot model production, testing and evaluation. Non-recurring production costs do not include DoD expenditures for machine tools, capitol equipment or facilities for which contractor rental payments are made in accordance with the DAR or asset use charges assessed in accordance with DoD 7200.3-M.

(h) “Special” RDT&E and Nonrecurring Production Costs. Those costs incurred at the request of, or for the benefit of, the customer in developing a special feature or unique requirement. These costs must be paid by the customer as they are incurred.

(i) Pro Rata Recovery of Nonrecurring Costs. Distribution (proration) of a pool to a specific number of units that benefit from the investment so that a DoD Component will collect from a customer a fair (prorata) share of the investment in the product being sold.

(j) A Cost Pool. Represents the total cost to be distributed across the specific number of units. The nonrecurring RDT&E cost pool comprises the costs described in §221.3(f). The nonrecurring production cost pool comprises costs described in §221.3(g).

(k) Foreign Military Sale (FMS). A sale of defense articles or defense services to a foreign government or international organization under authority of the Arms Export Control Act.

(l) Model. A basic alpha-numeric designation within a weapon system series, such as a ship hull series, an equipment or system series, an airplane series, or a vehicle series. For example, the F5A and the F5F are different models within the same F-5 system series.

(m) Non-U.S. Contractor. A non-U.S. citizen or an organization which is not incorporated in the U.S.

§ 221.4 Policy.

Non-U.S. Government purchasers shall pay a fair price, determined in accordance with this rule, for the values of the DoD nonrecurring investment in the development and production of defense articles and development of technology unless an NC recoupment charge waiver has been approved by the DoD official designated in §221.7.

Approved revised NC recoupment charges may not be applied retroactively to accepted FMS agreements or to direct sales that were entered into before the date of approval of the revised NC recoupment charge.

§ 221.5 Responsibilities.

(a) The Under Secretary of Defense for Research and Engineering (USDR&E) shall monitor and exercise control over NC recoupment aspect of domestic commercial sales of defense articles and technology and shall take appropriate action to review the Defense Acquisition Regulation (DAR) to agree with this Rule.

(b) The Under Secretary of Defense for Policy shall monitor the application of this Directive and exercise control over foreign sales of DoD-developed articles and technology.

(c) The Assistant Secretary of Defense (Comptroller) shall provide necessary cost accounting guidance and publish a listing of the items or technology to which NC recoupment charges are applicable.

(d) The Director, Defense Security Assistance Agency (DSAA), shall serve as the DoD official for review and approval of NC recoupment charges for major defense equipment (MDE) items and for processing NC recoupment charge waiver requests received from foreign countries and international organizations for foreign military sales (FMS) or direct commercial sales. Approved NC recoupment charges for MDE items shall be provided to the Deputy Assistant Secretary of Defense (Management Systems) (DASD(MS)) for publication.

(e) Heads of Military Departments and Defense Agencies shall determine the DoD nonrecurring investment in defense articles or technology and perform required pro rata calculations in accordance with cost accounting guidance from the ASD(C); provide recommended charges for MDE items to DSAA; determine the appropriate charges for non-MDE articles and technology; provide the approved non-MDE item and technology charges to the DASD(MS) for publication and submit quarterly reports of anticipated and actual NC recoupment charge collections to DSAA.

§ 221.6 Procedures.

(a) General. (1) Each DoD Component and defense contractor negotiating the sale of products or technology developed with DoD appropriations or funds shall ensure the assessment of the charges as set forth in this paragraph.

(2) Each DoD Component shall calculate a NC recoupment charge for items or technology releasable to foreign countries and international organizations when FMS or direct commercial sales are anticipated. The NC recoupment charge shall be based upon information recorded in DoD accounting records or DoD budget justification documents. Engineering cost estimates may be used to determine NC expected to be incurred in periods not covered by budget justification documents.

(3) The NC recoupment charge computation (nonrecurring RDT&E and production) for the sale of MDE items shall be submitted to the Director, DSAA, for approval of the amount to be applied to pending FMS or direct sales. A summary report on each MDE item shall be provided to DSAA. The Director, DSAA, shall review each DoD Component’s calculations and provide approved NC recoupment charges for MDE items to the DoD Component. A copy of all approvals shall be provided to the DASD(MS) for publishing in DoD 7200.3-M.

(4) Once the approved charge has been used in an authorized sale, the charge normally will not be revised until a model change occurs. However, each DoD Component annually shall review approved MDE charges to determine if there have been significant changes in factors or assumptions used to compute the original NC recoupment charge established for a model (for example, significant changes in identifiable
For the FMS program, the Offer and Acceptance (LOA) is defined in §221.3(a). The determination required in §221.6(a) is necessary to comply with this rule. If the NC recoupment charge has not already been established as provided for under this rule, the ACO shall contact the DoD Component responsible for establishment of the charge and advise the contractor of the estimated date the amount of the charge will be made available.

(5) When a defense contractor negotiates the direct sale of a defense article or technology, or a derivative of a U.S. Contractor developed item, he shall request the amount of the NC recoupment charge from the administrative contracting officer (ACO) or (for technology sales) the technology charge from the DoD Component responsible for DoD acquisition of the article. When making this request, the contractor shall submit such information as may be necessary to comply with this rule. If the NC recoupment charge has not already been established as provided for under this rule, the ACO shall contact the DoD Component activity responsible for establishment of the charge and advise the contractor of the estimated date the amount of the charge will be made available.

(6) All DoD contracts for RDT&E or acquisitions shall include a mandatory clause that requires the contractor to pay the USG, within 30 days following delivery of each item from the contractor's facility, the established NC recoupment charge for any domestic or international direct sale, corporation, or licensed production of defense articles or technology (see DAR 7-104.64). The DoD Component shall deposit collections in payment of an NC recoupment charge without delay in the nearest federal reserve bank to the DoD 7290.3-M. Notification of the deposit shall be provided to the DoD Component activity responsible for submission of reports required in §221.6(g)(2).

(b) Calculation of Charges on MDE and Components.—MDE items are defined in §221.3(a). The determination of whether an item meets the MDE dollar threshold shall be based on obligations recorded to date the equipment is offered for sale. Production costs shall include cost incurred for DoD, FMS, and known direct sales production. For the FMS program, the sales offer date shall be the date a Letter of Offer and Acceptance (LOA) is signed by a U.S. official and released to the FMS customer for commercial sales, the sales offer date shall be the date of contract signature.

(1) NC recoupment charges shall be assessed on a pro rata basis. The charges shall be established by dividing the total of NC investment (nonrecurring RDT&E & nonrecurring production) incurred to date plus projections of future costs to be incurred, by the total estimated number of units projected to be produced over the lifetime of the system (including DoD requirements, Military Assistance Program (MAP) requirements, FMS requirements, and direct commercial sales requirements). The computation of the cost pool shall exclude costs for those items which are restricted to U.S. Government use only (for example, U.S.-unique nuclear devices, countermeasures, security devices and aircraft carrier-unique adaptations).

(2) The number of units to be produced for the Department of Defense shall be obtained from budget backup data. FMS quantity projections and direct commercial sales quantity projections shall be derived jointly as best estimates by the Military Department and DSA. Defense contractors shall be consulted in determining direct commercial sales quantities, if necessary. In the case of disagreement on estimated FMS and direct commercial quantities and sales projections, the Director, DSA. will make the final determination in coordination with the ASD/C and the USD(R).

(3) For a weapon system that includes more than one component which meets the MDE threshold or contains a component that has application to several weapon systems or a commercial sale potential (hereafter referred to as a major individual component), a “building block” approach (that is, the sum of NC recoupment charges for individual components) shall be used to determine the NC recoupment charge for the sale of the entire system. Data must be accumulated for each major component when NC is identified in accounting records or budget documents and when the component has application to more than one weapon system or a potential for individual FMS or direct commercial sales. The sum of the various component NC recoupment charges and any remaining NC for the weapon system shall be applied to the sale of a complete system. Individual NC recoupment charges shall be applied to sales of individual components. DoD Components involved with a sale shall ensure that components are not purchased separately for ultimate assembly as an end item in an attempt to circumvent this rule.

(4) The established NC recoupment charge shall be included in the FMS unit price or, for commercial sales, provided to the seller, and paid by the seller to the USG.

(5) If a commercial item being sold is substantially different (less than 90 percent common) from the USG item for which the NC recoupment charge was developed, the charge shall be assessed based on the extent of commonality with the USG item. For example, if the commercial item is 25 percent common with the DoD item, only 28 percent of the established NC recoupment charge for the DoD item shall be assessed. The DoD Component office with system engineering responsibility for the item shall be responsible for determining the degree of such commonality. The contractors shall be advised in writing of the NC recoupment charge for derived items. A copy of the notification shall be provided to the Director, DSA.

(6) If records necessary to enable a pro rata NC calculation have been lost or destroyed for particular MDE items in which the USG has an NC investment, the head of the DoD Component concerned, or designee at the level of Assistant Secretary or higher, shall certify that the records have been lost or destroyed and shall determine a unit NC recoupment charge equal to 4 percent of the most recent USG contract price. The certification of lost or destroyed documents and recommend fixed charge per unit shall be forwarded to the Director, DSA, for approval. The Director, DSA, then shall establish a fixed unit NC recoupment charge for all subsequent sales.

(c) Calculation of Charges on Nonmajor Defense Equipment.—(1) End Items. A percentage NC recoupment charge shall be assessed on non-MDE end items whenever $2 million of RDT&E funded cost has been or is expected to be incurred on the item. The applicable surcharge shall be 5 percent of the item's current FMS selling price exclusive of NC recoupment charges for items sold under the FMS program or sold commercially by U.S. contractors. The DoD Components shall establish a unit NC recoupment charge for all subsequent sales and the unit charge shall be published in DoD 7290.3-M.

(2) Modification Kits—(i) Developed to provide an end item with new or improved capability. An NC percentage charge shall be made whenever $2 million of RDT&E, procurement or operation and maintenance funds have been expended on engineering, development, or testing of the kit. The
applicable surcharge shall be 5 percent of the modification kit's selling price for kits transferred under the FMS program or sold commercially by U.S. contractors.

(ii) Developed to improve the safety, reliability, availability, and maintainability. The cost of programs designed to improve the safety, reliability, availability and maintainability for the projected life of the item/major component shall be included in the end item/major component NC pools. If an FMS customer funds part of the development cost through a Component Improvement Program (CIP) or comparable program, a pricing exception for an appropriate adjustment of the established NC recoupment charge may be requested by a DoD Component. Modification kits developed to improve safety, reliability, availability, and maintainability are issued to FMS customers or incorporated into end items/major components without an additional NC recoupment charge because the applicable development cost is either included in the end item/major component NC recoupment charge or recouped as CIP or comparable program charges in the end item or major component.

(3) Components of non-MDE items. A percentage NC recoupment charge shall be made on any non-MDE item component whenever $2 million of RDT&E appropriations has been or is expected to be expended on the component. The applicable charge shall be 5 percent of the component's current FMS selling price for parts transferred under the FMS program or sold commercially by a U.S. contractor.

(d) Calculation of Charges for Technology Sales. This paragraph establishes procedures for calculation of charges after receipt of authorization to release technology.

(1) Technical data packages. (i) An NC recoupment charge shall be assessed for the transfer and use of Technical Data Packages (TDPs) to be used to manufacture or produce items for non-U.S. Government use. Charges for the use of TDPs normally are referred to as royalty fees. However, for MDE items, the approved MDE NC recoupment charge shall be assessed for each item manufactured or coproduced instead of a royalty fee.

(ii) For a non-MDE item an NC percentage surcharge shall be assessed as the royalty fee on the basis of the item's current FMS selling price. Prescribed charges for non-MDE items are as follows:

(A) Foreign Governments. Five percent on items manufactured for in-country use and eight percent on items manufactured for third party use by or on behalf of foreign governments or international organizations.

(B) U.S. Contractors. Three percent on items manufactured for consumption in the U.S. and five percent on items manufactured for export.

(iii) The above charges will be considered to constitute the "fair market price" for U.S. technology.

(iv) A TDP developed with USG funds may not be released to any non-USG parties, including contractors, unless the recipient has agreed in writing to pay the applicable charges prescribed by this rule.

(2) Software. A charge shall be made for sales of USG-developed software whenever $2 million or more has been, or is expected to be, expended by the DoD Component to develop the software, regardless of appropriation account. The charge shall be a pro rata charge. The numerator shall be the cost incurred by the DoD Component. The denominator shall be either the number of weapons systems to be supported by the software package or the number of software packages to be duplicated, as applicable.

(3) Other Technology Transfers. For all other technology transfers, including transfers of TDPs for purposes other than manufacturing and all transfers of industrial or manufacturing processes, the amount of the charge shall equal the fair market value of the technology involved. For transfers to any U.S. domestic organization this charge shall be the lower of either: (i) a proportionate share of the DoD investment cost identified by the development of the technical data or technology involved; or (ii) a fair market price for the technology or technical data involved based on demand or the potential monetary return on investment. For transfers to any non-U.S. contractor or other foreign customer, this charge will be the greater of the foregoing two alternatives. Accordingly, the lower domestic price shall be applied only if the prospective domestic purchaser signs a written commitment to the Department of Defense that the technology or technical data will not be transferred to any other party.

(e) Joint DoD Component Development Effort. DSAA shall designate a Joint DoD Component to perform a consolidated calculation when appropriations of more than one DoD Component are involved in the NC investment in an MDE item.

(f) "Special" RDT&E and Nonrecurring Production Costs. (1) The full amount of "special" RDT&E and nonrecurring production costs incurred for the benefit of a particular customer or customers shall be paid by that customer or customers. However, when a later purchaser requests the same specialized features which resulted from the added special RDT&E and nonrecurring production costs, a pro rata share of these costs may be paid by the later purchaser and transferred to the original customer, provided those special nonrecurring costs exceed $5 million. Such reimbursements shall not be transferred to the original customer if 8 years have elapsed since acceptance of DD Form 1513 by the original customer. The USG shall not be charged any NC recoupment charge if it adopts the features for its own use or provides equipment containing such features under a U.S. Grant Aid or similar program.

(2) For coproduction or codevelopment/cooperative development or cooperative production agreements, the policy set forth in this rule generally shall determine the allocation basis for recouping from the third party purchasers the investment costs of the participants. Such agreements shall provide for the application of the policies in this rule to sales to third parties by any of the parties to the agreement and for the distribution of recoupments and technology charges among the parties to the agreement.

(g) Reporting NC Recoupment Collections. (1) Funds collected for NC recoupment charges shall be disposed of in accordance with DoD 7290.3-M.

(2) Components shall maintain records of anticipated and actual NC recoupment charge collections for each FMS case and commercial contract. Commercial contracts may be consolidated and reported under a control number if such a grouping is considered cost effective. A quarterly report on the status of NC collections shall be forwarded to the DSAA Comptroller with a copy to the Director for Accounting Policy, Office of the Deputy Assistant Secretary of Defense (Management Systems) Office of the ASD(C), 45 days following the close of each quarter.

§ 221.7 Waivers (Including Reductions).

(a) The Arms Export Control Act requires the recoupment of NCs of MDE from FMS customers but authorizes consideration of waivers for particular sales that, if made, significantly advance U.S. Government (USG) interests in the North Atlantic Treaty Organization, Japan, or Australia. Waiver for non-MDE items under FMS and for direct
commercial sales shall be based upon the same considerations.

(b) Requests for waivers of NC recoupment charges for sales of defense articles under the FMS program or on direct commercial sales to foreign governments and international organizations shall be submitted to the Director, DSAA. Requests shall originate with the foreign government and shall provide information regarding the extent of standardization to be derived as a result of the waiver and other benefits which would accrue to the USG as a result of the sale. The request shall contain a summary statement of the facts regarding the program, benefits expected and justification therefor, and any calculations necessary to determine that the waiver has resulted in a reduction of contract price. Blanket waiver requests may not be submitted nor considered. The term "blank waiver" refers to an NC recoupment charge waiver for all sales to a particular country or all sales of a weapon system. A waiver request may not be approved for a sale that was accepted without an NC recoupment charge waiver, unless the waiver was pending at the time of acceptance. A waiver may not be granted in connection with a direct commercial sale if a waiver could not have been legally granted in connection with a sale made under the FMS program.

(c) Requests for waivers of NC recoupment charges for domestic sales of defense articles shall be submitted by the contractor to the USD&E. The request shall provide information regarding the dollar value of the waiver, benefits to be derived by the Department of Defense, the names of foreign and domestic competitors, impact on the USG balance of payments, demonstrable rights of the manufacturer or purchaser, and any other justification for the waiver.

(d) Requests for waivers shall be processed expeditiously, and a decision made by the approving authority (see § 221.7(f)) either to approve or disapprove the request within 60 days after receipt. A waiver in whole or in part of the recoupment charge shall be provided in writing to the DoD Component concerned before issuance of the FMS agreement or signing of the direct sale commercial contract.

(e) The approving authority shall request the concurrence of the Director, DSAA; the ASD(C); and the USD&E, as appropriate, in his or her decision. If an issue concerning the waiver request cannot be resolved, the approving authority shall refer the waiver request to the Deputy Secretary of Defense for final determination. The action memorandum to the Deputy Secretary of Defense shall be coordinated with the Director, DSAA, the ASD(C) and the USD&E, as appropriate.

(f) The Director, DSAA, is the approving authority and shall state in writing any approvals granted for waivers associated with FMS and direct foreign sales. The USD&E is the approving authority and shall state in writing any approvals granted for waivers involving sales of defense articles or technology to domestic organizations. This authority shall not be redelegated. A copy of each approved waiver shall be forwarded to the ASD(C) and to the concerned DoD Components by the approving authority.

(g) This rule does not apply to sales of excess property when accountability has been transferred to property disposal activities and the property is sold in open competition to the highest bidder.

§ 221.8 Information requirements.

The recordkeeping and reporting requirements prescribed in § 221.6(g)(2) are assigned Report Control Symbol DSAA(Q)1112.

M. S. Healy, OSD Federal Register Liaison Officer, Department of Defense.

April 26, 1984.

[FR Doc. 84-11353 Filed 4-30-84; 8:45 am]

BILLING CODE 3410-01-M

SELECTIVE SERVICE SYSTEM

32 CFR Part 1699

Enforcement of nondiscrimination on the Basis of Handicap in Selective Service System Programs

AGENCY: Selective Service System.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Selective Service System.

DATES: To be assured of consideration, comments must be received on or before August 28, 1984.

ADDRESSES: Comments should be sent to: Henry N. Williams, General Counsel, Selective Service System, Washington, D.C. 20435.

Comments received will be available for public inspection in Office of the General Counsel, Selective Service System, 1023 31st Street, NW., Washington, D.C. 20435. Copies of this notice are available on tape for those with impaired vision. They may be obtained at the above address.


SUPPLEMENTAL INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Selective Service System. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

No otherwise qualified handicapped individual in the United States... shall, solely by reason of his handicap, be excluded from the participation in, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees (29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. See 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) id: Congress Rec. 13,697 (remarks of Rep. Brademas); id. at 38,552 (remarks of Rep. Sarasin).
This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72985, 3 CFR, 1980 Comp., p. 288) and distributed to Executive agencies on April 15, 1983.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 29867, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

Section-by-Section Analysis

Section 1699.101 Purpose.

Section 1699.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 1699.102 Application.

The proposed regulation applies to all programs or activities conducted by the agency.

Section 1699.103 Definitions.

"Agency." For purposes of this regulation "agency" means the Selective Service System. "Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency’s programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 1699.100(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." The definition of "complete complaint" enables the agency to determine the beginning of its obligation to investigate a complaint (see § 1699.170(d)).

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The term "facility" is used in section 150 and section 170(f).

"Handicapped person." The definition of "handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). In the interest of brevity, examples of handicap in programs or activities appearing under the term "physical or mental impairment" are deleted.

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified handicapped person is one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in Southeastern Community College v. Davis, 442 U.S. 397 (1979).

In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." Id. at 410. It also found that the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways, "id. at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in a fundamental alteration in the nature of the program." Id. at 410.

We have incorporated the Court’s language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered: not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

We encourage comment on paragraph (2). The language we have proposed comes directly form the Supreme Court’s interpretation of section 504. However, so long as the definition of "qualified handicapped person" remains faithful to the statute and current case law, we are receptive to alternative language.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 1699.110 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The process shall include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The Department of Justice is considering whether and to what degree the Federal Advisory Committee Act (5 U.S.C. app.) is applicable to the proposed consultation.
participation in programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

Section 1699.111 Notice.

Section 1699.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 1699.130 General prohibitions against discrimination.

Section 1699.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 1699.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 1699.130.

When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 1699.150-1699.151) and communications (§ 1699.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 1989.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Section 1699.140 Employment.

Section 1699.140 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a recent decision of the Fifth Circuit that holds that, despite the resulting overlap of coverage with section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. Prewitt v. United States Postal Service, 602 F. 2d 222 (5th Cir. 1981). Consistent with that decision, this section provides that the standards, requirements and procedures of Section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to Federally conducted programs with respect to employment practices. In addition to this section, § 1699.170(b) of this regulation specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp. p. 206). Under this authority, the EEOC establishes governmentwide standards on nondiscrimination in employment on the basis of handicap.
Section 1699.149 Program accessibility: Discrimination prohibited.

Section 1699.149 States the general nondiscrimination principle underlying accessibility: Discrimination prohibited.

Section 1699.150 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 508 overruling regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56-41.58), with certain modifications. Thus, §1699.150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§1699.150(a)(1)). However, §1699.150, unlike 28 CFR 41.56-41.57, places explicit limits on the agency's obligation to ensure programs accessibility (§1699.150(a)(2)). Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in §1699.160(e). This provision is based on the Supreme Court's holding in Southeastern Community College v. Davis, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since Davis, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. See, e.g., Dopico v. Goldey-Beacom College, 837 F.2d 641 (2d Cir. 1988); American Public Transit Association v. Lewis (APTA), 655 F.2d 1272 (D.C. Cir. 1981). Thus, in APTA the United States Court of Appeals for the District of Columbia Circuit applied the Davis language and invalidated the section 504 regulations of the Department of Transportation. The court in APTA noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of paragraph (a)(2) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in Davis as well as to the decisions of lower courts following the Davis opinion. This paragraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodation is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped persons. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity. It is our view that compliance with §1699.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, the agency must consider whether and to what degree the Federal Advisory Committee Act (5 U.S.C. app.) is applicable to the proposed consultation requirement included in §1699.150(d).

Section 1699.151 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under section 504, section 508 of the Rehabilitation Act of 1973, as amended (28 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). Section 1699.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101-19.600 to 101-19.607 (1982). This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.
Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 1699.150.

Section 1699.160 Communications.

Section 1699.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 1699.160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency’s program or activity. They shall also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 1699.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 1699.160(c). That paragraph limits the obligation of the agency to ensure effective communication in accordance with Davis and the circuit court opinions interpreting it (see supra preamble § 1699.150(a)(2)). Unless not required by § 1699.160(e), the agency shall provide auxiliary aids at no cost to the handicapped person.

It is our view that compliance with § 1699.160 would in most cases result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 1699.160 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head’s decision or failure to make a decision may file a complaint under the compliance procedures established in § 1699.170.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public: (1) The communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency’s preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 1699.160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Paragraph (d) requires the agency to take appropriate steps to ensure that information regarding section 504 rights and protections that is supplied to employees, applicants, participants, beneficiaries, and other interested persons under § 1699.111 is effectively communicated to handicapped persons.

Section 1699.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 1699.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 1699.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act of section 502 was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons.

Paragraph (g) requires the agency to provide the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 1699.170(g)). One appeal within the agency shall be provided (§ 1699.170(j)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 1699.170(j)).

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 32 CFR Part 1699

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

For the reasons set forth in the preamble, 32 CFR Chapter XVI Selective Service System of the Code of Federal Regulations is proposed to be amended as follows:

Thomas K. Turnage, Director of Selective Service.

Part 1699 is added to read as follows:

PART 1699—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY SELECTIVE SERVICE SYSTEM

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§ 1699.101 Purpose. 
The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service. 

§ 1699.102 Application. 
This part applies to all programs or activities conducted by the agency. 

§ 1699.103 Definitions. 
For purposes of this part, the term—
"Agency" means Selective Service System. 
"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice. 
"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD’s), interpreters, notetakers, written materials, and other similar services and devices. 
"Complete complaint" means a written statement that contains the complainant’s name and address and describes the agency’s actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination. 
"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property. 
"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. 
As used in this definition, the phrase: (i) "Physical or mental impairment" includes— (ii) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or (ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism. 

"Qualified handicapped person" means— (i) Has a physical or mental impairment that substantially limits one or more major life activities but is treated by the agency as constituting such a limitation; (ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (iii) Has none of the impairments defined in subparagraph (i) of this definition but it treated by the agency as having such an impairment. 

§ 1699.104-1699.109 [Reserved] 

§ 1699.110 Self-evaluation. 
(a) The agency shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications. 
(b) The agency shall, for a least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection— (1) A list of the interested persons consulted; (2) A description of areas examined and any problems identified; and (3) A description of any modifications made. 

§ 1699.111 Notice. 
The agency shall make available to employees, applicants, participants, beneficiaries, and other interested
persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§ 1699.112-1699.129 [Reserved]

§ 1699.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual licensing, or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

§ 1699.131-1699.139 [Reserved]

§ 1699.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency.

§ 1699.141-1699.148 [Reserved]

§ 1699.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1699.150 and § 1699.151, no qualified handicapped person shall, because the agency’s facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1699.150 Program accessibility: Existing facilities.

(a) General. The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons.

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1699/150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) Methods. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency
§ 1699.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, or on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607 (1982), apply to buildings covered by this section.

§ 1699.152-1699.159 [Reserved]

§ 1699.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(2) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(b) The agency shall provide, when readily achievable, effective telecommunications systems for deaf persons (TDD's), or equally effective communication systems for a handicapped person with impaired vision or hearing, creating users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance to a building.

(c) The agency shall ensure that handicapped persons, including persons with impaired vision or hearing, can obtain information about accessible services, activities, and facilities.

(d) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities.

(e) The agency shall take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the agency's programs or activities.

(f) The agency shall take action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1699.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accomplished by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 1699.161-1699.169 [Reserved]

§ 1699.170 Compliance procedure.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Associates Director for Administration.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible and usable to handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusion of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt of the letter required by § 1699.170(g). The agency may extend this time for good cause.
The State submitted its supplement on February 2, 1984; updated and additional information was submitted on February 7, 15, and 17, 1984. The supplement contains a definition of the area’s carbon monoxide air quality problem, a schedule for the systematic analysis of control measures at locations where carbon monoxide is a problem, and a commitment to implement control measures as necessary to attain the national ambient air quality standards for carbon monoxide by December 31, 1987. For ozone, the supplement contains a schedule for the development and implementation of additional measures for the control of VOCs, an updated inventory of VOC emissions, and a revised schedule for the reduction of VOC emissions as necessary to attain the national ambient air quality standard for ozone by December 31, 1987. The supplement also contains a revised demonstration that basic transportation needs are being met, and criteria and procedures for ensuring conformity between the SIP and transportation plans, programs, projects and other federal actions.

DATE: EPA must receive comments on or before July 2, 1984.

ADDRESSES: All comments should be addressed to: Jacqueline E. Schafer, Regional Administrator, Environmental Protection Agency, Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, Room 900, New York, New York 10278.

Copies of the proposed revision are available for public inspection during normal business hours at:


New York State Department of Environmental Conservation, Region 1, State University of New York, Building 40, Stony Brook, New York 11790.

New York State Department of Environmental Conservation, Region 2, Two World Trade Center, New York, New York 10047.


SUPPLEMENTARY INFORMATION:

I. Background

In response to provisions of the 1977 Amendments to the Clean Air Act, on May 16, 1979 the State of New York submitted to the Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision (the “1979 SIP”) designed to continue the State’s efforts towards attainment of the ozone and carbon monoxide national ambient air quality standards in the New York portion of the New York—New Jersey—Connecticut Air Quality Control Region (NJ—NY—CT—AQCR or the “New York City metropolitan area”). EPA conditionally approved this revision on May 21, 1980 (45 FR 33981). However, because the State requested and received an extension of up to December 31, 1987 for attainment of the standards, the State was required, under the provisions of the Clean Air Act, to submit another SIP revision by July 1, 1982 (the “1982 SIP”). Such a 1982 SIP submission (the “1982 submissions”) was made by the State on July 1 and August 2, 1982.

Based upon its review of these 1982 submissions, on February 3, 1983 EPA published a Federal Register notice (48 FR 5130) proposing to disapprove the 1982 SIP. The reader is referred to this February 3, 1983 notice for a complete description of New York’s 1982 submissions, EPA’s review criteria and EPA’s findings as a result of its review.

In brief, EPA found that the 1982 submissions did not provide for attainment of the ozone or carbon monoxide standards by December 31, 1987. The SIP also did not include commitments to implement all reasonably available control measures nor did it contain adequate schedules for the evaluation and adoption of such measures. However, also on February 3, 1983, (48 FR 5137), EPA proposed to approve a part of the State’s ozone control program. EPA found that several State regulations adequately provided for the implementation of reasonably available control technology (RACT) for certain sources of VOCs covered by EPA Control Technique Guideline (CTG) Group II documents. EPA published final approval of this part of the control program on January 26, 1984 (49 FR 3438).

Specifically, in its February 3, 1983 notice of proposed disapproval, EPA identified nine elements of the 1982 submissions which were deficient. The additional information needed to address each of these deficiencies is summarized as follows:
Ozone

- Modeling and monitoring—an appropriate identification of the required reduction in emissions of VOCs necessary to attain the ozone standard by December 31, 1987;
- Stationary source controls—the additional development of emission controls representing RACT for the remaining sources of VOCs covered by EPA CTG Group II documents, and a commitment to the implementation of these controls;
- Additional controls—the identification of additional VOC control measures needed for attainment of the ozone standard, including specific schedules for their implementation;
- Transportation controls—a commitment to the adoption of reasonably available transportation control measures;
- Reasonable further progress—a demonstration that reasonable further progress towards attainment of the ozone standard will be made; and
- Attainment demonstration—a demonstration that the ozone standard will be attained by December 31, 1987, through the adoption and implementation of committed control measures.

Carbon Monoxide

- Carbon monoxide control program—a commitment to a carbon monoxide control program which provides for attainment and reasonable further progress toward attainment of the carbon monoxide standards at "hotspots," i.e., sites (traffic intersections or corridors) which experience high concentrations of carbon monoxide.

Other Requirements

- Basic transportation needs—a commitment to comprehensive public transportation improvement measures as needed to meet basic transportation needs; and
- Conformity of federal actions—a commitment to the adoption of criteria and procedures necessary to determine the conformity between the SIP and transportation plans, programs and projects.

On February 2, 1984, the Governor of the State of New York adopted and submitted to EPA a supplement to the 1982 submission. Updated information was transmitted to EPA by the New York State Department of Environmental Conservation (NYSDEC) on February 7, 1984. Additional information was submitted by NYSDEC on February 15 and 17, 1984. The supplement with the updated and additional information, combined with the previous 1982 submissions, constitute the 1982 SIP.

The February 2, 1984 supplement prepared to address the deficiencies in the 1982 submissions and is the subject of today's notice. More detailed information concerning EPA's review of the February 2, 1984 supplement is contained in a Final Addendum to the Technical Support Document prepared for EPA's February 3, 1983 proposal. This document is available for public inspection at the locations identified in the "Addresses" section of today's notice. The reader may also find interest in a November 2, 1983 Federal Register notice (48 FR 50668) in which EPA announced a general policy for correcting deficient SIPs and identified the consequences of EPA disapproval of a SIP.

II. Ozone

A. Overview

This section discusses the major elements of New York's February 2, 1984 supplement as it relates to attainment of the ozone standard. The February 2, 1984 supplement substantially changes the State's 1982 submissions. The February 2, 1984 supplement contains an expanded ozone control program designed to attain the ozone standard by December 31, 1987, a revised VOC emissions inventory, and a revised demonstration of reasonable further progress.

B. Control Measures

1. Introduction

As a result of the February 2, 1984 supplement, the ozone element of the 1982 SIP, in its entirety, is now comprised of an "existing control program" [summarized in Section II.B.2.a. of today's notice], "new RACT measures" and "extraordinary" measures. In combination, these strategies are projected to produce by December 31, 1987, a reduction in VOC emissions adequate to provide for attainment of the ozone standard. In addition, as described in Section II.B.4.a. of today's notice, the State has committed to adopt a "contingency measure" if it remains necessary.

Table 1 presents a listing of the measures comprising the ozone control program for the New York City metropolitan area. This table also shows the estimated reduction in VOC emissions that these measures are expected to provide. The schedule for the development and implementation of these measures is contained in Table 2. With the exception of one measure, final compliance will be provided for by December 31, 1987.

TABLE 1.—MEASURES COMPRISING THE OZONE CONTROL PROGRAM FOR THE NEW YORK CITY METROPOLITAN AREA

<table>
<thead>
<tr>
<th>Control measure</th>
<th>VOC emissions reduction in 1987 from baseline (tons per year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reasonably available control measures:</td>
<td></td>
</tr>
<tr>
<td>Growth and existing control program</td>
<td>143,660</td>
</tr>
<tr>
<td>Subtotal—Existing controls</td>
<td>143,660</td>
</tr>
<tr>
<td>New RACT measures:</td>
<td></td>
</tr>
<tr>
<td>Controls at major facilities</td>
<td>377</td>
</tr>
<tr>
<td>Gasoline tank truck controls</td>
<td>2,840</td>
</tr>
<tr>
<td>Reviation of RACT</td>
<td>(?*)</td>
</tr>
<tr>
<td>Mobile sources:</td>
<td></td>
</tr>
<tr>
<td>Light duty vehicle IMV</td>
<td>1,550</td>
</tr>
<tr>
<td>20% stringency</td>
<td></td>
</tr>
<tr>
<td>30% stringency with 2-speed idle test</td>
<td>2,243</td>
</tr>
<tr>
<td>Anti-tampering</td>
<td>455</td>
</tr>
<tr>
<td>Heavy duty gasoline truck IMV</td>
<td>2,000</td>
</tr>
<tr>
<td>Transportation measures</td>
<td>626</td>
</tr>
<tr>
<td>External floating roof tanks</td>
<td>(?*)</td>
</tr>
<tr>
<td>Subtotal—New RACT measures</td>
<td>9,996</td>
</tr>
<tr>
<td>Extraordinary control measures:</td>
<td></td>
</tr>
<tr>
<td>Stage II gasoline station controls</td>
<td>10,805</td>
</tr>
<tr>
<td>New RACT—Small sources</td>
<td>3,978</td>
</tr>
<tr>
<td>Automotive body shop</td>
<td>5,686</td>
</tr>
<tr>
<td>Architectural coatings</td>
<td>10,871</td>
</tr>
<tr>
<td>Consumer/commercial solvent use</td>
<td>10,774</td>
</tr>
<tr>
<td>Subtotal—Extraordinary control measures</td>
<td>42,116</td>
</tr>
<tr>
<td>Total emission reduction (without contingency measure)</td>
<td>195,772</td>
</tr>
<tr>
<td>Contingency measure:</td>
<td></td>
</tr>
<tr>
<td>Controls on existing dry cleaners (perchloroethylene)</td>
<td>5,947</td>
</tr>
<tr>
<td>Total emission reduction (with contingency measure)</td>
<td>190,719</td>
</tr>
<tr>
<td>Reduction required for attainment</td>
<td>190,676</td>
</tr>
</tbody>
</table>

Table 2.—SCHEDULE FOR IMPLEMENTATION OF THE OZONE CONTROL PROGRAM FOR THE NEW YORK CITY METROPOLITAN AREA

<table>
<thead>
<tr>
<th>Control measure</th>
<th>Begin study</th>
<th>End study</th>
<th>Public hearing</th>
<th>Adopt regulation</th>
<th>Final compliances</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reasonably available control measures: Existing control program</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New RACT measures:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Controls at major facilities</td>
<td>N/A</td>
<td>7/84</td>
<td>11/84</td>
<td>12/87</td>
<td></td>
</tr>
<tr>
<td>Gasoline tank truck controls</td>
<td>C</td>
<td>3/84</td>
<td>8/84</td>
<td>4/85</td>
<td></td>
</tr>
<tr>
<td>Reviation of RACT</td>
<td>C</td>
<td>2/84</td>
<td>N/A</td>
<td>5/84</td>
<td></td>
</tr>
</tbody>
</table>

This program is summarized in section II.B.2.a. of today's notice. * The SIP estimates that this measure will provide an emissions reduction of 4,669 tons by 1989. However, since full compliance with this measure will not be obtained by December 31, 1987, the State has reduced the effectiveness of this program to 3,978 tons. (See section II.B.3.a. of today's notice.)
2. Reasonably Available Control Measures

a. Existing Control Program. The 1982 submissions (the part that was approved on January 16, 1984 at 49 FR 3436) and the 1979 SIP contain VOC control measures which will continue to contribute towards attainment of the ozone standard. Such measures include the federal motor vehicle control program, the State’s I/M program (i.e., a program designed to operate with an initial vehicle failure rate or “stringency” of 10%), regulations for the control of a majority of the source categories covered by Group I and II CTG documents, and regulations for the control of other major sources.

b. New RACT Measures—i. Controls at Major Facilities. The 1982 submissions commit the State to the Control of VOC emissions from major facilities (i.e., those with VOC emissions greater than 100 tons per year). However, in some cases this effort has proven to be less effective than it could have been. This is because, rather than installing RACT at all emission points, some facilities elected to overcontrol at some emission points and apply this excess control against undercontrol at other emission points. (This practice is referred to as “bubbling.”) Therefore, for some emission points RACT has not been applied.

Because significant reductions in VOC emissions are needed to attain the ozone standard in the NJ—NY—CT AQCR, the State has committed to restrict the application of bubbles. Sources subject to both Part 228—“Surface Coating Processes” and Part 234—“Graphic Arts” will not be permitted to demonstrate compliance by overcontrol at one emission point and offsetting undercontrol at another when the points are subject to the requirements of these different regulations. This will be accomplished by revising by November 1984 the existing regulations (Part 228 and Part 234) and by negotiating compliance orders with affected sources. It should be noted that it is within the State’s prerogative to adopt as restrictive a bubble policy as it deems necessary.

ii. Gasoline Tank Truck Controls. Even though EPA had identified gasoline tank trucks as a Group II CTG source category requiring the application of RACT, the 1982 SIP submission did not provide a VOC control measure addressing gasoline tank truck leaks. However, New York State, in coordination with surrounding states, has committed to the development and implementation of a regulation that represents RACT for this source category. The February 2, 1984 supplement includes an implementation schedule for this effort, which provides for regulation adoption by June 1984.

iii. Reevaluation of RACT. Current State VOC regulations (i.e., Parts 223, 226, 228, 233, 234, and 238) provide for the granting of waivers from RACT emission reduction requirements if a source is unable to meet such requirements because of technological or economic hardships. Under provisions of the February 2, 1984 supplement, such waivers will now be reviewed upon renewal of the source’s Certificate to Operate in order to determine whether the waiver is still warranted. Because this will be done on an ongoing basis as a part of the State’s normal procedures, no regulatory revision is necessary for its implementation.

iv. Mobile Source Controls—(a) Light Duty Vehicle Inspection and Maintenance (I/M). In its 1979 SIP, the State committed to implement an I/M program for light duty vehicles. This program fully met all of the applicable EPA criteria and was approved. In its 1982 submissions and in its February 2, 1984 supplement, the State has maintained its commitment to its current I/M program and has committed to several improvements and expansions to it. The 1982 SIP submission called for the State on January 1, 1984 to increase the stringency level of the existing I/M program from 10 to 20 percent. This was effectuated through a revision to Part 217, “Emissions from Motor Vehicles Propelled by Gasoline Engines.” In its February 2, 1984 supplement, the State commits to further increase the stringency level of its I/M program, from 20 to 30 percent, on January 1, 1986. Also, on January 1, 1987 the State will institute the use of a two-speed idle test.

(b) Anti-Tampering. In its February 2, 1984 supplement, the State commits to inspect light duty vehicles for evidence of tampering with their emission control equipment. The program will begin on July 1, 1984 and will affect all 1984 and later model year light duty vehicles that are currently subject to emission inspection in the New York City metropolitan area. Approximately four million vehicles will have their principal air pollution control equipment examined visually to ensure that no component has been removed or rendered ineffective. The equipment to be examined includes the:

- Catalytic converter.
- Air injection system.
- Evaporative emission control system.
- Exhaust gas recirculation system.
- Air pre-heat system.
- Fuel inlet restrictor, and
- PCV valve.

Any equipment found missing or inoperative will have to be repaired or replaced in order for the vehicle to be allowed to operate on public roads. Enforcement will be executed through the sticker and registration mechanism currently used in enforcing the existing I/M program requirements. The State also plans to implement the anti-tampering program throughout New York State, not only in the New York portion of the NJ—NY—CT AQCR.

(c) Heavy Duty Gasoline Truck I/M. In its 1982 SIP submission, the State...
committee to implement an I/M program for heavy duty gasoline vehicles (HDGV) in the NJ-NY-CT AQCR. This program was to begin in January 1984 if, after study, it was found to be economically feasible. Since the study of the economic feasibility of this program did not begin until December 1983, which was later than originally anticipated, the starting date for the HDGV I/M program has been changed in the State's February 2, 1984 supplement to begin on January 1, 1985.

v. Transportation Measures. EPA's February 3, 1983 proposal to disapprove the 1982 submissions was based in part on the absence of a State commitment to implement the reasonably available transportation measures identified in the document. With minor exceptions, the State's February 2, 1984 supplement commits to implementation of the extensive program of transportation control measures contained in Appendices A, B, and C of the 1982 submissions. These control measures replace those contained in the 1979 SIP. The 1982 SIP submission includes State, county, and local commitments to the implementation of the following types of measures:

- Exclusive Bus/Carpool Lanes
- Parking Controls
- Park and Ride/Fringe Parking
- Carpool Programs
- Bicycle Lanes and Storage Facilities
- Alternative Work Schedules
- Traffic Flow Improvements
- Private Car Restrictions
- Freight Transportation
- Land Use Policy and Development
- Extended Vehicle Idling
- Improved Public Transit.

Virtually all of the projects described in the Appendices of the 1982 SIP submission have been retained by the State. An updated list of specific projects is provided in the "Appendix of Ozone Control Measures" which is part of the February 2, 1984 supplement. Since the State now commits to implement those transportation control measures which have been found to be reasonably available, and since the ozone control program in its entirety is adequate to provide for attainment of the ozone standard, appropriate EPA requirements have been met.

vi. External Floating Roof Tanks. In its 1982 submissions, the State failed to provide a regulation or a commitment to develop a RACT regulation for the control of VOC emissions from the Group II CTG source category, petroleum liquid storage in external floating roof tanks. The State has now committed to the development and adoption of such a regulation by September 1, 1984.

3. Extraordinary Control Measures
   a. Stage II Gasoline Station Controls. The State has committed to the adoption by June 1985 of a requirement for the capture of the gasoline vapors that are displaced when automobile gas tanks are refueled (Stage II vapor recovery). The captured vapors are to be returned to the gasoline station's storage tanks for eventual collection through a currently required VOC control system (Stage I vapor recovery).
   b. New RACT—Small Sources. The stage II SIP submission requires that VOC sources emitting over ten pounds per hour and subject to Part 212, "Processes and Exhaust and/or Ventilation System," have their environmental rating changed from "D" to "B." A "B" rating requires a greater degree of emission control than does a "D" rating.
   c. Existing Dry Cleaners (Perchloroethylene). The State has committed in its February 2, 1984 supplement to adopt a regulation by January 1986 to control VOC emissions from automotive body shops. This regulation is intended to reduce VOC emissions from the refining of primarily worn or damaged automobiles by requiring paint reformulation (i.e., replacing VOCs with water or replacing high VOC content paint with high solids content paint) and/or the installation of vapor control devices.
   d. Architectural Coatings. The State's recertification schedule, full compliance by all sources will not be obtained until after December 31, 1987. Therefore, the measure increases the number of regulated sources. The State has indicated that it will provide for individual waivers from its requirements based on technical or economic hardships. Compliance will occur through New York's existing source recertification process.
   e. Consumer/Commercial Solvent Use. The State has committed to the control of consumer/commercial solvent use. A regulation to reduce VOC emissions from such products as toilietries, aerosols, space deodorants and rubbing compounds will be adopted by July 1986. Control will be achieved through reformulation and product modifications.

4. Contingency Measure Controls on Existing Dry Cleaners (Perchloroethylene). The State has committed to revise its Part 232, "Dry Cleaners," to ensure that the regulation requires RACT in the event that EPA continues to consider perchloroethylene as a reactive VOC. EPA is in the process of examining the reactivity of perchloroethylene (See 48 FR 49097; October 24, 1983).

The State adopted and submitted to EPA on July 25, 1983 Part 232, "Dry Cleaning," which controls the emissions of perchloroethylene from dry cleaning operations. EPA, in its February 3, 1983 proposed approval action (48 FR 5137) on certain of New York's VOC control regulations indicated that it was not taking action to propose approval of this regulation pending the completion of certain technical studies. As pointed out on February 3, 1983, this regulation does not fully provide for RACT. This is because it does not require that
emissions from the dryers at existing facilities be vented through both a condenser and carbon adsorption system, or through equivalent control equipment.

Since the State has adopted this regulation and it does provide for emission reductions, EPA is now proposing to approve Part 232 as currently adopted by the State. However, EPA’s proposed approval should not be interpreted as a determination of the ability of Part 232 to provide for RACT as described in the appropriate CTG document. The State is committed to amending and adopting Part 232 to provide for RACT by January 1988.

5. Conclusion

a. Group II CTG Requirements. On January 26, 1984 (49 FR 3436) EPA took final action to approve State regulations for the control of VOC emissions from six of the nine Group II CTG source categories requiring control. Since RACT for dry cleaners may no longer be required and since the State’s February 2, 1984 supplement commits to the development of regulations for the control of emissions from gasoline tank trucks and external floating roof tanks, the State has now fulfilled the EPA requirement concerning the Group II CTG source categories.

b. Group III CTG Requirements. The 1982 SIP submission contains a commitment to adopt RACT regulations for any future CTG source category identified by EPA. In fulfillment of this commitment, the February 2, 1984 supplement contains the results of an evaluation of the only two petroleum dry cleaning sources in the NJ-NY-CT AQCR. This source category is covered by a Group III CTG document. The State has determined that the two petroleum dry cleaning sources each emit less than 100 tons per year of VOCs. Consequently, because their emission rates are below the threshold value established by the CTG document, they need not meet the CTG’s control requirements. Nevertheless, the State intends to regulate these sources as part of the measure, “New RACT-Small Sources.”

c. New RACT Measures. EPA finds that the new RACT measures contained in the State’s February 2, 1984 supplement adequately respond to EPA’s requirements regarding the development and implementation of additional control measures. Consequently, EPA is proposing to approve the new RACT measures.

d. Extraordinary Control Measures. EPA finds that the extraordinary measures contained in the State’s February 2, 1984 supplement adequately respond to EPA’s requirements regarding the development and implementation of additional control measures. Although the measures require additional study to confirm their estimated effectiveness and, for some, the most reasonable method of implementation, the assumptions made by the State appear to be reasonable. Consequently, EPA is proposing to approve the extraordinary control measures.

B. Ozone Modeling

In its February 3, 1983 proposal, EPA was unable to accept the State’s ozone modeling analysis. The State’s analysis indicated that a 59 percent VOC emission reduction was needed to attain the ozone standard in the NJ-NY-CT AQCR. In a joint effort with New York and New Jersey, EPA had previously determined that a 60 percent reduction was necessary. However, based on changes to assumptions about emissions in future years, EPA currently believes that a 59 percent reduction in VOC emissions is necessary to attain the ozone standard in the NJ-NY-CT AQCR; the February 2, 1984 supplement reflects this number. Therefore, this particular deficiency identified in the 1982 submissions has been corrected.

EPA’s recalculation reflects the fact that the State of New Jersey will be implementing additional measures on a state-wide basis outside of the NJ-NY-CT AQCR. Becaused New Jersey is instituting statewide controls, VOC emissions will be reduced not only in the NY-NJ-CT AQCR, But also in upwind New Jersey areas. This latter fact benefits the NY-NJ-CT AQCR by lowering, beyond that which was originally anticipated, the concentration of precursor VOC’s being transported into the AQCR from upwind areas. As a result, the VOC emission reduction necessary to provide for attainment of the ozone standard in the NJ-NY-CT AQCR is lowered from 60 percent to 59 percent. (See 48 FR 36141 August 9, 1983 for a fuller discussion of this calculation).

C. Emissions Inventory

The State has provided a revised inventory of its VOC emissions to reflect its revised ozone control program and the most current date available. The February 2, 1984 supplement provides an inventory which includes perchloroethylene as a VOC and one which does not include perchloroethylene. For the emissions inventory that does not include perchloroethylene, a detailed summary is provided by specific source category. For the emissions inventory that does include perchloroethylene, a summary of emissions is provided only for general source categories. Aside from perchloroethylene sources, the two inventories appear identical. The State chose not to provide a detailed emissions inventory for perchloroethylene since, as noted in Section II.B.4 of today’s notice, EPA is in the process of examining the reactivity of perchloroethylene.

EPA is reviewing the adequacy of the emissions inventory with perchloroethylene. Table 3 presents a summary of the original inventory contained in the 1982 submissions and the revised inventory which includes perchloroethylene. EPA finds the revised emissions inventory to be adequate and proposes to approve it. However, this inventory makes use of a revised emission factor for calculating emissions from architectural coatings. This factor will be reviewed in a study to be conducted by the State in its development of the architectural coatings measure. EPA finds the interim use of the revised factor to be acceptable pending the results of the study.

<table>
<thead>
<tr>
<th>Source category</th>
<th>1980 baseline</th>
<th>1987 with RACT measures only</th>
<th>1987 with RACT and extraordinary control measures</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Original 1</td>
<td>Revised 1</td>
<td>Original</td>
</tr>
<tr>
<td>Point sources</td>
<td></td>
<td></td>
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<tr>
<td>19,148</td>
<td>18,148</td>
<td>17,916</td>
<td>14,086</td>
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<td>9,826</td>
<td>9,826</td>
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<tr>
<td>Area sources</td>
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</tr>
<tr>
<td>544,023</td>
<td>544,023</td>
<td>544,023</td>
<td>320,516</td>
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<tr>
<td>Total</td>
<td>562,171</td>
<td>339,454</td>
<td>214,342</td>
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<tr>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

* From the August 3, 1982 submission.
* From the February 2, 1984 supplement.
* Based upon Table 1 of today’s notice. EPA credits the ozone control program with an emissions reduction of 189,769 tons per year in 1987. Therefore, EPA finds the VOC emissions remaining in 1987 with the application of RACT and extraordinary control measures to be no greater than 139,666 tons per year. EPA has not yet confirmed the estimate made by the State of 137,908 tons per year.
In a related matter, in its approval of the 1979 SIP, EPA promulgated a condition at 40 CFR 52.1674(f)(2) which requires a submittal by the State of an adequate emissions inventory of VOC emissions in the NJ-NY-CT AQCR.

Since EPA proposes to find the inventory contained in the February 2, 1984 supplement to be adequate, EPA is also proposing today to revoke this condition.

The revoking of 40 CFR 52.1674(f)(2) will provide full approval of the 1979 SIP for attainment of the ozone and carbon monoxide standards in the NJ-NY-CT AQCR. Consequently, this action, if made final, will remove the limitation on the construction or modification of major VOC sources in the AQCR. This limitation is currently in effect as a result of provisions of Section 110(a)(2)(I) of the Clean Air Act which imposes such limitations on areas which do not have in effect a SIP which meets the requirements of Part D. The U.S. Court of Appeals for the Second Circuit has held that the construction moratorium required under Section 110(a)(2)(I) must remain in effect until a state satisfies all conditions imposed by EPA on approval of a SIP. See Connecticut Fund For The Environment v. EPA, 672 F.2d 998, 1007–10 (2nd Cir. 1982), and Council of Community Organizations v. Gorsuch, 883 F.2d 648, 662 (2nd Cir. 1989).

D. Reasonable Further Progress and Annual Reporting

In its February 3, 1983 proposal, EPA identified the need for the State to develop additional ozone control measures so as to demonstrate reasonable further progress towards attainment of the ozone standard. This has now been accomplished.

The demonstration of reasonable further progress contained in the February 2, 1984 supplement generally shows a linear reduction (i.e., at a constant rate) in VOC emissions between 1980 and 1987. In the years 1980 and 1981 reductions in emissions are greater than what would have accomplished if reductions were being achieved in a linear fashion. In 1984 and 1985 reductions are less than those required for linearity. In the years 1986 and 1987 reductions in emissions are again linear. A graph showing reasonable further progress is provided in the State’s February 2, 1984 supplement. Also, to further document reasonable further progress, the State provides a table showing emission reductions on a year-by-year basis for eight generic source categories. The February 2, 1984 supplement commits the State to submit to EPA an annual report which will discuss its progress in achieving the required emission reductions. The annual report will consist of an emission tracking element and an air quality trends element. If any shortfalls in emission reductions occur from those which are anticipated by the SIP, their effect on reasonable further progress will be discussed. Among other things, the report will discuss the effect of new sources, changes and updates to the emissions inventory, and changes in State and/or federal policy and law in relation to their effect on reasonable further progress. Should it be established that reasonable further progress is not being met for the reporting year, an analysis will be performed by the State to determine if the problem is temporary or persistent and if contingency measures should be developed to assure scheduled attainment of the ozone standard.

E. Demonstration of Attainment

In its February 3, 1983 proposal, EPA found that the State’s VOC control program was inadequate to demonstrate attainment of the ozone standard by December 31, 1987. The State’s February 2, 1984 supplement provides commitments to develop and implement a program of new RACT measures and extraordinary control measures sufficient to provide for attainment of the ozone standard by December 31, 1987. Therefore, EPA finds that, with the State’s revised control program, the 1982 SIP now adequately demonstrates attainment of the ozone standard as required by the Clean Air Act.

III. Carbon Monoxide

A. Introduction

The 1979 SIP included a commitment to conduct a carbon monoxide hotspot study for the purpose of defining by June 1981 the extent and magnitude of the carbon monoxide problem in the New York City metropolitan area. However, because of technical and contractual problems, the study was still incomplete as of June 1982. As a result, the 1982 submissions contained little information on the New York City metropolitan area’s carbon monoxide problems; it identified only two known hotspots. Consequently, in its February 3, 1983 notice, EPA proposed to disapprove the carbon monoxide element of the SIP. However, since that time, the carbon monoxide hotspot study has been completed and its results have been included in the State’s February 2, 1984 supplement. The methodology employed in this study is described in the next section of today’s notice.

B. Hotspot Study

1. Background

At the start of the hotspot study, local transportation planning and health agencies in the New York City metropolitan area prepared a list of candidate hotspots. From this list, sites were selected by the State as representative of the area’s hotspot problems. Carbon monoxide, traffic, and meteorological data were collected at these representative sites for purposes of calibrating EPA-approved air quality models. The carbon monoxide concentrations at all of the candidate hotspot sites were then predicted using the models.

2. New York City

The New York City Department of Environmental Protection (NYCDEP) used two air quality models to predict carbon monoxide concentrations at 47 candidate sites. For thirteen “deep-canyon” sites (i.e., sites that are relatively enclosed and typically are located in areas lined by tall buildings), NYCDEP used the SONDEL model. EPA has approved this model for use in the City of New York. For 34 “non-deep canyon” sites NYCDEP used the HIWAY 2 model. As a result of this analysis, seventeen of the non-deep canyon sites and all thirteen of the deep-canyon sites were predicted to violate the standard as of January 1, 1984.

3. Nassau and Westchester Counties

The State used EPA’s Hotspot Verification procedure to screen potential carbon monoxide hotspots in Nassau and Westchester Counties. Thosse sites found to be in violation of the carbon monoxide standard were then further analyzed by the more refined EPA Intersection-Midblock Model (IMM).

In Nassau County eleven candidate sites were evaluated and, without the application of control measures, one violation of the standard was predicted to exist after December 31, 1987. This hotspot occurs at the intersection of Old Country Road and Clinton Avenue. The remaining sites in Nassau County were predicted to be in attainment of the carbon monoxide standards prior to December 31, 1987.

In Westchester County sixteen candidate sites were evaluated and no violations of the standards after December 31, 1985 were predicted to occur.
### C. Control Measures

#### 1. Tailpipe Control Measures

Carbon monoxide emissions from mobile sources are controlled in the same manner as are VOC emissions. The following "tailpipe" control measures, discussed in Section II. B. 2h.i.v. of today's notice, will be implemented throughout the New York City metropolitan area:

- Federal motor vehicle control program,
- I/M Program (10% stringency),
- I/M,
- Program (20% and 30% stringency),
- Anti-tampering, and
- Heavy Duty Gasoline Truck I/M

#### 2. Site-specific Control Measures (Hotspots)

- New York City. The February 2, 1984 supplement describes a four-phase approach by the State and City of New York to develop control measures at identified hotspots. Each year, a group of up to fifteen sites will be identified and any needed control measures will be developed and implemented.

Control measures for the first group of sites were implemented in 1983. The location of these sites and the control measures applied at each site are presented in Table 4. The February 2, 1984 supplement contains the results of modeling analyses demonstrating that the application of these measures will provide for the timely attainment of the carbon monoxide standards at each site.

Two categories of control measures have been directly applied in the City—area-wide and local measures. They are as follows:

- Areawide:
  - Tailpipe (see Section III. C.1.)
  - Red Zone Bus Lanes
  - Traffic Enforcement
  - Queens-Midtown Tunnel Lane Reversal

- Local Measures:
  - Signalization Changes
  - Parking Restrictions
  - Exclusive Turning Lanes
  - Realignment of Existing Traffic Lanes

In addition, the State's submission refers to the "indirect air quality benefits" of other measures implemented by the New York City Department of Transportation. These measures are:

- Signal Computerization
- Parking Controls
- Express Bus and Carpool Lanes
- Traffic Flow Improvements
- Bicycle Lanes and Bicycle Storage Facilities
- Private Car Restrictions
- Park and Ride Facilities

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#### Table 4.—CONTROL PROGRAM FOR GROUP I CARBON MONOXIDE HOTSPOTS IN NEW YORK CITY

<table>
<thead>
<tr>
<th>Site</th>
<th>Control Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manhattan Central Business District: 37th Street between Sixth and Eighth Avenues 5.</td>
<td>Traffic enforcement, Queens-Midtown Tunnel lane reversal.</td>
</tr>
<tr>
<td>47th Street between Fifth and Sixth Avenues. 56th Street between Fifth and Madison Avenues.</td>
<td>Traffic enforcement.</td>
</tr>
<tr>
<td>58th Avenue between 40th and 41st Streets*</td>
<td>Traffic enforcement.</td>
</tr>
<tr>
<td>57th Street between Third and Lexington Avenues*</td>
<td>Traffic enforcement.</td>
</tr>
<tr>
<td>56th Street</td>
<td>Traffic enforcement.</td>
</tr>
<tr>
<td>56th Street between Second and Third Avenues. Sixth Avenue between 31st and 32nd Streets. Fifth Avenue between 31st and 32nd Streets. Eighth Avenue between 40th and 42nd Streets.</td>
<td>Traffic enforcement realignment of existing traffic lanes.</td>
</tr>
<tr>
<td>Outside of Central Business District: Canal Street between Church Street and Bowery. Canal Street between Elizabeth Street and Bowery. Houston Street between Bowery and Elizabeth Street. Flatbush Avenue between Tilley and Johnson Streets. Atlantic Avenue between Third and Fourth Avenues.</td>
<td>Traffic enforcement realignment of existing traffic lanes.</td>
</tr>
</tbody>
</table>

1 Besides the site-specific measures identified in Table 4, all other improvements from the emission reductions achieved through the State's Inspection and Maintenance program and other "tailpipe" measures.

The February 2, 1984 supplement notes that the City considers its signal computerization project as a SIP commitment and as an essential element of its traffic control program. Also, the supplement cites (in Appendix K) the Metropolitan Transportation Authority's Five-Year Capital Program as another good faith effort which may provide additional air quality benefits.

As a measure of the effectiveness of the traffic enforcement measure, the SIP commits to maintaining a minimum level of traffic enforcement resources (i.e., 100 officers assigned to parking enforcement, 187 officers assigned to intersection control and moving violations, and 30 tow trucks) in the Midtown Core of Manhattan. It is stated in the February 2, 1984 supplement that this level will not be reduced unless the City does an analysis which demonstrates that the reduction will not adversely affect its ability to maintain the effectiveness of the traffic enforcement measure in the Midtown Manhattan Core. The City will transmit any such analysis to EPA.

### b. Nassau County

The February 2, 1984 supplement describes the control measures to be applied at the site in Nassau County predicted to be in nonattainment of the carbon monoxide standard in 1987 without application of a transportation control measures. For the hotspot located at Old Country Road and Clinton Avenue, a reconstruction project identified in the 1984-1986 Transportation Improvement Program will improve traffic flow. This project will reduce the predicted carbon monoxide concentrations from 9.8 to 8.6 parts per million in 1987. The project is currently being designed.

#### D. Growth and Changing Traffic Patterns

1. Introduction

In order to meet the Clean Air Act's requirement for the maintenance of national ambient air quality standards once they are attained, the February 2, 1984 supplement cites a procedure which will be used to evaluate the impact of changing traffic patterns on air quality. The procedure makes use of the fact that an environmental impact statement (EIS), required by either the National Environmental Policy Act (NEPA), the State Environmental Quality Review Act (SEQRA), or the New York City Environmental Quality Review (CEQR), must be developed for certain major projects.

The State's submission describes SEQRA as requiring every State and local agency to assess the environmental impacts of proposed projects subject to the statute prior to the time when any actions are undertaken or approvals are issued. Projects subject to SEQRA that may be indirect sources of air pollution must be evaluated for their present and future contributions to air pollution. An indirect source is defined in the February 2, 1984 supplement as a facility, structure or installation, the construction or operation of which results or may result directly or indirectly in associated vehicular movements which contribute to concentrations of any air contaminant for which there is an air quality standard. While SEQRA applies to all State and local agencies, municipalities may adopt an environmental quality...
review ordinance which can be no less restrictive than the State law; for example, New York City's CEQR.

In the February 2, 1984 supplement, NYSDEC commits to assist local governments in Nassau and Westchester Counties in implementing an indirect source review process within carbon monoxide nonattainment areas. In return, the State expects the local governments to use the results of the indirect source review process in their decisionmaking regarding the granting, denying or conditioning of permits for projects which are identified as indirect sources of air pollution.

In order to ensure that the carbon monoxide standards will be attained by December 31, 1987 and maintained thereafter, NYSDEC will not issue permits to proposed projects for which an EIS identifies a violation or exacerbation of the standard unless the State or local government requires that the necessary steps be taken to prevent the identified violation. The following sections in today's notice summarize the commitments made by local governments to assess growth and changing traffic patterns.

2. New York City

To further ensure that the carbon monoxide standard is attained and maintained in New York City, if an EIS for a project identifies a violation or exacerbation of the carbon monoxide standards, the City commits to ensure that control measures will be implemented by the project sponsor or City so as to provide for attainment of the standards by December 31, 1987 and maintenance thereafter.

The State transportation planning system will develop and implement any additional control measures that might be necessary to provide for attainment and maintenance if conditions (e.g., traffic, land use) anticipated by the SIP change significantly. The City is committed to give special attention to the significant development planned for the West Midtown area of Manhattan and to any control measures that might be necessary for that area.

3. Nassau County

NYSDEC commits to implement, by June 1, 1984, an indirect source review program and secure agreements with local governments in the nonattainment area of Nassau County to use the air quality assessment process in their decisionmaking regarding the granting, denying or conditioning of permits for projects which are identified as indirect sources of air pollution. Projects proposed in the Mitchel Field area are expected to result in growth and changed traffic patterns in the area.

Consequently, NYSDEC, in cooperation with Nassau County, has begun to assess the impact of these projects upon the carbon monoxide concentrations at nearby intersections. Once impacts are determined, control measures selected for the area will be included as part of a September 1, 1984 submission to EPA.

4. Westchester County

The Westchester County Department of Health reviews the analysis of indirect source impacts performed for projects covered by SEQRA. For those projects where the Westchester County Health Department is an approving agency and where the proposed project is predicted to cause a contravention of the carbon monoxide standards, the applicant for the project will be required to evaluate control measures in accordance with the SEQRA process.

E. Reasonable Further Progress and Annual Reporting

The SIP must demonstrate that reasonable further progress toward attainment of the carbon monoxide standards will continue to be made and will be reported on throughout the period of nonattainment. The State's submission provides a staged elimination of hotspots in New York City, a schedule for the elimination of the current hotspots in Nassau County and a demonstration that the hotspots in Westchester County will be eliminated by the end of 1985. This demonstrates reasonable further progress through the systematic elimination of hotspots.

The February 2, 1984 supplement also commits the State to submit an annual report to EPA which will document its progress in implementing the SIP. One of the objectives of this report is to demonstrate that the predicted emission reductions are being achieved. The annual report will discuss four factors that can influence the effectiveness of the carbon monoxide element of the SIP, i.e., growth, changing traffic patterns, conservativeness of technical methods, and the accuracy of data. Also, the effects of certain new projects will be discussed.

F. Attainment Demonstration

As noted, for those hotspots addressed, the February 2, 1984 supplement demonstrates attainment of the carbon monoxide standard by December 31, 1987 through the adoption and implementation of the committed control measures.

G. Conclusion

EPA finds that the February 2, 1984 supplement provides an adequate program for the control of carbon monoxide. It adequately defines the nature and extent of the carbon monoxide problem and demonstrates attainment of the carbon monoxide standards. Consequently, EPA is proposing to approve the carbon monoxide element of the 1982 SIP.

IV. Other Requirements

A. Conformity

In its February 3, 1983 proposal, EPA found that the State's procedures for assessing conformity, as described in the 1982 submissions, were inadequate. However, since that time the area's Metropolitan Planning Organization (MPO)—the New York Metropolitan Transportation Council has adopted conformity procedures which EPA finds to be adequate.

The procedures include an assessment of the air quality effects of individual and collective transportation activities. The Transportation Improvement Program (TIP) will be reviewed by the MPO for the TIP's contribution in helping the State achieve reasonable further progress towards attainment of air quality standards and to ensure that all transportation projects committed to in the SIP are contained in it.

In addition, in its February 3, 1983 proposal, EPA determined that the 1982 SIP should also discuss procedures to assess for conformity purposes the emissions impacts of any federal actions including those not related to transportation. The February 2, 1984 supplement commits to a comprehensive annual reporting process whereby emissions from all federal actions will be considered.

EPA finds the procedures contained in the February 2, 1984 supplement to be adequate to ensure conformity of the 1982 SIP with transportation and federal actions.

B. Basic Transportation Needs

1. Introduction

Sections 110(c)(5)(B) and 110(a)(3)(D) of the Clean Air Act provide certain planning requirements associated with the meeting of "basic transportation needs" (BTN). In its decision of June 16, 1982, the U.S. Court of Appeals for the Second Circuit suggested specific criteria for reviewing the 1982 SIP against these provisions. Council of Commuter Organizations v. Gorsuch, 683 F. 2d 546, 603 (2nd Cir. 1982). These were used by EPA in its evaluation of the February 2, 1984 supplement; EPA's review of how the supplement addresses each criterion follows.
2. Review Criteria

a. EPA should independently determine the adequacy of the State's definition of its basic transportation needs in accordance with EPA guidance. The State's definition of BTN conforms to that contained in the BTN guidance proposed by EPA and the U.S. Department of Transportation (USDOT) on September 18, 1980 (45 FR 62170). The guidance provides that BTN shall be determined based on "a review of those changes in public transportation service, facilities, and/or policies that are necessary to maintain mobility as transportation control strategies are implemented".

The State notes in its February 2, 1984 supplement that there still are no transportation measures in the 1982 SIP which are expected to impede traffic flow to an extent which would divert auto users to transit. Therefore, BTN will continue to be met. The traffic signal computerization project is the only measure which could restrict the public's mobility. Since this project will make use of a system that could be used to meter (restrict) auto entries into the Manhattan central business district, some drivers may shift to the transit system. The February 2, 1984 supplement includes an analysis of the excess capacity of the New York City transit system. The analysis concludes that the system has sufficient capacity to absorb any automobile travelers diverted to transit as a result of the transportation measures contained in the 1982 SIP.

b. EPA should determine whether the identified measures as scheduled for implementation in the 1982 SIP meets the State's basic transportation needs by providing for a real improvement in public transportation for 1982 and each year thereafter (this evaluation requires a detailed discussion for the identified improvement measures).

The SIP does not identify any measures for implementation since none are necessary to meet BTN.

c. EPA should evaluate the SIP provisions of implementing details and schedules that are sufficiently specific to enable the monitoring of New York's progress toward meeting its basic transportation needs.

The SIP does not contain implementing details and schedules since no transit improvements are necessary to meet basic transportation needs.

d. EPA should ensure that the SIP identifies responsible agencies required to take actions to implement identified strategies as scheduled. For instance, if New York continues to rely on a fair stabilization strategy, some agency or individual must take responsibility to ensure that this strategy is implemented.

The February 2, 1984 supplement identifies no strategies for implementation; therefore no agencies are defined with respect to BTN.

e. EPA should determine whether the SIP meets the equivalent reduction requirement (i.e., emission reductions equivalent to those which would have occurred if the bridge tolls had been implemented) and whether remedial action needs to be taken to remedy past failures to satisfy this requirement.

In its February 3, 1983 proposal, EPA pointed out that the 1982 submissions failed to provide an analysis and demonstration of emissions reduction which is required by Section 110(c)(5)(B) of the Clean Air Act. According to this provisions, the 1982 SIP must demonstrate that the measures included in the SIP provide for an emissions reduction equivalent to the reduction which was achieved by providing tolling the East and Harlem River crossings.

The February 2, 1984 supplement demonstrates that the following measures committed to in the 1982 SIP will meet this requirement:

- Increased stringency of the light duty vehicle I/M program from 20 to 30 percent (2,136 tons per year).
- Anti-tampering measures for light duty vehicles (422 tons per year).
- Vehicle use measures (628 tons per year).
- Increased stringency and anti-tampering for light duty trucks (160 tons per year).

The toll strategy was expected to result in a reduction in the vehicle miles travelled (VMT) in the metropolitan area by 0.4 percent. Based on the changing VOC emissions from highway vehicles, this percent reduction equates to different levels of VOC reduction depending on the year of analysis. Table 5 contains these VOC reduction levels, by year.

<table>
<thead>
<tr>
<th>Year</th>
<th>Mobile source VOC emissions</th>
<th>Emissions reduction resulting from 0.4 percent VMT reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1977</td>
<td>225,047</td>
<td>900</td>
</tr>
<tr>
<td>1980</td>
<td>176,212</td>
<td>705</td>
</tr>
<tr>
<td>1981</td>
<td>146,182</td>
<td>596</td>
</tr>
<tr>
<td>1982</td>
<td>126,436</td>
<td>505</td>
</tr>
<tr>
<td>1983</td>
<td>107,272</td>
<td>430</td>
</tr>
<tr>
<td>1984</td>
<td>90,374</td>
<td>360</td>
</tr>
<tr>
<td>1985</td>
<td>75,986</td>
<td>305</td>
</tr>
<tr>
<td>1986</td>
<td>62,006</td>
<td>250</td>
</tr>
</tbody>
</table>

C. Resources

The 1982 SIP must identify financial and manpower resources necessary to carry out the commitments being made by the State. EPA provides financial resources to the State with funds made available under provisions of Section 105 of the Clean Air Act. At this time EPA assumes that adequate resources will be made available through State and federal funding for the State to meet its commitments. EPA will reevaluate implementation of some of the above mentioned measures, and the resultant emission reductions, began in 1980. In addition, the measures will provide for the equivalent emission reduction requirement beginning in 1986. EPA does not believe that requiring remedial actions is either practical or necessary.

e. EPA should reevaluate the adequacy of the SIP's funding provisions in light of recent federal funding cutbacks and recent developments regarding state aid for mass transit.

The February 2, 1984 supplement does not contain transit funding information. However, since BTN are being met, no funding is needed to meet them.

g. EPA should assess the adequacy of consultation with local and regional agencies in the preparation of the 1982 SIP.

The February 2, 1984 supplement notes that consultation occurred in its development. There has been no indication by any local or regional agency of inadequate consultation.

3. Conclusion

In accordance with proposed EPA and USDOT guidance the State has determined that the present transit system provides for BTN and that no changes to this situation are anticipated. Therefore, EPA finds the New York program concerning BTN to be adequate and approvable. Also, EPA believes that the 1982 SIP responds to the extent appropriate to the review criteria suggested by the U.S. Court of Appeals given the fact that New York has found that no new transit improvement measures are required.
IV. Summary

EPA is proposing approval of the supplemental information submitted by the State on February 2, 1984 and of the 1982 SIP in its entirety. EPA is soliciting comments only on the material discussed in today's notice. The Administrator's decision to approve or disapprove this submission will be based upon the comments received and on whether the SIP revision as a whole meets the requirements of Section 110 and Part D of the Clean Air Act and 40 CFR Part 51.

Under 5 U.S.C Section 605(b), the Regional Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

I. Introduction

The new date by which comments must be received is June 25, 1984.

ADDRESS: Send comments to: Joel Feinglass, Department of Health and Human Services, Room 813D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201. The public may see the comments received in Room 517D from 9 a.m. to 5:30 p.m., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Feinglass, Director, Division of Assistance Policy, 202-245-7565.


Margaret M. Heckler, Secretary of Health and Human Services.

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

(MM Docket No. 84-281; FCC 84-89)

Nighttime Operations on Canadian, Mexican, and Bahamian AM Clear Channels

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its Rules pertaining to unlimited time operation by AM broadcast stations on Canadian, Mexican, and Bahamian Clear Channels. Use of these channels by U.S. stations have previously been prohibited or restricted by international agreements. The proposed amendments provide technical standards and non-technical criteria pertaining to operation on these channels and designate certain Class IV stations as "Class II-C". Comments are sought on the proposed standards, criteria and new designation, as well as on other relevant matters.

DATES: Comments must be filed on or before June 1, 1984. A reply to comments must be filed on or before June 15, 1984.

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 834-6530.

List of Subjects in 47 CFR Part 73

Radio and television broadcasting.

Notice of Proposed Rulemaking

In the matter of Nighttime Operations on Canadian, Mexican, and Bahamian AM Clear Channels; MM Docket No. 84-281.


By the Commission.

II. Background

1. The Federal Communications Commission herein proposes technical and non-technical amendments to Part 73 of the Rules pertaining to unlimited time operation on channels hereofore designated as Canadian, Mexican, and Bahamian Class I-A Clear Channels. The new bilateral agreement, which supersedes NARBA insofar as relations between Canada and the United States are concerned, permits nighttime operations on these Canadian Clear Channels anywhere in the U.S. as long as requisite protection is given Canadian assignments as determined in accordance with the new agreement. Although NARBA is still applicable with regard to the Bahamian Clear Channel, the Commonwealth of the Bahamas stated its intention in the Rio Final Acts of the Region 2 Conference on AM Broadcasting to reduce the standards and non-technical criteria and new designation, as well as on other relevant matters.

2. The terms of the North American Regional Broadcasting Agreement ("NARBA") have, in the past, prohibited the United States from establishing any new nighttime AM operations on the seven Canadian Class I-A Clear Channels or on the Bahamian Clear Channel within 650 miles of the Canadian border and Bahama Islands, respectively. With the recent signing of the new bilateral agreement on AM broadcasting between the United States and Canada, this restriction has been removed with regard to the Canadian Clear Channels. The new bilateral agreement, which supersedes NARBA insofar as relations between Canada and the United States are concerned, permits nighttime operations on these Canadian Clear Channels anywhere in the U.S. as long as requisite protection is given Canadian assignments as determined in accordance with the new agreement. Although NARBA is still applicable with regard to the Bahamian Clear Channel, the Commonwealth of the Bahamas stated its intention in the Rio Final Acts of the Region 2 Conference on AM Broadcasting to reduce the standards and non-technical criteria and new designation, as well as on other relevant matters.

3. The Canadian Class I-A's were designated in the North American Regional Broadcasting Agreement at 540, 600, 740, 800, 900, 1050, and 1560 kHz. The Mexican Class I-A Clear Channel, designated under the U.S./Mexican AM Agreement, are 540, 730, 800, 900, 1050, 1220, and 1570 kHz. The Bahamian Clear Channel is 1560 kHz.
Acts. The Bahamas has not as yet taken such action. However, in the course of recent bilateral discussions, that Administration has reaffirmed this intention. Once this is accomplished, the 600-mile restriction set forth by NARBA will no longer be applicable regarding the Bahaman Clear Channel.

3. The current bilateral agreement between the United States and Mexico precludes any new nighttime operations anywhere within the United States on the Mexican Class I-A Clear Channels. However, the United States and Mexico are in the process of negotiating a new bilateral AM agreement. Considerable progress has been made towards developing a new agreement that would permit nighttime operation on the U.S. and Mexican Clear Channels in a manner similar to that now permitted by the recent agreement with Canada.

4. During the negotiations for the new bilateral agreement with Canada, the Commission invited parties that would have an interest in applying for fulltime operation on the Canadian Clear Channels to make those interests known. In excess of 150 such expressions of interest were received, and they were used to assist the U.S. delegation in establishing protection rights on these channels. Although a substantial number of these filings were included in the frequency plan for the new agreement in order to maintain protection rights, they cannot be given domestic priority because the Commission must now establish appropriate amendments to the Rules governing the formal filing of applications for these frequencies.

Procedures have been included in the agreement that provide for shifting priorities from those tentative proposals now in the frequency plan to communities where applications may ultimately be formally filed and granted.

III. Discussion

5. The Commission invites comments from interested parties to assist it in formulating amendments to its rules governing applications for new fulltime Class II stations on the Canadian Class I-A Clear Channels. Additionally, with the anticipated denunciation of NARBA by the Bahamas and the encouraging progress made thus far in developing a new bilateral agreement with Mexico, we believe that it is appropriate to consolidate the essentially identical issues concerning use of these Bahaman and Mexican Clear Channels with the similar issues related to the Canadian Clear Channels.

6. It appears that the primary issues pertaining to use of these foreign Clear Channels are some of the same issues that were addressed previously in the Commission's Report and Order in Docket No. 20642, Clear Channel Broadcasting in the AM Broadcast Band, 767 F.C.C. 2d 1345 (1980), reconsider. denied, 85 F.C.C. 2d 216 (1980). Of particular relevance to this proceeding are those issues that the Commission resolved in Docket No. 20642 which concerned the technical and eligibility rules governing applications for new Class II AM broadcast stations on the U.S. Class I-A Clear Channels. Because of the relatively short time that has elapsed since adoption of the 1980 Report and Order, we believe that the resolution of issues reached in that proceeding can also be applied in this proceeding. In light of this, we propose to adopt identical or similar standards for new fulltime Class II stations on the foreign Clear Channels as were adopted in Docket No. 20642. However, we invite any other proposals that would likely result in the greatest overall benefit to the public.

A. Non-Technical Issues

7. Prior to Commission action in Docket No. 20642, § 73.37(e)(2) of the Rules specified that one of three alternate threshold standards must be met by applicants for authorization to operate nighttime. As the Commission stated in its Further Notice of Proposed Rulemaking in that proceeding, these well established AM standards were also suitable for the new Class II stations which it proposed to authorize on the 25 Class I-A Clear Channels. 70 F.C.C. 2d 1077 (1979). In addition to applying these three threshold standards to the 25 Class I-A Clear Channels, the Commission ultimately adopted in the Report and Order in Docket No. 20642 two additional threshold standards, specifically limited to the 25 Class I-A Clear Channels, that were designed to provide additional opportunities for more minority-owned stations and for noncommercial radio service.

8. In adopting these five threshold standards for new applications on the 25 Class I-A Clear Channels, the Commission assessed three requirements for new stations that it considered most prominent: (1) First or second local nighttime radio outlets to unserved or underserved communities; (2) minority-owned stations; (3) additional noncommercial stations.

During the relatively brief interval since 1980, it does not appear that the public's needs which give rise to these three prominent requirements have changed significantly. Because it was predicted in Docket No. 20642 that only approximately 100 to 125 new stations would result from the Commission's action in that proceeding, we conclude that opportunities to meet these needs still remain inadequate today.

Therefore, it appears appropriate to also apply the five threshold standards set forth in § 73.37(a)(2)(i)–(v) to the foreign Clear Channels which are the subject of this proceeding.

B. Technical Issues

9. Prior to Commission action in Docket No. 20642, Class II-B stations were defined in § 73.21(a)(ii) of the Rules as unlimited-time Class II stations, other than Class II-A stations, operating with a power not less than 250 watts nor more than 50 kW. Additionally, Class II-B stations normally were protected during the nighttime to their 2.5 mV/m contour. In Docket No. 20642, however, rules were adopted that gave different treatment to Class II-B applications and stations on the 25 Class I-A Clear Channels. For those 25 Clear Channels it was decided to distinguish between applications for Class II-B stations which would provide a first nighttime primary service to at least 25 percent of an area or population without service and applications for new Class II-B stations for all other situations. In the first case, a maximum nighttime power of 50 kW would be permitted, because such higher power may be necessary in order to reach unserved areas or populations. It was further decided that these stations generally would be protected nighttime to the lesser of either their 2.5 mV/m nighttime contours or to the lower interference level caused

9Subparagraph (i) required that at least 25 percent of the area or population to receive interference-free primary nighttime service did not receive such service from an existing AM station or from any FM station with a signal strength of 1 mv/m or greater. Subparagraph (ii) required that the community designated in the application be provided with a first or second aural nighttime service and that no FM channel be available for use in the community. Subparagraph (iii) required that at least 20 percent of the area or population of the designated community receive fewer than two aural services at night and that no FM channel be available for use in the community.

These new standards are reflected in Subparagraphs (iv) and (v). Subparagraph (iv) provides for minority ownership of 50 percent or more of applicants. Subparagraph (v) provides that the applicants operate noncommercially.

10. When a station is already limited by interference from other stations to a contour of higher value than that normally protected for its class, this contour shall be established standard for such station with respect to interference from all other stations.
by previously authorized co-channel stations. It was concluded that all other Class II-B stations on these channels would be limited to a maximum nighttime power of 1 kW and normally would be limited to a maximum power of 1 kW unless the application is previously filed with the Commission or granted. Similarly, we also propose to apply these Class II-B and Class II-C designations to the Class II fulltime stations which would be authorized on the foreign Clear Channels that are the subject of this proceeding.

IV. Other Matters

12. As previously noted, NARBA only restricted nighttime operations on the Canadian and Bahamian Class I-A Clear Channels within 650 miles of the Canadian border and the Bahama Islands, respectively. Thus, beyond these 650-mile limits the FCC Rules have permitted applications to be filed on these Clear Channels. In order to provide consistent application of the Rules and to promote equitable treatment of existing applicants on these Clear Channels, we are proposing that the technical and non-technical rule amendments being proposed herein shall be applicable throughout the United States and not just within the areas wherein nighttime operations had been precluded by NARBA.

Applications that are already on file with the Commission and that were filed in accordance with the existing rules would receive protection in accordance with existing rules. Comments are requested on all aspects of the Commission’s proposals.

13. Regulatory Flexibility Act Initial Analysis: I. Reason for Action. As a result of the (1981) Final Acts of the Regional Administrative MF Broadcasting Conference (Region 2) which changed the system of AM frequency priorities and of a bilateral agreement concluded with Canada as well as anticipated agreements with Mexico and the Bahamas, 14 AM broadcast frequencies formerly restricted or unavailable for nighttime use by United States AM radio stations have or are expected to become available for application by Class II stations for full-time use. In this proceeding, we seek to develop a record and to elicit comments concerning proposed rules to authorize use of this newly available spectrum space.

II Objective. This proceeding will elicit comments on the public interest benefits and costs of the proposed rule changes in accordance with fulfilling the mandate of Section 309(a) of the Communications Act of 1934, as amended. The Commission proposes to fully expand fulltime aural service on newly available AM frequencies and to establish criteria for applicants which address unmet broadcast needs.

III. Legal Basis. Legal action as proposed is in furtherance of Sections 4 and 303 of the Communications Act of 1934, as amended, which charges the Commission to explore new and improved uses of radio as well as to promulgate rules and set forth conditions and restrictions to carry out the provisions of the Communications Act.

IV. Description, Potential Impact, and Number of Small Facilities Affected.

The proposed rules would apply existing criteria governing applications for fulltime broadcast stations to applicants seeking authorization to operate fulltime stations on 14 frequencies now or soon to be available. In addition, certain Class II-B stations will be redefined as “Class II-C.” The proposed rules provide for the authorization of a substantial number of fulltime stations which would be available to meet the need for additional minority-owned and noncommercial facilities. The rule changes are not expected to have a significant economic impact on a substantial number of small entities.

V. Recording, record keeping and other compliance requirements: None.

VI. Federal: rules which overlap, duplicate or conflict with these rules: None.

VII. Any significant alternative minimizing impact on small entities and consistent with stated objective: None.

Invitation to Comment

14. As noted, the bilateral negotiations with Canada have been concluded. Although negotiations with Mexico and with The Bahamas have not yet progressed to the same point as those with Canada, we believe that they too will result in a satisfactory agreement. We believe it to be in the public interest to authorize new radio stations serving on the newly available spectrum space as soon as practicable following bilateral agreements. Thus, we propose to initiate the appropriate changes in our Rules in order that applications for such use may be considered by us as soon as possible.

15. Accordingly, pursuant to authority under Sections 1, 4(i) and (o) and 303(a) through (d), (f), (g), (h) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-180, it is proposed to amend the rules governing the use of the channels denoted herein by Class II-B and Class II-C radio stations so as to permit their use and to impose associated requirements, substantially as proposed in this Notice.

1 The resultant draft agreement is available for inspection at the Commission’s offices and copies can be obtained through the Commission’s copy contractor.
of Proposed Rule Making or in accordance with such variants, modifications, or alternatives within the scope of the issues of this proceeding, as we may find preferable after considering the entire record.

16. Pursuant to §§ 1.410 and 1.415 of the Commission's Rules, interested parties may file comments on or before June 1, 1984 and reply comments on or before June 15, 1984. All relevant and timely comments will be considered. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

17. For purposes of this nonrestricted notice and comment rule making proceeding, members of the public are advised that ex parte contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an ex parte presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who makes an ex parte presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral ex parte presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentation, and that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each ex parte presentation described above must state on its face that the Secretary has been served and must also state by docket number the proceeding to which it relates. See 47 CFR 1.1231.

18. As required by Section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of the proposed rule on small entities. Written public comments are requested on the IRFA. The comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 50 U.S.C. 601 et seq. (1981).

19. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554. For further information on this proceeding, contact Joel Rosenberg, Policy and Rules Division, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

William J. Tricarico, Secretary.

[FR Doc. 84-1163 Filed 4-30-8* 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 84–232]

Future Public Safety Telecommunications Requirements; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry: Extension of comment/reply comment period.

SUMMARY: On March 7, 1984 the Commission released a Notice of Inquiry to examine future Public Safety telecommunications requirements. Comments were due May 15, 1984 and reply comments due October 15, 1984. Similarly, the Associated Public-Safety Communications Officers, Inc. (APCO) has requested a four month extension of time as well as clarification of the scope of the proceeding.

2. In support of its motion, County states that in order to achieve its objective of responding to the inquiry in a "thorough, positive and meaningful manner" it must analyze the telecommunications demands of the 83 cities within its geographic boundaries as well as its various user departments. County asserts this task will take longer than the time allotted. APCO, in support of its motion, states that an extension is necessary to gather data from its 48 chapters in order to adequately prepare the detailed and extensive response required by this inquiry.

3. We recognize the importance and considerable breadth of the issues involved in this proceeding. Therefore, an extension of time will be granted. However, the importance of this matter also requires that we proceed as expeditiously as possible to develop a plan which provides for the radio spectrum needs of State and local public safety authorities as mandated by Congress in the 1983 Authorization Act. In light of this, we believe that an extension of three months provides...
sufficient time in which to prepare comments without sacrificing detail or quality.

4. APCO also requests clarification regarding whether, in the “Spectrum Availability/Suitability” portion of the inquiry, the omission of the 512-806 MHz band from the list of frequency bands was an error. It was not. The inquiry is directed to spectrum currently available to public safety authorities. However, this does not preclude APCO, or any other interested person, from submitting comments concerning other frequency bands.

5. Accordingly, it is ordered, pursuant to the authority set forth in section 0.331 of the Commission’s Rules, that interested persons are to file comments by August 15, 1984 and reply comments by September 15, 1984.

6. The point of contact in this matter is Joseph A. Levin of the Rules Branch, Land Mobile and Microwave Division, (202) 634-2443.

Federal Communications Commission
Robert S. Fossumer,
Chief, Private Radio Bureau.

[FR Doc. 84-11635 Filed 4-30-84; 8:45 am]

47 CFR Part 90

Sharing of Two Police Radio Service Frequency Pairs With Eligibles in Fire and Special Emergency Radio Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to adopt rules which would eliminate the non-voice restriction on the frequency pairs 460.525/465.525 and 480.550/465.550 MHz and allow persons eligible in the Fire and Special Emergency Radio Services to use these frequencies on a coequal, shared basis with eligibles in the Police Radio Service. In the alternative, IAFC and IMSA ask the Commission to “grandfather” indefinitely all Fire and Special Emergency licensees currently operating on these channels. The Associated Public-Safety Communication Officers, Inc. (APCO) filed comments opposing the petition.

BACKGROUND

1. The International Association of Fire Chiefs, Inc. (IAFC) and the International Municipal Signal Association (IMSA) have petitioned the Commission to amend Part 90 of the Commission’s Rules to allow persons eligible in the Fire and Special Emergency Radio Services to use the frequency pairs 460.525/465.525 and 480.550/465.550 MHz on a coequal, shared basis with eligibles in the Police Radio Service. In the alternative, IAFC and IMSA ask the Commission to “grandfather” indefinitely all Fire and Special Emergency licensees currently operating on these channels. The Associated Public-Safety Communication Officers, Inc. (APCO) filed comments opposing the petition.

2. The two frequency pairs in question are presently allocated to the Police Radio Service for uncoordinated non-voice operations. Police use of these channels, however, is secondary to “grandfathered” Fire and Special Emergency operations. Fire and Special Emergency licensees on these channels have until March 1, 1986 to change frequencies.

3. Prior to 1972 these two UHF frequency pairs were allocated exclusively to the Fire Radio Service. In that year, however, the Commission made the base side of each of the frequency pairs (460.525 and 480.550 MHz) available to eligibles in the Local Government and Special Emergency Radio Services on a shared basis with Fire Radio Service licensees. At the same time the mobile side of each pair (465.525 and 465.550 MHz) was reallocated exclusively to the Special Emergency Radio Service.

4. Petitioner contend that “time and circumstance have made the limitations on these channels obsolete and antithetical to current policies governing the utilization of spectrum available in the Private Land Mobile Services (PLMRS) in general, and in the Public Safety frequency assignments in particular.” For example, they argue that the rationale for reserving two frequency pairs in the Police Radio Service specifically for non-voice operations is no longer valid. In PR Docket 82-470 the Commission elevated non-voice mobile communications to coequal, primary status with voice communications on all coordinated private land mobile frequencies below 470 MHz. Consequently, there is no longer any reason to reserve frequencies for non-voice operations. Further, petitioners contend that sharing frequencies between similar services is now widely recognized as a means of increasing private land mobile spectrum utilization. Accordingly, petitioners later the Commission made the base side of the two frequency pairs available only in the Special Emergency Radio Service. In 1976 the two frequency pairs were again subject of a Commission action, this time in Docket 20484. In this proceeding the Commission exchanged two pairs of frequencies in the Special Emergency Radio Service, 460/465.525 and 460/465.550 MHz, for two Police Radio Service frequency pairs, 462/467.050 and 462/467.975 MHz. The exchange was done in order to permit a continuum of emergency medical frequencies in the Special Emergency Radio Service. A non-voice use limitation was imposed on police use of the new 460/465 MHz pairs. Fire and Special Emergency entities licensed on the two 460/465 MHz pairs at the time of the exchange were allowed to continue operations until March 1, 1986, and are considered primary to new non-voice police operations.

FOR FURTHER INFORMATION CONTACT:
Herb Zeiler, Private Radio Bureau, Rules Branch, (202) 634-2443.
argue that the displacement of current Fire and Special Emergency licensees on these channels is unnecessary, economically wasteful, and contrary to good spectrum management.

5. APCO, in its comments opposing the petition, agrees that the limitation restricting use of these two Police UHF frequency pairs to uncoordinated non-voice use is no longer necessary and asks that it be deleted. However, APCO argues against making the two frequency pairs available to new Fire and Special Emergency Radio Service users or extending the grandfather deadline. According to APCO, the petitioners have not demonstrated any need to alter the arrangement adopted in docket 20484. They state that the frequencies should remain in the Police Radio Service. Any further use of the channels by Fire and Special Emergency eligibles, according to APCO, should be through existing interservice sharing procedures.

Discussion

6. We have analyzed petitioners' request and it appears to have merit. The main reason for the Commission requiring Fire and Special Emergency licensees to change frequencies was the fact that it considered voice use incompatible with non-voice police operations. With the adoption of Docket 82-470 which allowed non-voice operations on regularly assignable base/mobile frequencies there is no need to continue reserving these frequencies specifically for non-voice use and therefore, little reason to require present Fire and Special Emergency licensees to vacate the channels. The primary issue then appears to be whether we should propose to grandfather indefinitely current users or make the channels available on a regular basis to more than one radio service. The sharing approach would appear to be the better choice. Sharing channels among like users tends to increase spectrum utilization. Further, such a sharing arrangement would provide a common channel for local police, fire, and medical entities to coordinate with one another in the event of a disaster. Accordingly, for the purposes of this Notice we are proposing to delete the non-voice limitation and make these two frequency pairs available to eligibles in the Fire and Special Emergency Radio Services for use on a co-equal, shared basis with eligibles in the Police Radio Service.

7. There are a number of different eligibility categories in the Special Emergency Radio Service. In past interservice sharing arrangements involving public land mobile radio, we have differentiated between public safety users and other private land mobile users.* We believe this policy should be continued. Accordingly, we are proposing to limit the use of these two frequency pairs in the Special Emergency Radio Service to governmental entities establishing eligibility under § 90.33(a), Medical Services.* This is consistent with the interservice sharing procedures adopted in Docket 81-110. In order to further assure that users are compatible we are proposing to limit Special Emergency use of these frequencies to emergency medical operations.

8. Finally there is the question of coordination. Frequency coordination is required in both the Police and Fire Radio Services for base/mobile (voice) operations. There is, however, no coordination requirement in the Special Emergency Radio Service or on the present non-voice use of these frequencies in the Police Radio Service. In order to take full advantage of the benefits of frequency coordination all users must participate. Accordingly, we are proposing to require Special Emergency applicants to submit evidence of frequency coordination when they apply for these channels.

9. In summary, we are proposing to delete the non-voice limitation on these two frequency pairs and make them available to eligibles in the Fire Radio Service and to governmental entities able to establish eligibility under § 90.35 in the Special Emergency Radio Service for use on a co-equal, shared basis with eligibles in the Police Radio Service. Use of the frequencies by Special Emergency eligibles would be limited to emergency medical operations and coordination would be required.

Regulatory Flexibility

10. The Commission certifies that Section 603 and 604 of the Regulatory Flexibility Act of 1980 do not apply to the Rules proposed in this Notice of Proposed Rule Making because they will not have a significant economic impact on a substantial number of small entities. Police entities should not be affected since the item does not propose any change to the present use of these frequencies exclusive of additional shared usage by Fire and certain Special Emergency eligibles. Consequently, there will be no need for the purchase of any additional equipment. The Secretary shall cause a copy of this Notice of Proposed Rule Making, including the above certification, to be published in the Federal Register, and to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 605(b) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. 601 et. seq. (1981).

11. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that ex parte contacts are permitted from the time the Commission adopts a notice of proposed rule making until the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission whichever is earlier. In general, an ex parte presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner of a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written ex parte presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the Public file. Any person who makes an oral ex parte presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation. On the day of that oral presentation, a written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each ex parte presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 C.F.R. 1.1231.

12. Authority for issuance of this Notice of Proposed Rule Making is contained in Section 4(j) and 303(r) of the Communication Act of 1934, as amended, 47 U.S.C. 154(j) and 303(r). Pursuant to the procedures set out in § 1.415 of the Commission's Rules, 47 C.F.R. 1.415, interested persons may file comments on or before May 25, 1984 and
reply comments on or before June 11, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In researching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

13. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file and original and 11 copies. Members of the general public who wish to express their interest by participating in the proceeding, contact Herbert Zeiler, Private Radio Bureau, Federal Communications Commission, Washington, D.C. (202) 634-2443.

Appendix

PART 90—[AMENDED]

Part 90 of the Commission's Rules and Regulations is amended as follows:

1. Section 90.19(d) is amended by removing limitations (18) and (20) from the frequency table and by revising the entries for frequencies 460.500-460.550 and 465.500-465.550 to read as follows:

<table>
<thead>
<tr>
<th>Frequency or band</th>
<th>Class of station(s)</th>
<th>Limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>460.500</td>
<td>PP</td>
<td></td>
</tr>
<tr>
<td>460.525</td>
<td>PP, PF, PS</td>
<td></td>
</tr>
<tr>
<td>460.550</td>
<td>PP, PF, PS</td>
<td></td>
</tr>
<tr>
<td>465.500</td>
<td>PP</td>
<td></td>
</tr>
<tr>
<td>465.525</td>
<td>PP, PF, PS</td>
<td></td>
</tr>
<tr>
<td>465.550</td>
<td>PP, PF, PS</td>
<td></td>
</tr>
</tbody>
</table>

2. Section 90.19 is amended by revising paragraph (e)(17) and removing and reserving paragraphs (e)(18) and (e)(20).

(e) * * *

(17) This frequency is shared with the Fire and Special Emergency Radio Services.

| (18) | [Reserved] |
| (19) | * * * |
| (20) | [Reserved] |

3. Section 90.21 is amended by revising paragraph (c)(8).

§ 90.21 Fire Radio Service.

(c) * * *

(8) This frequency is shared with the Police and Special Emergency Radio Services.

4. Section 90.53 is amended by revising paragraph (b)(17) and adding a new paragraph (b)(32).

§ 90.53 Frequencies available.

(b) * * *

(17) This frequency is shared with the Fire and Police Radio Services and is subject to the coordination requirements specified in § 90.175.

(32) This frequency is assignable only to governmental entities eligible under § 90.53(a) for the dispatch of medical care vehicles and personnel for the rendition or delivery of emergency medical services. This frequency may be designated by common consent for intra-system and inter-system mutual assistance purposes.

5. Section 90.175(e)(2) is revised to read as follows:

§ 90.175 Frequency coordination requirements.

(e) * * *

(2) Applications in the Special Emergency Radio Service, except as required by § 90.53(b)(8) and (17) and § 90.267 and § 90.175(g).

6. In § 90.555, paragraph (b) is amended by revising entries for frequencies 460.500-460.550 and 465.500-465.550 to read as follows:

§ 90.555 Combined frequency listing.

(b) * * *

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Services</th>
<th>Special limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>460.500</td>
<td>PP</td>
<td></td>
</tr>
<tr>
<td>460.525</td>
<td>PP, PF, PS</td>
<td></td>
</tr>
<tr>
<td>460.550</td>
<td>PP, PF, PS</td>
<td></td>
</tr>
<tr>
<td>465.500</td>
<td>PP</td>
<td></td>
</tr>
<tr>
<td>465.525</td>
<td>PP, PF, PS</td>
<td></td>
</tr>
<tr>
<td>465.550</td>
<td>PP, PF, PS</td>
<td></td>
</tr>
</tbody>
</table>

[PR Doc. 84-11350 Filed 4-30-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 84-265]

Reimbursement of Out-of-Pocket Costs for Volunteer Administered Amateur Radio Examinations; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: The preamble (summary) to the Notice of Proposed Rule Making in PR Docket No. 84-265, 49 FR 10316, March 20, 1984, is corrected to reflect the fact that the collection of information requirements contained in the proposed rule have been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35).

DATE: Comments should be submitted on or before June 8, 1984.

ADDRESS: Comments concerning the proposed requirements shall be directed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal, Communications Commission, Federal Communications Commission, Washington, D.C. 20554.


William J. Tricarico,
Secretary, Federal Communications Commission.

[PR Doc. 84-11350 Filed 4-30-84; 8:45 am]

BILLING CODE 6712-01-M
DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration
49 CFR Part 571
Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking
AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.
ACTION: Denial of petition for rulemaking.
SUMMARY: This notice denies a petition filed by Lewis S. Hollins, requesting this agency to amend the headlighting requirements for new motor vehicles, set forth in Federal Motor Vehicle Safety Standard No. 108. The petition alleged that motor vehicle safety could be improved by allowance of a single beam headlighting system in which the headlamp could be tilted to the upper beam position. The petition was denied primarily because experience and research have shown the safety need for two distinct beams of differing intensity and light distribution.


SUPPLEMENTARY INFORMATION: Lewis S. Hollins of Great Neck, N.Y., has filed a petition with NHTSA requesting a revision of the headlighting requirements currently incorporated in Safety Standard No. 108 (49 CFR 571.108).

The standard currently requires that motor vehicles, other than motorcycles whose horsepower is 5 or less, be equipped with dual beam headlighting systems. In his petition Mr. Hollins asked for an amendment of Standard No. 108 to allow, as an optional system, one providing a single beam, a system in which the headlamps would be spring loaded to tilt upward at driver command to provide the equivalent of the upper beam found on dual beam headlamps. Mr. Hollins alleged that current dual beam headlamps are inferior to single filament ones in candlepower and range, and provide more glare. He argued that dual filament lamps are more expensive to produce, and that drivers use them improperly on the upper beam in traffic. In his view, single beam tiltable headlamps would be superior in each of these three respects.

The Office of Rulemaking conducted a technical review of the petition, in accordance with 49 CFR 552.8, to determine whether there would be a reasonable possibility that the order requested would be issued at the end of a rulemaking proceeding. Initially, the agency noted that the petitioner had submitted no data or other information, other than simple opinion, to support his contentions that dual beam headlamps were inferior to single ones in any of the three respects mentioned. Mr. Hollins presented only a concept without any details as to beam distribution and intensity, aiming control, or lateral alignment of the system. The agency has in the past denied rulemaking petitions where data has not been provided to substantiate the petitioner's arguments, or that its product was as safe as those currently passing Federal requirements (see, for example, Denial of Petition for Rulemaking, Pirelli, Standard No. 109, 47 FR 40865, October 21, 1982).

Nevertheless, the agency proceeded to examine the concept of a single beam headlamp. Such a lighting system has no apparent provision to change beam pattern or intensity. Standard No. 108 specifies two distinct beams, referred to as upper and lower, each of which contain minimum and maximum candlepower output to be met at a differing range of test points. The result is that the intensity of the upper beam is considerably greater than that of the lower beam, and provides substantially greater seeing distance for the driver. For example, an upper beam system with an intensity of 120,000 candela, directs a beam pattern down the road for a distance of approximately 900 feet, while a lower beam system with an intensity of 60,000 candela projects a beam of approximately 400 feet; light from this pattern also spreads slightly to the right to illuminate the edge of the road. Such an ability to vary beam pattern and intensity in response to differing driving needs is lacking in the single filament system.

At the conclusion of the technical review the agency determined that there was not a reasonable possibility that at the end of the rulemaking proceeding Standard No. 108 would be amended to allow a single beam tiltable headlight system, and the petition was denied.

The program official and attorney principally responsible for the development of this agency position are Jere Medlin and Taylor Vinson, respectively.

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
50 CFR Part 285
Atlantic Tuna Fisheries
AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Proposed rule.
SUMMARY: NOAA issues a proposed rule (within the framework of the 1983 recommendations of the International Commission for the Conservation of Atlantic Tunas) to modify methods of determining the inseason adjustment of the catch rate limit and the allocation of giant Atlantic bluefin tuna within the General Category, and requests public comment. The proposed rule would allow NOAA to improve its response to unforeseen annual variations in the fishery for the benefit of the constituency, and reduce its cost. The intended effect is to provide uninterrupted fishing operations with accompanying benefit to the Atlantic bluefin tuna resource.

DATE: Comments must be received by May 25, 1984.
ADDRESSES: Send comments on this proposed rulemaking to National Marine Fisheries Service, Northeast Region, Management Division, State Fish Pier, Gloucester, Massachusetts 01930-3097. Clearly mark “Comments on Atlantic bluefin tuna proposed rulemaking” on the outside of the envelope. Copies of the 1983 environmental assessment (EA) and the initial regulatory flexibility analysis (IRFA) are available from National Marine Fisheries Service, Northeast Region, Services Division, P.O. Box 1106, Gloucester, Massachusetts, 01931-1109.
FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617-281-2900, extension 325; or David S. Crestin, 617-3800, extension 253.
SUPPLEMENTARY INFORMATION: Background
The United States is a signatory nation to the International Convention for the Conservation of Atlantic Tunas.
Promulgate rules necessary to implement recommendations adopted by the International Commission for the Conservation of Atlantic Tuna (ICCAT) and to carry out the purposes and objectives of the Convention. The Secretary’s authority under the Act has been delegated to the Assistant Administrator for Fisheries (Assistant Administrator).

Rules presently governing the U.S. fishery for Atlantic bluefin tuna are at 50 CFR Part 285, Subpart B (48 FR 27755, 48 FR 35107, 49 FR 1043). These rules implement the following recommendations of ICCAT: (1) To reduce catch levels of Atlantic bluefin tuna in the western Atlantic Ocean to an amount which would provide a broad range of biological information while keeping catch levels conservative; (2) to limit the catch of Atlantic bluefin tuna smaller than 120 centimeters (cm) (47 inches) fork length to no more than 15 percent by weight of the total catch in the western Atlantic Ocean; and (3) to prohibit directed fisheries for Atlantic bluefin tuna in spawning areas, such as the Gulf of Mexico.

ICCAT held its Eight Regular Meeting in Madrid, Spain, November 9-15, 1983. This meeting was preceded by a meeting of the Standing Committee on Research and Statistics (SCRS), November 3-8. Current restrictions on fishing for Atlantic bluefin tuna in the western Atlantic Ocean were reviewed in light of the SCRS findings which offered no new information regarding the status of the stocks nor any new management advice. The SCRS had held two additional meetings on Atlantic bluefin tuna in 1983, but reported to the Commission that any analysis carried out before 1984 would not add significantly to the stock assessments. The Commission, therefore, recommended an extension of the existing management regime for one year. The United States emphasized its view that, in the absence of conclusive technical advice and analyses concerning status of the stock which would warrant new management measures, the present conservation program should continue.

As in 1983, the total allowable catch in the western Atlantic Ocean for 1984 will be 3,660 metric tons (mt) (4,032 short tons [st]), with allocations of 1,397.2 mt (1,529 st), 573.3 mt (632 st) and 899.4 mt (771 st) for the United States, Canada, and Japan, respectively. The percentage share of the total allowable catch for the western Atlantic Ocean remains the same for each nation in 1984 as in 1982 and 1983: United States, 52.15 percent; Canada, 21.55 percent; and Japan, 26.30 percent. ICCAT considers continuation of the 1983 management measures to be sound environmentally and within an acceptable catch range which will not place undue stress on the Atlantic bluefin tuna stocks.

Proposed Changes: Discussion of Major Issues

1. Variable Catch-Rate Limit for Harvesting Giant Atlantic Bluefin Tuna

In 1983, NOAA implemented rules establishing a variable catch rate for the General category (§ 285.24). This system was designed to provide for the longest possible fishing season while making as few inseason adjustments as necessary to the 650 st quota.

At the beginning of the 1983 season, vessels permitted in the General category under § 285.21(b) and fishing for giant Atlantic bluefin tuna were allowed to catch one giant Atlantic bluefin tuna per day per vessel. The rules required the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), to review this daily limit for appropriateness twice during the fishing season: first, about August 7, and second, about September 7. At the first review, if less than 30 percent of the handgear quota had been caught, the allowable limit would have been increased to two Atlantic bluefin tuna per day per vessel. At the second review, if 85 percent or more of the handgear quota had been caught, the allowable limit would have been set at one giant Atlantic bluefin tuna per day per vessel; if 70 or more percent, but less than 85 percent, of the handgear quota had been caught, the allowable limit would have been set at two giant Atlantic bluefin tuna per day per vessel; if more than 60 percent, but less than 70 percent, of the handgear quota had been caught, the allowable limit would have been set at one giant Atlantic bluefin tuna per day per vessel; if 70 or more percent, but less than 85 percent, of the handgear quota had been caught, the allowable limit would have been set at two giant Atlantic bluefin tuna per day per vessel.

NOAA believes the triggering mechanism mandating a change in the daily limit resulted in a series of management actions which unnecessarily interrupted fishing operations in the General category segment of the fishery. A closure, followed by a reopening, a partial closure, and final closure, all within a period of 30 days, resulted in fishermen being unable to reasonably plan their fishing activities. For example, the party/charter boat fleet had difficulty in deciding whether or not to book fishing trips in advance. Bait suppliers had to gamble on whether to stock large inventories of high-priced bait for Atlantic bluefin tuna fishermen. This series of rapid management actions tended to create confusion among the constituency and increased NOAA’s paperwork burden and cost without any accompanying benefit to the Atlantic bluefin tuna resource.

To solve this problem, NOAA proposes to provide the Assistant Administrator, with authority to adjust the allowable limit of one giant Atlantic bluefin tuna per day per vessel after September 1 of each year. This adjustment would be based on criteria such as daily landing trends, availability of giant Atlantic bluefin tuna on the fishing grounds, and other factors which would interrupt the fishing activities in the General category throughout the regulatory area. This ability to adjust the limit based on changing conditions in the fishery will result in a more flexible system, and provide the greatest possible opportunity for all segments of the fishery to fish.
2. General Category Allocations

Geographical and seasonal differences in the conduct of the General category fishery continue to generate significant comment and debate regarding allocation of the quota, primarily from the constituency from western Long Islands, New York and New Jersey. In 1982, quota of 310 st was available from the General category, of which 25 st was reversed for the period following September 15, to allow for a late season for the directed rod-and-reel fishery on giant Atlantic bluefin tuna in the New York Bight area. This strategy failed because of the relatively small quota available and significantly increased daily landings in the latter part of August and early September. Due to these developments and the several days lag in receiving landings reports, 321 st were landed before a temporary closure could be effective to preserve the 25 st for the period following September 15. NOAA, therefore, was forced to close the General category fishery on September 13 for the remainder of 1982.

NOAA, in an attempt to prevent a premature closure of this fishery in 1983 as had occurred in 1982, increased the reserve from 25 st to 100 st (from approximately eight to 18 percent of the General category quota) for the period following September 15. This amount, in conjunction with a transfer of 64 st from the reserve for inseason adjustments authorized under § 285.22(g), resulted in an extension of the General-category fishery for giant Atlantic bluefin tuna from September 19 to October 13, when the fishery was closed throughout the regulatory area for the remainder of 1983 (48 FR 46995, October 17, 1983). During this period, approximately 23 st of giant Atlantic bluefin tuna were taken in the New York Bight area. The fishery was active at the time of closure. Atlantic bluefin tuna were reported present in this area and remained so through the month of November. The closure in mid-October, therefore, deprived the fishermen of an opportunity to harvest the resources.

The management options available in 1982 and 1983 to ensure the opportunity of a late season for giant Atlantic bluefin tuna in the New York Bight area proved to be inadequate. To prevent a recurrence of a premature closure of the giant Atlantic-bluefin tuna fishery in this area in 1984, NOAA believes rules are needed which would provide the opportunity to review all available information important to the implementation of reasonable management controls within the General category. Specifically, NOAA proposes that if the Assistant Administrator determines, based on dealer reports, fishing grounds data, or other relevant information, that variations in seasonal distribution or abundance may deprive an area of fishing opportunities, he may set aside a special allocation from the General category quota to continue fishing opportunities for this area. This special allocation would not exceed the greater of one-third or maximum annual harvest of the indented area in any of the preceding three years. The Assistant Administrator would be required to publish a notice in the Federal Register of the Assistant Administrator's determination to make an allocation from the General category quota, the information used to determine the need for and the amount of the allocation, and the identity of the area. An allocation to a particular area would not prevent other fishermen from fishing for giant Atlantic bluefin tuna in the designated area with the specified gear. NOAA believes the discretionary authority inherent in this proposal would provide necessary flexibility for reasonable management of this segment of the Atlantic bluefin tuna fishery.

3. Other Proposed Changes to the Rules

NOAA also proposes several technical changes which make minor modifications to the existing rules for clarity, ease of understanding, or enforceability. The following section-by-section discussion explains these proposed changes.

Section 285.4. At the request of the United States Coast Guard, paragraphs (c) through (f), which specify procedures fishing vessel operators must follow to facilitate safe boarding and inspection of their vessel for enforcement purposes, have been added to this section. These proposed paragraphs would make these rules consistent with NOAA's other fisheries rules in Title 50 of the Code of Federal Regulations regarding at-sea fisheries enforcement by the United States Coast Guard.

Section 285.21. This section has been modified to identify more clearly the time frame in which a vessel's Atlantic bluefin tuna permit category may be changed. The restriction on changing vessel permit categories during the fishing season has provided the greatest possible opportunity for the largest number of fishermen to harvest giant Atlantic bluefin tuna. To allow otherwise would accelerate the rate at which the overall United States quota was caught, thereby resulting in early closure of the fishery.

Section 285.25. Paragraph (c) of this section is modified to require owners or operators of purse seine vessels to be responsible for weighing and measuring each medium or giant Atlantic bluefin tuna at the time of offloading and prior to overland transport. One of the two telephone numbers given for requesting inspection of purse seine vessel also has been updated.

Section 285.26. A sentence is added to identify explicitly fork length as the single criterion for the determination of size classes of Atlantic bluefin tuna. This proposed revision would remove potential ambiguity in this section, thus improving its enforceability.

Section 285.28. Paragraph (i) has been changed to clarify NOAA's intent that a permitted fishing vessel cannot be issued a permit for a buy-boat operation.

Section 285.30. Paragraph (c)(2) of this section is revised to change the reporting requirements by eliminating the 24-hour grace period for persons that land medium or giant Atlantic bluefin tuna and do not transfer the fish to a permitted dealer. Appropriate telephone numbers for contacting NMFS law enforcement offices are added. This proposed change would make this section more consistent with the reporting requirements of other sections of the rules and provide for more accurate and timely monitoring of the overall catch.

Section 285.31. Paragraph (cc) of this section is redesignated as paragraph (dd). A new paragraph (cc) is added to this section which establishes a new prohibition making it unlawful to possess unmarked handline or harpoon gear. This prohibition is necessary because of the new proposed § 285.33 for identifying ownership of handline and harpoon gear used in the giant Atlantic bluefin tuna fishery.

Section 285.32. Paragraphs (a) and (c) have been revised to make them consistent with the revisions made in § 285.31.

Section 285.33. This section is added to the rules to require that all handline and harpoon gear be marked with the vessel's Atlantic bluefin tuna permit number. This marking requirement would facilitate the identification of ownership of these gear types found onboard vessels or found unattached from vessels at sea. Identification of handline and harpoon gear would allow NOAA to monitor catches more effectively and thus assist in preventing fishermen from exceeding the daily catch rate. NOAA has found from experience that this proposed change would allow the rules to be enforced more effectively.
The Administrator of NOAA has determined that these rules are not major under Executive Order 12291 based on discussion in the preamble to these regulations. Additionally, it was determined that this action is not significant under the Regulatory Flexibility Act, and because these regulations do not change the intent of previously adopted regulations they are categorically excluded and no EA or EIS was prepared. Copies of all previously published reports may be obtained from the NMFS Northeast Region, Services Division, P.O. Box 1109, Gloucester, MA 01931-1109.

The information collection requirements for this Act, previously approved by the Office of Management and Budget (OMB) under OMB control numbers 0648-0007, -0031, and -0013, will not be affected by any of the proposed changes.

The purpose of this proposal is to provide a more efficient system for establishing the limit on catch rate in this category. There are no expected impacts associated with this proposal which were not discussed in the 1983 EA, regulatory flexibility analysis/regulatory impact review (RFA/RIR), or in the previous regulations.

List of Subjects in 50 CFR Part 285
Fisheries, Penalties, Reporting and recordkeeping requirements.


Carmen J. Blonin,

For the reasons set forth in the preamble, 50 CFR Part 285 is proposed to be amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for Part 285 is as follows:

Authority: 16 U.S.C. 971 et seq.

2. Subpart B of the Table of Contents is amended by adding a new § 285.33

Gear identification. To read as follows:

Subpart B—Atlantic Bluefin Tuna

§ 285.33 Gear identification.

3. Section 285.4 is amended by adding new paragraphs (c), (d), (e), and (f) to read as follows:

§ 285.4 Enforcement.

(c) 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 Act and this part.

(d) 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.

(ii) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for 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, placards, 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 must consider the signal to be a command to stop the vessel instantly.

(e) 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 man rope or safety line, and illumination for the ladder, and

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

(f) 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 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 (.-.-.)1,2 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 vessel's identification.

(2) "RY-GY" (.-.- - - - -)- means "you should proceed at slow speed, a boat is coming to you." The 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.

(3) "SQ" (.-.-.-.-) means "you should stop or heave to; I am going to board you."

(4) "L" (.-.) means "you should stop your vessel instantly."

4. Section 285.21 is amended by adding a new sentence to the end of paragraph (c) to read as follows:

§ 285.21 Vessel permits.

(c) Application procedure. * * * * * After May 15, the vessel’s permit category may not be changed for the remainder of the calendar year regardless of any change in the vessel's ownership.

5. Section 285.22 is amended by removing the words “Regional Director” and replacing them with “Assistant Administrator” each time they appear in paragraph (g) and revising paragraph (a) to read as follows:

§ 285.22 Quotas.

(a) General. The total amount of giant Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the General category under § 285.21(b) is 850 st (590 mt). If the Assistant Administrator

1 Period (.) means a short flash of light.

2 Dash (-) means a long flash of light.
determines (based on dealer reports, availability of giant Atlantic bluefin tuna on the fishing grounds, and any other relevant information), that variations in seasonal distribution, abundance, or migration patterns of Atlantic bluefin tuna, and the catch rate, may prevent fishermen in an identified area from harvesting their share of the quota, the Assistant Administrator may set aside an allocation for such area. The amount of any allocation will not exceed the greater of 50 st or the maximum reported landings in the identified area in any of the preceding three years. The daily catch rate limit for the identified area will be set at one giant Atlantic bluefin tuna per day per vessel. The Assistant Administrator will publish a notice of any allocation and its basis in the Federal Register.

8. Section 285.24 is amended by revising paragraph (a) to read as follows:

§ 285.24 Catch rate limits.

(a) From June 1, vessels permitted in the General category under § 285.21(b), may catch only one giant Atlantic bluefin tuna per day per vessel. The Assistant Administrator, on or about September 1, may adjust the daily catch rate limit to a maximum of three giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors to provide for maximum utilization of the quota. The Assistant Administrator will publish a notice in the Federal Register of any adjustment in the allowable daily catch rate limit made under this paragraph. Operators of vessels permitted in the General category may possess giant Atlantic bluefin tuna in an amount not to exceed a single day’s catch as allowed by the daily catch rate limit in effect at that time.

7. Section 285.25 is amended by revising paragraph (c) to read as follows:

§ 285.25 Purse seine vessel requirements.

(c) Inspection. Any owner or operator of a purse seine vessel with a permit issued under § 285.21(b) must request an inspection of the vessel and fishing gear by an enforcement agent of the NMFS before commencing any fishing trip and before offloading any Atlantic bluefin tuna. The vessel owner or operator must request such inspection at least 24 hours before commencement of a fishing trip or offloading by calling 617–261–3600 extension 252; or 617–583–5721. Purse seine vessel owners or operators must have each medium and giant Atlantic bluefin tuna in their catch weighed (round weight), measured, and the information recorded on the appropriate forms at the time offloading and prior to transport from the area of offloading.

8. Section 285.26 is revised to read as follows:

§ 285.26 Size classes.

For any Atlantic bluefin tuna which is landed with the head removed, it is a rebuttable presumption for purposes of this subpart that the tuna, when caught, fell into a size class in accordance with the following table. For this purpose, all measurements must be taken in a straight line along the middle of the lateral surface from the forward most part of the beheaded fish to the fork of the tail. The fork length measurement will be the sole criterion for determining the size class of an individual Atlantic bluefin tuna. Approximate round weight in the table are given for illustrative purposes only.

9. Section 285.28 is amended by revising paragraph (l) to read as follows:

§ 285.28 Dealer permits.

(l) Buy-boats. Each buy-boat must have a dealer permit issued under this section. The Regional Director will not issue a dealer permit for a buy-boat operation under this section to any vessel which has a valid fishing vessel permit issued under § 285.21. The Regional Director will not issue a dealer permit to a buy-boat unless the owner or operator of the buy-boat agrees in writing to allow an individual authorized by the Regional Director to accompany the buy-boat on any trip to observe operations. The Regional Director will provide reasonable notice to the owner or operator of any buy-boat that an individual will be placed on board. The Regional Director will reimburse the owner of any buy-boat for any expenses which the Regional Director determines to be reasonable and which are related directly to the placement of an individual on that buy-boat.

10. Section 285.30 is amended by revising paragraph (c)(2) to read as follows:

§ 285.30 Metal tags.

(c) * * *

(2) Any person who catches a medium or giant Atlantic bluefin tuna and does not transfer it to a permitted dealer must contact the nearest NMFS enforcement office at the time of landing such Atlantic bluefin tuna and make the tuna available for inspection and attachment of a metal tag. The offices to contact are: Portland, Maine (207–780–3241); Otis Air Force Base, Massachusetts (617–503–5721), and upont, New York (516–282–3267).

11. Section 285.31 is amended by removing the final "or" from paragraph (bb), by redesignating paragraph (cc) as (dd), and by adding a new paragraph (ee) to read as follows:

§ 285.31 Prohibitions.

(ce) To use or possess handline or harpoon floatation gear which is not marked in accordance with § 285.33, or is marked with the Atlantic bluefin tuna permit number of another vessel; or

12. Section 285.32 is amended by revising paragraphs (a) and (c) to read as follows:

§ 285.32 Civil penalties.

(a) Any person who violates paragraphs (a) through (u) inclusive, or paragraphs (x) through (cc), inclusive, of § 285.31 will be assessed a civil penalty of not more than $25,000 for a first violation and a civil penalty of not more than $50,000 for a subsequent violation.

(c) Any person who violates paragraph (dd) of § 285.31 will be assessed a civil penalty in accordance with the criteria set forth in 16 U.S.C. 971e.

13. A new § 285.33 is added to read as follows:

§ 285.33 Gear identification.

Any flotation device attached to handline or harpoon gear must be marked with the Atlantic bluefin tuna permit number of the vessel from which it is used. The required markings must be permanently affixed and at least one inch in height in block Arabic numerals of a color that contrasts with the background color of the flotation device.

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BILLING CODE 3510–22–M

MARINE MAMMAL COMMISSION

50 CFR Part 560-

Government In the Sunshine Act

AGENCY: Marine Mammal Commission.

ACTION: Notice of proposed rulemaking.
SUMMARY: Pursuant to the Government in the Sunshine Act, (Sunshine Act) (5 U.S.C. 552b), the Marine Mammal Commission proposes to amend Title 50, Chapter V of the Code of Federal Regulations by adding a new Part 560. The purpose of the proposed regulations is to implement the open meeting requirements of the Sunshine Act (5 U.S.C. 552b (b)-(f)). Promulgation of these regulations is required by 5 U.S.C. 552b (g).

DATES: To be assured of consideration, comments must be in writing and must be received on or before June 15, 1984.

ADDRESS: Comments should be sent to: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, Room 307, 1625 I Street, NW., Washington, D.C. 20006. Comments should refer to specific sections in the regulation and, where appropriate, recommend alternative language.

FOR FURTHER INFORMATION CONTACT: Donald C. Baur, General Counsel, Marine Mammal Commission, Room 307, 1625 I Street, NW., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

Enacted in 1976, the Government in the Sunshine Act advances the policy of Congress that "the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government" (5 U.S.C. 552b). It is based on the proposition that "the government should conduct the public's business in public" (S. Rep. No. 354, 94th Cong., 1st Sess. 1 (1975)).

Through its provisions, Congress has attempted to "increase the public's faith in the integrity of government, enable the public to better understand the decisions reached by the Government, and better acquaint the public with the process by which agency decisions are reached" (Id.).

The requirements of the Sunshine Act apply to each agency that is headed by a "collegial body composed of two or more members, a majority of whom are appointed to such positions by the President with the advice and consent of the Senate" (5 U.S.C. 552b(a)(1)). Agencies included within this definition are required to hold "every portion of every meeting . . . . open to public observation," (5 U.S.C. 552b (b)), unless the meeting or portions thereof fall within one of the ten exemptions set forth in 5 U.S.C. 552b (c). These exemptions are permissive, not mandatory, and an agency may either open or release information about an otherwise exempted meeting or portion thereof.

The Marine Mammal Commission was established pursuant to statute in 1972, under section 201 of the Marine Mammal Protection Act (16 U.S.C. 1401). Under that section, the Commission is composed of three members who are "knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals" (16 U.S.C. 1401(a)(1)).

On December 29, 1982, the Marine Mammal Protection Act was amended to require that all future members of the Commission be appointed by the President "by and with the advice and consent of the Senate" (Pub. L. 97-389, section 202, 96 Stat. 1853). This amendment brought the Commission within the Sunshine Act definition of "agency." As a result, at such time as two members of the Commission have been appointed in accordance with the procedures of the 1982 amendment, the Commission will be required to conduct its deliberations in compliance with the open meeting provisions of the Act.

It is the intent of this rulemaking to develop Marine Mammal Commission regulations that implement the requirements of the Act prior to the time a majority of the members of the Commission have been appointed by the President with the advice and consent of the Senate. Although the decisionmaking processes of the Commission have consistently provided for public observation and participation, these proposed regulations will bring those procedures into technical compliance with the Sunshine Act.

Drafting Information

The primary author of these regulations is Donald C. Baur, General Counsel, Marine Mammal Commission.

Paperwork Reduction Act

This rulemaking adds no information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Compliance With Other Laws

The Commission has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (48 FR 13189, February 10, 1981).

In accordance with the Regulatory Flexibility Act, (5 U.S.C. 601 et seq.), the Commission has determined that the regulations in this rulemaking will not have a significant economic effect on a substantial number of small entities, and that a regulatory analysis is not required. The proposed regulations are procedural requirements affecting the internal processes of the Marine Mammal Commission. As such, they do not impose significant burdens on the public or any class or group of small entities.

These proposed regulations do not affect the environment. No environmental assessment or environmental impact statement has been prepared.

List of Subjects in 50 CFR Part 560

Sunshine Act.

In consideration of the foregoing, 50 CFR Chapter V is proposed to be amended by adding a new Part 560, reading as follows:

PART 560—IMPLEMENTATION OF THE GOVERNMENT IN THE SUNSHINE ACT

§ 560.1 Purpose and scope.

This part contains the regulations of the Marine Mammal Commission implementing the Government in the Sunshine Act (5 U.S.C. 552b). Consistent with the Act, it is the policy of the Marine Mammal Commission that the public is entitled to the fullest practicable information regarding its decisionmaking processes. The provisions of this part set forth the basic responsibilities of the Commission with regard to this policy and offer guidance to members of the public who wish to exercise the rights established by the Act. These regulations also fulfill the requirement of 5 U.S.C. 552b(g) that each agency subject to the Act shall promulgate regulations to implement the open meeting requirements of subsections (b) through (f) of section 552b.

§ 560.2 Definitions.

For purposes of this part, the term—

"Administrative Officer" means the Administrative Officer of the Marine Mammal Commission.

"Commission" means the Marine Mammal Commission, a collegial body established under 16 U.S.C. 1401 that functions as a unit and is composed of three individual members, each of whom
is appointed by the President with the advice and consent of the Senate. “Executive Director” means an individual who is a member of the Marine Mammal Commission.

“Executive Director” means the Executive Director of the Marine Mammal Commission.

“General Counsel” means the General Counsel of the Marine Mammal Commission.

“Meeting” means the deliberations of at least a majority of the members of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include an individual Commissioner’s consideration of official Commission business circulated in writing for disposition either by notation or by separate, sequential consideration, and deliberations on whether:

(1) Change the subject matter of a publicly announced meeting, as provided in § 560.4(e) of this part;
(2) Call a meeting at a date earlier than announced, as provided in § 560.4(f) of this part;
(3) Close a portion or portions of a meeting or series of meetings, as provided in § 560.5 of this part; or
(4) Determine whether or not to withhold from disclosure information pertaining to a meeting, a portion of a meeting, or a series of meetings, as provided in § 560.5 of this part.

“Public observation” means attendance by a member of the public at an open meeting of the Commission, but does not include participation in the meeting.

“Public participation” means the presentation or discussion of information, raising of questions, or other manner of involvement in an open meeting of the Commission by a member of the public in a manner that contributes to the conduct of Commission business.

§ 560.3 Open meetings.

(a) Except as otherwise provided in this part, every meeting of the Commission shall be open to public observation.

(b) Meetings of the Commission, or portions thereof, shall be open to public participation only when an announcement to that effect is issued under § 560.4(b)(4) of this part. Public participation shall be conducted in an orderly, nondisruptive manner and in accordance with such procedures as the chairperson of the meeting may establish. Public participation may be terminated at any time for any reason.

(c) When holding open meetings, the Commission shall make a diligent effort to provide ample space, sufficient visibility, and adequate acoustics to accommodate the public attendance anticipated.

(d) Members of the public may record open meetings of the Commission by means of any mechanical or electronic device, unless the Commission determines that such recording would disrupt the orderly conduct of the meeting.

§ 560.4 Notice of meetings.

(a) Except as otherwise provided in this section, the Commission shall make a public announcement at least 7 days prior to a meeting.

(b) The public announcement shall include:

(1) The time and place of the meeting;
(2) The subject matter of the meeting;
(3) Whether the meeting is to be open, closed, or portions thereof closed;
(4) Whether public participation will be allowed; and
(5) The name and telephone number of the person who will respond to requests for information about the meeting.

(c) The public announcement requirement shall be implemented by:

(1) Submitting the announcement for publication in the Federal Register;
(2) Distributing the announcement to affected governmental entities;
(3) Mailing the announcement to persons and organizations known to have an interest in the subject matter of the meeting; and
(4) Other means that the Executive Director deems appropriate to inform interested parties.

(d) A meeting may be held with less than 7 days notice if a majority of the members of the Commission determine by recorded vote that the business of the Commission so requires. The Commission shall make a public announcement to this effect at the earliest practicable time. The announcement shall include the information required by paragraph (b) of this section and shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time which are determined by the Executive Director to provide interested parties with adequate notice.

§ 560.5 Closed meetings.

(a) A meeting or portions thereof may be closed, and information pertaining to such meeting or portions thereof may be withheld from the public, only if the Commission determines that such meeting or portions thereof, or the disclosure of such information, is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (ii) in fact properly classified pursuant to that Executive Order;
(2) Relate solely to the internal personnel rules and practices of the Commission;
(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that the statute: (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
(4) Disclose the trade secrets and commercial or financial information obtained from a person and privileged or confidential;
(5) Involve either accusing any person of a crime or formally censuring any person;
(6) Disclose information of a personal nature, if disclosure would constitute a clearly unwarranted invasion of personal privacy;
(7) Disclose either investigatory records compiled for law enforcement purposes or information which if written would be contained in such records, but
only to the extent that the production of
the records or information would:
(i) Interfere with enforcement
proceedings,
(ii) Deprive a person of a right to
either a fair trial or an impartial
adjudication,
(iii) Constitute an unwarranted
invasion of personal privacy,
(iv) Disclose the identity of a
confidential source and, in the case of a
intelligence investigation, confidential
information furnished only by the
conducting a lawful national security
investigation, confidential
information furnished only by the
confidential source,
(v) Disclose investigative techniques
and procedures, or,
(vi) Endanger the life or physical
safety of law enforcement personnel;
(vii) Disclose information contained in
or related to examination, operating, or
condition reports prepared by, on behalf
of, or for the use of an agency
responsible for the regulation or
supervision of financial institutions;
(viii) Disclose information the premature
disclosure of which would be likely to
significantly frustrate implementation of
a proposed action of the Commission.
This exception shall not apply in any
instance where the Commission has
already disclosed to the public the
content or nature of the proposed action
or where the Commission is required by
law to make such disclosure on its own
Initiative prior to taking final action on
the proposal; or
(ix) Specifically concern the issuance of
a subpoena by the Commission, or the
participation of the Commission in a
civil action or proceeding, an action in a
foreign court or international tribunal, or
an arbitration, or the initiation, conduct,
or disposition by the Commission of a
particular case of formal adjudication
pursuant to the procedures in § 5 U.S.C.
554 or otherwise involving a
determination on the record after
opportunity for a hearing.
(b) Before a meeting or portions thereof may be closed to public
observation, the Commission shall
determine whether or not the public
interest requires that the meeting or
portions thereof be open. The
Commission may open a meeting or
portions thereof that could be closed
under paragraph (a) of this section if the
Commission finds it to be in the public
interest to do so.

§ 560.6 Procedures for closing meetings.
(a) A meeting or portions thereof may be
closed and information pertaining to
such meeting or portions thereof may be
withheld under § 560.5 of this part only
when a majority of the members of the
Commission vote to take such action.
(b) A separate vote of the members of the
Commission shall be taken with
respect to each meeting or portion
thereof proposed to be closed and with
respect to information which is
proposed to be withheld. A single vote
may be taken with respect to a series of
meetings or portions thereof which are
proposed to be closed, so long as each
meeting or portion thereof in such series
involves the same particular matter and
is scheduled to be held no more than
thirty days after the initial meeting in
such series. The vote of each
participating Commission shall be
recorded, and no proxies shall be
allowed.
(c) A person whose interests may be
directly affected by a portion of a
meeting may request in writing that the
Commission close that portion of the
meeting for any of the reasons referred to in § 560.5(a) (5), (6) or (7) of this part.
Upon the request of a Commissioner, a
recorded vote shall be taken whether to
close such meeting or a portion thereof.
(d) Before the Commission may hold a
closed meeting, a certification shall be
obtained from the General Counsel that,
in his or her opinion, the meeting may
properly be closed. The certification
shall be in writing and shall state each
applicable exemptive provision from
§ 560.5(a) of this part.
(e) Within one day of a vote taken
pursuant to this section, the Commission
shall make publicly available a written
copy of such vote reflecting the vote of
each Commissioner.
(f) In the case of the closure of a
meeting or portions thereof, the
Commission shall make publicly
available within two working days of the
date of the vote on such action a full
written explanation of the reasons for the
closing together with a list of all persons
expected to attend the meeting and their
affiliation.

§ 560.7 Recordkeeping requirements.
(a) Except as otherwise provided in
this section, the Commission shall
maintain either a complete transcript or
electronic recording of the proceedings
of each meeting, whether opened or
closed.
(b) In the case of either a meeting or
portions of a meeting closed to the
public pursuant to §§ 560.5(a)(8) or (10)
of this part, the Commission shall
maintain either a complete transcript, an
electronic recording, or a set of minutes
of the proceedings. If minutes are
maintained, they shall fully and clearly
describe all matters discussed and shall
provide a full and accurate summary of
any actions taken and the reasons for
such actions were taken,
including a description of the views
expressed on any item and a record
reflecting the vote of each
Commissioner. All documents
considered in connection with any
action shall be identified in such
minutes.
(c) The transcript, electronic
recording, or copy of the minutes shall
disclose the identity of each speaker.
(d) The Commission shall maintain a
complete verbatim copy of the
transcript, a complete electronic
recording or a complete copy of the
minutes of the proceedings of each
meeting for at least two years, or for one
year after the conclusion of any
Commission proceeding with respect to
which the meeting was held, whichever
occurs later.

§ 560.8 Public availability of records.
(a) The Commission shall make
available to the public the transcript,
electronic recording, or minutes of a
meeting, except for items of discussion
or testimony that relate to matters the
Commission has determined to contain
information which may be withheld
under § 560.5 of this part.
(b) The transcript, electronic recording,
or minutes of a meeting shall be made
available for public review as soon as
practicable after each meeting at the
Marine Mammal Commission, 1625 I
Street, NW., Washington, D.C. 20006.
(c) Copies of the transcript, a
transcription of the electronic recording,
or the minutes of a meeting shall be
furnished at cost to any person upon
written request. Written requests should
be addressed to the Administrative
Office, Marine Mammal Commission,
1625 I Street, NW., Washington, D.C.
20006.

§ 560.9 [Reserved]
John R. Twiss, Jr.,
Executive Director, Marine Mammal
Commission.

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric
Administration
50 CFR Part 674
(Docket No. 30812-162)
High Seas Salmon Fishery Off Alaska
AGENCY: National Marine Fisheries
Service (NMFS), NOAA, Commerce.
ACTION: Notice of proposed delay in season opening date.

SUMMARY: The Secretary of Commerce proposes to delay the opening date of the commercial fishery for chinook salmon in the fishery conservation zone (FCZ) off southeast Alaska from the previously-scheduled May 15 to June 5, 1984. The Director, Alaska Region, NMFS has determined that this delay is necessary to reduce the overall fishing effort on chinook salmon early in the season as well as to mitigate the effects of hooking mortality on incidentally-caught chinook that would occur during a coho-only season. This action is intended to conserve chinook salmon stocks that contribute to the Alaska, Oregon, and Washington chinook salmon fisheries.

DATES: Public comments on this proposed action are invited until May 8, 1984. The final notice is expected to be effective May 15 or June 5, Alaska Daylight Time (ADT) on May 15, 1984, delaying the opening of the 1984 fishing season for chinook salmon until 12:01 a.m. ADT on June 5, 1984.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. The data upon which this notice is based is available for public inspection during business hours (8:00 a.m. to 4:30 p.m. ADT weekdays) at the NMFS Alaska Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: James R. Wilson (Regional Economist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175° East Longitude (FMP), which governs this fishery in the FCZ, provides for adjustments of season and area openings and closures by field order. The FMP was developed by the North Pacific Fishery Management Council (Council) and implemented under the Magnuson Fishery Conservation and Management Act. Implementing rules at 50 CFR 674.23 (a) and (b) specify that these field orders will be issued by the Secretary of Commerce under criteria set out in those rules.

At the February, 1984, joint meeting with the Alaska Board of Fisheries (Board), the Council reviewed the results of the 1983 coastwide chinook salmon harvests and escapements to rivers of origin. Most natural stocks of chinook salmon remain depressed and escapements for these stocks remain well below established levels. The Council found that the decline in spawning escapements to most rivers was not halted in 1983 and the expectations for 1984 total stock abundance reflect a decline in population size from 1983.

The Board and the Council advised the Regional Director that the 1984 troll season for chinook salmon should be delayed until June 5, 1984, to limit the 1984 harvest. They took this action for the following reasons:

- Information on the 1983 harvests and escapements to rivers of origin indicate that the condition of chinook salmon stocks throughout their range is not improving as intended by the management strategy employed under the FMP. This is true not only for the natural chinook salmon stocks harvested off southeast Alaska whose spawning streams are outside the area, but also for those stocks which spawn in Alaska.

- It is known from previous experience that the effect of overall fishing effort during any coho-only season later in the summer contributes substantially to the incidental hooking and subsequent mortality of the chinook salmon.

The Regional Director has in turn determined, in accordance with § 674.23 (a) and (b) cited above, that:

1. The condition of chinook salmon in the management area is substantially different from the condition anticipated in the FMP, and (2) this difference requires the delayed opening of the season based on the consideration of factors listed below:

- Information presented to the Council on the current coastwide condition of chinook salmon stocks.
- Studies conducted since implementation of the FMP which indicate that most of the natural chinook stocks harvested off southeast Alaska are depressed and are in a continuing state of decline.

- A study by the Alaska Department of Fish and Game (ADF&G) indicating a 27 percent average mortality rate among chinook salmon hooked and released.
- Information indicating that postponement of the season opening will increase escapement of the depressed chinook stocks to rivers in southeast Alaska and spawning streams outside that area.

The Regional Director recommends that the opening date for the commercial fishery for chinook salmon in the FCZ off southeast Alaska be 12:01 a.m., ADT, on June 5, 1984. Additional inseason time or area adjustments may be in light of further information received during the ongoing fishery.

A delayed opening of the fishery from May 15 to June 5 will reduce the likelihood of overharvest of coastwide stocks of chinook salmon whose spawning streams are outside the southeast Alaska area. This delay will also allow more chinook salmon of southeast Alaska origin to escape to spawning streams, which should promote rebuilding of southeast Alaska stocks. This delay also will conserve chinook salmon by extending fishing time into a period when the coho salmon harvest will be ongoing, thus minimizing unnecessary discard and hooking mortality of incidentally-caught chinook salmon that would otherwise occur were a single species fishery for coho salmon to continue after the optimum yield for chinook salmon is achieved.

The final notice should become effective on May 15, 1984, after filing for public inspection with the Office of the Federal Register and publicizing for 48 hours through ADF&G procedures under § 674.23(b)(2). The Regional Director has determined, under 5 U.S.C. 553 (b) and (d), that the reasons justifying the field order make it impracticable and contrary to the public interest to provide advance notice and prior opportunity to comment for a full 30 days, or delay for 30 days the effective date of the order. If full comment and delay periods were provided, the chinook fishery off southeast Alaska would have to open on May 15 and remain open until the comment and delayed effectiveness periods were completed. This would defeat the purpose of this action, which is to eliminate pressure on chinook salmon stocks during late May and early June. However, an abbreviated advance comment period of 12 days is provided until [insert date 12 days after date of filing with the office of the Federal Register]. Comments are received during the 12-day comment period, will be considered in developing the final notice.
Other Matters

This action is taken under the authority of regulations specified at 50 CFR 674.23, and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information request as defined in the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 674

Fisheries.

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

Carmen J. Blondin, Deputy Assistant Administrator for Fisheries Resource Management.

[FR Doc. 84-11628 Filed 4-26-84; 11:00 am]
DEPARTMENT OF AGRICULTURE
Animal and Plant Health Inspection Service

[PROPOSED RULES]

Availability of Site-Specific Environmental Analyses for the USDA Cooperative Gypsy Moth Suppression and Regulatory Projects

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This gives notice of the availability of site-specific environmental analyses for proposed treatment areas in Kane and Lake Counties, Illinois; Bartholomew, Elkhart, Marion, and St. Joseph Counties, Indiana; Eaton and Menominee Counties, Michigan; Benton, Hennepin, and Washington Counties, Minnesota; Watauga County, North Carolina; Franklin and Lucas Counties, Ohio; Benton, Montgomer, and Multnomah Counties, Oregon; Johnson County, Tennessee; Montgomery and Patrick Counties, Virginia; King, Pierce, and Snohomish Counties, Washington; and Dane and Waukesha Counties, Wisconsin.

ADDRESSES: Copies of the site-specific environmental analysis for the proposed treatment area(s) in each State are available for public inspection in a State office in the State where the analysis was conducted. Addresses of these State offices are as follows:

Illinois Department of Agriculture, Division of Agriculture Industry Regulation, Bureau of Plant and Apiary Protection, 1010 Jorie Boulevard, Suite 20, Oakbrook, Illinois 60521;

Indiana Department of Natural Resources, Division of Entomology, 613 Indiana State Office Building, Indianapolis, Indiana 46204;

Michigan Department of Agriculture, Plant Industry Division, P.O. Box 30017, Lansing, Michigan 48809;

Minnesota Department of Agriculture, Division of Plant Industry, 90 West Plato Boulevard, St. Paul, Minnesota 55107;

North Carolina Department of Agriculture, Plant Industry Division, Plant Protection Section, P.O. Box 27647, Raleigh, North Carolina 27611;

Ohio Department of Agriculture, Division of Plant Industry, Reynoldsburg, Ohio 43068;

Oregon Department of Agriculture, Plant Division, Agriculture Building, Salem, Oregon 97310;

Tennessee Department of Agriculture, Division of Plant Industries, P.O. Box 40627, Melrose Station, Nashville, Tennessee 37204;

Virginia Department of Agriculture and Consumer Services, Plant Pest Control Section, Division of Product and Industry Regulation, 1100 Bank Street, Room 508, P.O. Box 163, Richmond, Virginia 23290;

Washington Department of Agriculture, Plant Industry Division, 406 General Administration Building, AX-41, Olympia, Washington 98504; and Wisconsin Department of Agriculture, Trade and Consumer Protection, Plant Industry Division, 601 West Badger Road, Madison, Wisconsin 53708.

Copies are also available for public inspection at the Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 863 Federal Building, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Gary E. Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, Hyattsville, MD 20782.

SUPPLEMENTARY INFORMATION: The USDA draft Environmental Impact Statement for the Cooperative Gypsy Moth Suppression and Eradication Projects was submitted to the Environmental Protection Agency (EPA) on December 28, 1983. The public comment period for this document closed February 25, 1984. The final Environmental Impact Statement (EIS) was filed with the EPA on March 16, 1984, and a notice of availability of this document was published in the Federal Register on March 23, 1984 (49 FR 10983). The EIS discusses the national Gypsy Moth Suppression and Eradication Projects and notes that annual decisions concerning APHIS participation in eradication projects are made based on the results of site-specific environmental analyses prepared for the proposed treatment areas. A separate site-specific environmental analysis has been prepared for each of the following proposed treatment areas:

Illinois: approximately 150 acres in the counties of Kane and Lake;

Indiana: approximately 1505 acres in the counties of Bartholomew, Elkhart, Marion, and St. Joseph;

Michigan: approximately 200 acres in the counties of Eaton and Menominee;

Minnesota: approximately 83 acres in the counties of Benton, Hennepin, and Washington;

North Carolina: approximately 1200 acres in the county of Watauga;

Ohio: approximately 140 acres in the counties of Franklin and Lucas;

Oregon: approximately 11,560 acres in the counties of Benton, Marion, and Multnomah;

Tennessee: approximately 14,800 acres in the county of Johnson;

Virginia: 1725 acres in the counties of Montgomery and Patrick;

Washington: approximately 7415 acres in the counties of King, Pierce, and Snohomish;

Wisconsin: approximately 360 acres in the counties of Dane and Waukesha.

Each site-specific environmental analysis discusses the environmental effects of the program for those acres that are proposed to be treated in the respective State covered by the document. There are no unique characteristics or aspects of or within the proposed treatment areas or any treatment options discussed for possible use that would place any of these areas or treatment options outside the scope of considerations addressed in the EIS.

Done at Washington, D.C., this 26th day of April 1984.

Richard R. Backus,
Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84-11601 Filed 4-30-84; 8:45 am]
Federal Grain Inspection Service

Designation Renewal of Bloomington Grain Inspection Department (IL), Lubbock Grain Inspection and Weighing (TX), and Plainview Grain Inspection and Weighing Service, Inc. (TX)

AGENCY: Federal Grain Inspection Service, USDA

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Bloomington Grain Inspection Department (Bloomington), Lubbock Grain Inspection and Weighing (Lubbock), and Plainview Grain Inspection and Weighing Service, Inc. (Plainview), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 et seq.) (Act).

EFFECTIVE DATE: June 1, 1984.


FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The December 1, 1983, issue of the Federal Register (48 FR 34258) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Bloomington's, Lubbock's, and Plainview's designations terminate on May 31, 1984, and requesting applications for designation as the agency to provide official services within each specified geographic area. Applications were to be postmarked by January 2, 1984. Bloomington, Lubbock, and Plainview were the only applicants for each respective designation. FGIS announced the names of these applicants and requested comments on same in the February 1, 1984, issue of the Federal Register (49 FR 4018). Comments were to be postmarked by March 19, 1984. No comments were received regarding the designation renewal of Bloomington, Lubbock, and Plainview. FGIS has evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), has determined that Bloomington, Lubbock, and Plainview are able to provide official services in the respective geographic areas for which their designations are being renewed. Each assigned area is the entire geographic area, as previously described in the December 1 Federal Register issue.

Effective June 1, 1984, and terminating May 31, 1987, the responsibility for providing official inspection services in their respective specified geographic areas are assigned to Bloomington, Lubbock, and Plainview. A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency to conduct official inspection services and where the agency and one or more of its licensed inspectors are located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring a licensed inspector to all locations within its geographic area. Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of the specified service points. Interested persons also may obtain a list of the specified service points by contacting the agencies at the following address:

Bloomington Grain Inspection Department, 1700 W. Olive Street, c/o Ralph Purina, P.O. Box 817, Bloomington, IL 61701.

Lubbock Grain Inspection and Weighing, 920 Avenue A, P.O. Box 673, Lubbock, TX 79408.

Plainview Grain Inspection and Weighing Service, Inc., 1100 North Broadway Street, P.O. Box 717, Plainview, TX 79072.


Neil E. Porter,
Acting Director, Compliance Division.

BILLING CODE 3410-EN-M

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the areas currently assigned to Central Iowa Grain Inspection Service, Inc., Maine Department of Agriculture, and Montana Department of Agriculture.

DATE: Comments to be postmarked on or before June 15, 1984.

ADDRESS: Comments must be submitted in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0697 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-4; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The March 1, 1984, issue of the Federal Register (49 FR 7617) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 et seq.) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by April 2, 1984.

Central Iowa Grain Inspection Service, Inc., Maine Department of Agriculture, and Montana Department of Agriculture, the only applicants for each respective designation, requested designation for the entire geographic area currently assigned to each of those agencies.

In accordance with section 802.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their comments concerning the applicants for designation. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice, and postmarked not later than June 15, 1984. Comments and other available information will be considered in making a final decision. Notice of the
final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.  

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))


Neil E. Porter,  
Acting Director, Compliance Division.

[FR Doc. 84-11789 Filed 4-30-84; 8:45 am]  
BILLING CODE 3410-EN-M

Request for Designation Applicants to Perform Official Services in the Geographic Areas Currently Assigned to Hastings Grain Inspection, Inc. (NE), and New York State Department of Agriculture and Markets (NY)

AGENCY: Federal Grain Inspection Service, USDA.  
ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each specified agency. The official agencies are Hastings Grain Inspection, Inc., and New York State Department of Agriculture and Markets.

DATE: Applications to be postmarked on or before May 31, 1984.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, D.C. 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1312-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.  

Section 7(f)(1) of the Act (7 U.S.C. 71 et seq., at 79(f)(1)) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area. Hastings Grain Inspection, Inc. (Hastings), 306 East Park Street, Hastings, NE 68901, was designated under the Act as an official agency for the performance of inspection functions on November 1, 1981. New York State Department of Agriculture and Markets (New York), Building 8, State Campus, Albany, NY 12235, was designated under the Act as an official agency for the performance of inspection functions on October 1, 1981.

The agencies' designations will terminate on October 31, 1984. Section 7(g)(1) of the Act states generally that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic areas presently assigned to Hastings, in the State of Nebraska, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the following:

- Bounded on the North by the northern Nebraska State line from the Western Sioux County line east to the eastern Knox County line;
- Bounded on the East by the eastern and southern Knox County lines; the eastern Antelope County line; the northern Madison County line east to U.S. Route 81; U.S. Route 81 south to the southern Madison County line; the southern Madison County line; the eastern Boone, Nance, and Merrick County lines; the Platte River southwest; the eastern Hamilton County line; the northern and eastern Fillmore County lines; the southern Fillmore County line west to U.S. Route 81; U.S. Route 81 south to State Highway 8; State Highway 8 west to County Road 1 mile west of U.S. Route 81; County Road south to southern Nebraska State line;  
- Bounded on the South by the Southern Nebraska State line, from County Road 1 mile west of U.S. Route 81, west to the western Dundy County line;  
- Bounded on the West by the western Dundy, Chase, Perkins, and Keith County lines; the southern and western Garden County lines; the southern Morrill County line west to U.S. Route 395; U.S. Route 395 north to the southern Box Butte County line; the southern and western Sioux City County lines north to the northern Nebraska State line.

The following locations, outside of the foregoing contiguous geographic area, are presently assigned to Hastings and are part of this geographic area assignment:

1. Farmers Cooperative Grain Company and Wagner Mills, Inc., Columbus, Platte County; and  
2. Farmers Co-op and Dayton Dorn Grain Company, Big Springs, Deuel County.

The geographic area presently assigned to New York, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the entire State of New York, except those export port locations within the State.

Interested parties, including Hastings and New York, are hereby given an opportunity to apply for designation as the official agency to perform the official services in the geographic areas, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(b) of the regulations issued thereunder. Designations in the specified geographic areas are for the period beginning November 1, 1984, and ending October 31, 1987. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))


Neil E. Porter,  
Acting Director, Compliance Division.

[FR Doc. 84-11790 Filed 4-30-84; 8:45 am]  
BILLING CODE 3410-EN-M

Forest Service

Lewis and Clark National Forest  
Grazing Advisory Board; Meeting

The spring meeting of the Lewis and Clark National Forest Grazing Advisory Board, published 49 FR 17883, April 26, 1984, is re-scheduled for 5:30 p.m. on Monday, May 7, 1984, at the Ponderosa Inn, 220 Central Avenue, Great Falls, MT. The meeting will start with a social hour for getting acquainted with the new members of the Board. A no host dinner, from the menu, will follow at 6:30 p.m. The business meeting will follow the dinner.

The purpose of the meeting is to review the Lewis and Clark National Forest's range management program for...
fiscal year 1984 and proposals for 1985. The revised noxious weed program and the Forest's proposal to reevaluate the noxious weed program for 1985 will be discussed at the meeting. Discussion will also be held on other topics of interest to the Board.

The meeting will be open to the public. Persons who wish to attend should notify George P. Raths, Chairman of the Board, P.O. Box 478, Roundup, Montana 59072, Phone 323-1084 or Wayne Phillips, Acting Secretary, Lewis and Clark National Forest, Box 871, Great Falls, Montana 59403, Phone 727-0901. Written statements may be filed with Board before or after the meeting.


John D. Gorman,
Forest Supervisor, Lewis and Clark National Forest.
1. Section 3. Structure and Scope of Authority. Paragraph .04 is revised to read as follows:

".04 The Assistant Secretary for Trade Development shall be assisted in carrying out his/her responsibilities by:

a. The Deputy Assistant Secretary for Trade Development;

b. The Deputy Assistant Secretary for Basic Industries;

c. The Deputy Assistant Secretary for Capital Goods and International Construction;

d. The Deputy Assistant Secretary for Aerospace;

e. The Deputy Assistant Secretary for Science and Electronics;

f. The Deputy Assistant Secretary for Textiles and Apparel;

g. The Deputy Assistant Secretary for Automotive and Consumer Goods;

h. The Deputy Assistant Secretary for Services;

i. The Deputy Assistant Secretary for Trade Information and Analysis; and

j. The Deputy Assistant Secretary for Trade Adjustment Assistance."

2. Section 4. Delegation of Authority. In pen and ink, at the end of subparagraph .01pp. delete the word "and." At the end of subparagraph .01pp. delete the period and add "; and".

New paragraphs .01qq. and .01rr. are added to read as follows:

"q. Headnote 2, subpart B, part 6, schedule 6 of the Tariff Schedules of the United States (19 U.S.C. 1202) relating to the development, maintenance and publication of a list of bona fide motor-vehicle manufacturers, and authority to promulgate rules and regulations pertaining thereto under section 501(2) of Title V of the Automotive Products Trade Act of 1965 (19 U.S.C. 2031); and

"r. Section 264 of the Tariff Act of 1974 (19 U.S.C. 2354) relating to the studies and reports and information activities in response to investigations and findings of the International Trade Commission, except that reports to be submitted to the President shall be issued by the Secretary, and responsibility for assistance in preparation and processing of petitions and applications under subsection 234(c) shall be vested in the Assistant Secretary for Economic Development.""

3. Section 5. Functions. Paragraph .01 is revised to read as follows:

".01 Promote U.S. exports and strengthen the international trade and investment position of the U.S.; develop, maintain and disseminate analyses and information (other than that information collected and provided by the Federal Statistical agencies) on domestic industrial sectors and on foreign economic and commercial conditions; provide trade adjustment assistance to industries, communities and firms adversely affected by imports; and assist U.S. exporters through the facilities of the U.S. Commercial Service and the Foreign Commercial Service."

Kay Bulow,

Acting Assistant Secretary for Administration.

[FR Doc. 94-11720 Filed 4-30-84; 8:45 am]

BILLING CODE 3510-DK-M

[Department Organization Order 10-3; Amtd. 10]

Department Organization Order; Under Secretary for International Trade

Effective Date: March 4, 1984.

Department Organization Order 10-3, dated February 16, 1982 is hereby further amended as shown below. The purpose of this amendment is to establish the position of Deputy Assistant Secretary for Foreign Commercial Operations to assist the Director General of the U.S. and Foreign Commercial Service.

Section 3. Structure and Scope of Authority. Paragraph .05 is revised to read as follows:

".05 The Director General of the U.S. and Foreign Commercial Service shall be assisted in carrying out his/her responsibilities by the following:

a. The Deputy Assistant Secretary for the U.S. and Foreign Commercial Service.

b. The Deputy Assistant Secretary for Foreign Commercial Operations.

Kay Bulow,

Acting Assistant Secretary for Administration.

[FR Doc. 84-11720 Filed 4-30-84; 8:45 am]

BILLING CODE 3510-DK-M

International Trade Administration

[C-301-001]

Leather Wearing Apparel From Colombia; Final Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of suspension agreement.

SUMMARY: On January 26, 1984, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on leather wearing apparel from Colombia.

The review covers the period July 1, 1982 through June 30, 1983.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: May 1, 1984.


SUPPLEMENTARY INFORMATION:

Background

On January 26, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 3232) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on leather wearing apparel from Colombia (48 FR 19863, April 2, 1983). The Department has now completed that review, in accordance with section 751 of the "Tariff Act of 1980" ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Colombian men's, boys', women's, girls' and infants' leather coats and jackets, and other leather wearing apparel (such as vests, pants and shorts), as well as parts and pieces thereof. Such merchandise is currently classifiable under items 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated. The review covers the period July 1, 1982 through June 30, 1983, and one program: the Tax Reimbursement Certificate Program ("CAT").

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as the preliminary results. We determine that Confecciones Amazonas Oriinoco ("CAO"), the predominant exporter of such Colombian apparel to the U.S., has complied with the terms of the suspension agreement for the period July 1, 1982 through June 30, 1983. CAO renounced all CAT benefits associated with exports of leather wearing apparel to the United States, did not accept substitute or equivalent benefits and met all of the reporting requirements of the agreement. CAO continued to
account for at least 85 percent of imports of all such Colombian leather wearing apparel into the United States. Therefore, the suspension agreement for Colombian leather wearing apparel shall remain in effect. The Department is now beginning the next administrative review of the agreement.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)), and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Alan F. Holmer,
Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-11713 Filed 4-30-84; 6:45 am]
BILLING CODE 3510-DS-M

Sodium Gluconate From the European Communities; Final Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of suspension agreement.

SUMMARY: On January 20, 1984, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on sodium gluconate from the European Communities. The review covers the period June 1, 1982 through October 31, 1982.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine that the signatories to the agreement have complied with its terms during the period of review.

Therefore, the suspension agreement for sodium gluconate from the EC shall remain in effect. The Department intends to begin immediately the next administrative review of the agreement.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Alan F. Holmer,
Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-11714 Filed 4-30-84; 8:45 am]
BILLING CODE 3510-0S-M

National Oceanic and Atmospheric Administration

Fishery Conservation and Management; Foreign Fishing Permit Applications

Correction

In FR Doc. 84–10858 beginning on page 17063 in the issue of Monday, April 23, 1984, make the following correction:

On page 17063, in the table near the bottom of the page, under the heading “Application No.”, second line, ”JA–84–0134” should have read ”JA–84–1034”.

BILLING CODE 1505–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Controlling Imports of Certain Man-Made Fiber Apparel Products Produced or Manufactured in the Philippines; Correction

April 30, 1984.

On April 27, 1984 a notice was published in the Federal Register (49 FR 18150) concerning man-made fiber apparel products in Category 848, produced or manufactured in the Philippines. The date in line one of paragraph 3 of the letter to the Commissioner of Customs which followed that notice should be corrected to read, “April 27, 1984.”

Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–11880 Filed 4-30-84; 10:19 am]
BILLING CODE 3510–0R–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Modification to the Subject/Category Listing To Accompany the Armed Forces Discharge Review/Correction Boards Index

AGENCY: Office of the Secretary, DOD.

ACTION: Notice.

SUMMARY: This is a notice of a revision of the Subject/Category Listing to the Armed Forces Discharge Review/Correction Boards Index previously published in the Federal Register of October 13, 1978 (43 FR 47237). The purpose of the index is to assist those appealing to either the Discharge Review or the Correction Board. This revision reflects administrative and technical changes to the 1978 and should make the index more comprehensive and easier to use.


SUPPLEMENTARY INFORMATION: The purpose of the Subject/Category Listing.
as recorded in the Federal Register of February 18, 1977 (42 FR 10028), is to assist those requesting a review by either the Discharge Review and/or Correction Board. The index allows the user to identify those cases whose circumstances are similar to a specific case; an individual can then determine the reasons for which the Board or the Secretary (or both) granted or denied relief. Minor changes have been made to the Subject/Category Listing since its last publication in the Federal Register as cited above. However, a complete revision is appropriate at this time as a means of incorporating the many administrative and technical changes that have occurred in the last 5 years.

The new categories represent changes in discharge policies. Additionally, those issues that have appeared with increasing regularity and were not specified in the former index have been established as separate categories. The net result is that the revised index is more specific and should be of greater assistance to the user. The revision encourages the Boards to submit new categories to the Office of the Deputy Assistant Secretary of Defense (Military Personnel and Force Management) Attn: JSRA for possible inclusion in a subsequent change.


M. S. Healy,
OSD Federal Register Liaison Officer,
Department of Defense.

Subject/Category Listing To Accompany the Armed Forces Discharge Review and Correction Boards Index, February 1984

Foreword—February 84

This Consolidated listing is for use with the Armed Forces Discharge Review/Correction Boards Index.

Its purpose is to assign numerical codes to various "Reasons for Discharge" used in the review process. This includes issues raised by the applicant and those identified by the Board in arriving at its determination in discharge and other types of cases.

The consolidated index is divided into two sections: Section I contains those index numbers that are used for discharge review cases; Section II deals with those index numbers used in nondischarge review cases.

Section I has been modified since its original publication and is divided into two subsections. Subsection IA contains index numbers used by the boards prior to mid-1978; its inclusion in this revision is as a historical reference. This section of the Consolidated Index spans pages 4-20 and represents index numbers 001.00-099.99.

Section IB, the index in use today, has been used by the Discharge Review Boards since mid-1978. It incorporates the terminology contained in DOD Directive 1522.26, "Discharge Review Board (DRB) Procedures and Standards," dated 11 August 1982 and covers pages 21-46. It contains numerical codes A00.01-A99.99.

Asterisks (*) mark those categories in Sections IB and II that are effected by this update. Suggestions for changes in the Subject/Category listing should be sent to the following address:

Administrative Director, Joint Service Review Activity, OASD(MI&L)
(MP&FM), Washington, D.C. 20301.

This document is maintained and published by the DA Military Review Boards Agency as proponent agency for the Department of Defense. If you desire additional copies of this publication, their address is as follows: DA Military Review Boards Agency, SPBA, Room 1E467, The Pentagon, Washington, D.C. 20310.

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Section 1A—Index Numbers Used to Index Discharge Cases Heard Prior to Mid-1978 (Numerical Codes 001.00-099.00)

Discharge Review Board Index

| (01.00) Absence Without Leave |
| (01.01) Less than 30 days |
| (01.02) Less than 60 days |
| (01.03) Less than one year |
| (01.04) One year or longer |
| (02.00) Abuse of Discretion |
| (72.00) Activation From Reservist Status (Sufficiency) |
| (03.00) Administrative Discharge Board Hearing |
| (03.01) Command influence |
| (03.02) Composition of Board—proper and adequate |
| (03.03) Composition of Board—improper or inadequate |
| (03.04) Counsel—proper and adequate |
| (03.05) Counsel—ineffective or absence of |
| (03.06) Counsel—non-lawyer |
| (03.07) Evidence—proper and adequate |
| (03.08) Evidence—irrelevant or immaterial |
| (03.09) Evidence—hearsay |
| (03.10) Evidence—pre-service |
| (03.11) Recommendation—proper and adequate |
| (03.12) Recommendation—arbitrary |
| (03.13) Recommendation—too harsh |
| (03.14) Right of cross-examination |
| (03.15) Right to appear |
| (03.16) Witness—denial |
| (03.17) Witness—availability |
| (03.18) Other |

(04.00) Administrative Discharge Process

(04.01) Commander's report/record—complete and adequate

(04.02) Commander's report/record—incoplete or inadequate

(04.03) Counseling—proper and adequate

(04.04) Counseling—lack of or inadequate

(04.05) Discharge authority/action—proper and adequate

(04.06) Discharge authority/action—improper or inadequate

(04.07) Discharge authority/action—delegation

(04.08) Expeditious discharge

(04.09) Failure to follow regulations

(04.10) Hearing—proper and adequate

(04.11) Hearing—improper or denied

(04.12) Legal counsel—proper and adequate

(04.13) Legal counsel—ineffective or absence of

(04.14) Legal counsel—non-lawyer

(04.15) Medical & psychiatric report—proper and adequate

(04.16) Medical & psychiatric report—lack of or inadequate

(04.17) Notice—proper and adequate

(04.18) Notice—lack of or inadequate

(04.19) Notice—not timely

(04.20) Rehabilitative transfer/effort—proper and adequate

(04.21) Rehabilitative transfer/effort—inequate or denied

(04.22) Statements submitted

(04.23) Statement not submitted

(04.24) Waiver—proper and adequate

(04.25) Waiver—unknowing or unintelligent

(04.26) Waiver—coerced

(04.27) Other

(05.00) AFQT Scores

(05.01) Improper or inadequate

(05.02) Considered as an indication of ability to perform

(06.00) Alcohol

(06.01) Alcoholism
Section 1B—Index Numbers Used To Index Discharge Cases Reviewed After Mid-1978 (Numerical Codes A00.01–A99.99)

Outline to the Revised Subject/Category Listing

Propriety Considerations

Part A Common Elements to All Discharges

Index Numbers (A01.00–A01.36)

Part B Common Elements to Discharge Where SM Has Right to Board Hearing

Index Numbers (A02.00–A02.32)

Part C Reasons For Discharge and Specific Elements Pertaining to These Discharges

Index Numbers (A03.00–A03.08)

Part D Specifically Retroactive Policy Changes

Index Numbers (A05.00–A05.08)

Equity Considerations

Part E Policy Changes Not Specifically Retroactive

Index Numbers (A09.00–A09.16)

Part F Quality of Service

Index Numbers (A90.00–A90.06)

Part G Capability to Serve

Index Numbers (A92.00–A92.06)

Part H Other Equitable Considerations

Index Numbers (A94.00–A94.08)

Other Considerations

Part I Administrative Actions Indirectly Related to Discharge

Index Numbers (A99.00–A99.16)

Part J Special Programs

Index Numbers (A00.00–A00.58)

Explanation of the Revised Subject/Category Listing as It Relates to the Discharge Review Boards

The revised Subject/Category listing (S/CL) incorporates the Discharge Review standards with those which resulted from the Urban Law litigation and subsequent changes in DoD Directive 1332.26, “Discharge Review Board (DRB) Procedures and Standards.” The most recent changes to the S/CL are marked with an asterisk (*).

The current S/CL which pertains to the DRB’s is divided into ten parts: Parts A through D relate to Propriety Considerations; Parts E through H relate to Equity Considerations; and Parts I through J relate to Other Considerations and Special Programs. For further explanation of these parts, see the comments contained on page 25.

The index reference numbers have been assigned for easy use. The letter “A” precedes each index number to indicate that it is from the revised S/CL (after mid-1978).

(a) Reasons for Discharge are indicated by “major digits” A03.00–A03.08.

(b) Specific Procedural Elements unique to a particular Reason of Discharge are indicated by the “major digit” assigned that reason and “minor digits” reflecting the Specific Procedural Elements, e.g. A03.03, A70.04.

(c) Procedural Elements Common to All Discharges begin with the “major digit” A01 and are further categorized by “minor digits,” e.g. A01.02 or A01.11.

(d) Procedural Elements Common to All Discharges Where the Servicemember has a Right to a Board Hearing begin with the “major digit” A02 and are further categorized by “minor digits,” e.g. A02.02 or A02.13.

(e) All Equity Considerations are reflected by the “major digits” A90–A94 and are further categorized by “minor digits,” e.g. A92.03 or A93.14.

(f) Contentions or Issues Addressed Which Concern the Propriety of Administrative Actions indirectly related to the discharge process but which may reflect on the equity of the process begin with the “major digit” A99 and are further categorized by “minor digit,” e.g. A99.01 or A99.08.

(g) All considerations under Special Programs concerning discharge review are indicated by the “major digit” A00 and further are categorized by “minor digits” e.g. A00.21, A00.14.

For example, in the Computer Printout (Part I of the Index) you might see under the headings the following:

Example

**Reason For Discharge**

A03.00

Specific Procedural Regn’t Pertaining to the Discharge

(A93.21/22) Medical/Physical Problems

The Subject/Category Listing uses a slash to indicate that two numbers have been assigned to a particular issue, e.g. A03.03/04 indicates either A03.03 or A03.04. The **even** numbers indicate favorable consideration by the Board concerning a standard of equity (A92.02) or that a claim of impropriety was valid. (A01.10) An **odd** number indicates unfavorable consideration of equity (A93.07) or that a claim of impropriety was invalid (A03.03).

Board Members should code not only the Reason For Discharge and Issues raised, but all areas of consideration which provided the basis for their decision. To enable an applicant to determine which Issue addressed provided the principal reason for the Board’s decision, an index reference number assigned to that reason should, whenever possible, be the first number entered under ISSUES ADDRESSED.

For PROPRIETY CONSIDERATIONS, a number relating to a specific
procedural error will be entered first (see A01.10)
For EQUITY CONSIDERATIONS, a number relating to a broad area of EQUITY, e.g. A03.00 may be appropriate, especially in those cases where more than one Equity consideration provided the basis for the decision.

Explanation of Parts Relating to the Discharge Review Portion of the Subject/Category Listing

Part A—relates to propriety issues common to all discharges.
Part B—relates to propriety issues common to all discharges where the servicemember has a right to a hearing before a Board of Officers.
Part C—index reference numbers assigned to specific Reasons for Discharge—under each reason, the considerations of propriety unique to that discharge.
Part D—Two policy changes that have been made expressly retroactive.
Part E—relates to procedural changes which past applicants have suggested represent a substantial enhancement of rights and which, if applied retroactively, would result in a more favorable characterization of discharge. This Part also includes index reference numbers which relate to policy changes concerning the characterization of discharge a Servicemember can or must receive when separated for a particular reason.
Part F—Equitable Considerations relating to a former servicemember’s Quality of Service.
Part G—Equitable Considerations relating to a former servicemember’s Capability to Serve.
Part H—Equitable Considerations which do not clearly fall within one of the parts above.
Part I—relates to considerations of propriety in administrative actions indirectly related to the discharge process but which may reflect on the equity of that process.
Part J—relates to Special Programs for discharge review.

Section 1—Revised Subject/Category Listing (1978), Updated February 1984, Propriety Considerations

Part A—Common Elements Throughout the Discharge Process

(A01.01/02) Separation action not properly initiated
(A01.03/04) SM not properly notified of separation action
(A01.05/06) Improper physical examination at separation
(A01.07/08) Discharge authority not proper
(A01.09/10) Characterization based in part on prior service
(A01.11/12) Characterization based in part on pre-service record
(A01.13/14) Evidence in record does not support reason for discharge
(A01.15/18) SM not separated within reasonable time after approval
(A01.17/18) JAC’s (Legal) review, when required, defective
(A01.19/28) SM’s ratings/grades were not properly calculated or administered
(A01.21/22) Evidence obtained in violation of Article 31 UCMJ, (Self Incrimination) improperly considered
(A01.23/24) Evidence obtained from unlawful search improperly considered
(A01.25/28) Herasay evidence improperly considered
(A01.27/28) Unsworn testimony or statements improperly considered
(A01.29/30) Exempt evidence (alcohol/ drug rehabilitation program) improperly considered
(A01.31/32) Other evidence improperly considered, including defective records of disciplinary offenses
(A01.33/34) Discharge Under Conditions Other Than Honorable of inactive reservist based upon civilian misconduct found not to have affected directly the performance of military duties
(A01.35/36) Discharge with a General Discharge of inactive reservist based upon civilian misconduct found not to have an adverse impact on the overall effectiveness of the military morale and efficiency.
** (A01.37/38) No counsel provided
** (A01.39/40) Inadequate counsel
** (A01.41/42) No board of officers
** (A01.43/44) Presumption of regularity (Incomplete record)
** (A01.45/46) Other (Submit category/ issue to: Administrative Director Joint Service Review Activity OASD(MI&L) (MP&FM), Washington, D.C. 20301)

Part B—Elements common to Discharges Where SM Has Right to Board Hearing

(A02.01/02) Commander’s report improper
(A02.03/04) SM not properly notified of right to request board hearing
(A02.05/06) SM not properly notified of right to submit statement
(A02.07/08) Improper Counsel for consultation
(A02.09/10) Waiver of board hearing not proper
(A02.11/12) Improper denial of request for board hearing
(A02.13/14) Improper composition of board

(A02.15/16) Improper counsel for representation
(A02.17/18) Ineffective assistance of counsel
(A02.19/20) Request for witness improperly denied
(A02.21/22) Command intervention (influence) improper
(A02.23/24) Improper denial of request to personally appear
(A02.25/26) Recommendation of board improper
(A02.27/28) Discharge authority’s approval improper in light of board recommendation
(A02.29/30) Withdrawal of waiver not properly considered
(A02.31/32) Improper vacation of suspended administrative discharge.
** (A02.33/34) Other (Submit category/ issue to: Administrative Director, Joint Service Review Activity, OASD(MI&L) (MP&FM), Washington, D.C. 20301)

Part C—Reasons for Discharge and Specific Elements Pertaining to These Discharges

(A03.00/00) Discharge for Expiration of Term of Service/Enlistment (ETS)
(A03.01/02) SM member did meet regulatory criteria for Honorable Discharge
(A03.03/04) Personal decoration during current service not considered
(A03.05/06) Characterization based on isolated acts of indiscretion
(A03.07/08) Characterization based on mental status or other medical evaluation
(A03.09/10) Characterization improperly changed by commanding officer of transfer activity, and appropriate entries not made in file showing reason
(A04.00/00) Discharge for Convenience of Government (Best Interest of the Service) (See specific categories A05.—A30. below)
(A05.00/00) Reduction in strength (Service manpower)
(A06.00/00)Erroneous induction or enlistment
(A07.00/00) Early separation under directed programs
(A08.00/00) Discharge on basis of alien status
(A09.00/00) Lack of jurisdiction
(A10.00/00) Sole surviving son/daughter or family member
(A11.00/00) Concealment of arrest record
(A12.00/00) Secretarial authority
(A13.00/00) Discharge for obesity
(A14.00/00) Discharge for motion/transfer sickness
(A15.00/00) Inability to perform duties due to parenthood
(A16.00) Discharge to accept commission
(A17.00) Discharge for enlistment/reenlistment
(A18.00) Physically disqualified for Officer Candidate School
(A19.00) SM erroneously delivered punitive discharge before review final
(A20.00) Discharge for allergy to clothing
(A21.00) SM serving constructive enlistment with defective contract
(A22.00) Discharge for pregnancy or marriage
(A23.00) Discharge for conscientious objection

*(A24.00) Marginal performer discharge (EDP/QMP): Non-trainee

(A24.01/02) SM not properly counseled by command
(A24.03/04) SM met required standards of performance after award of MOS
(A24.05/06) SM not in unit from which separated for required period of time
(A24.07/08) SM did not consent to discharge
(A24.09/10) Improper counsel for consultation (when required)
(A24.11/12) Statement submitted not considered
(A24.13/14) Not separated within specified period of time in service

*(A25.00) Marginal performer discharge (TDP): Trainee (1 Sep 73–30 Sep 82)
(A25.01/02) SM not discharged within required period of time after enlistment
(A25.03/04) Trainee discharge not properly characterized as honorable
(A25.05/06) Trainee discharge not properly counseled before discharge
(A25.07/08) Statement/rebuttal submitted not considered

(A26.00) Substandard performance/behavior ( Petty Officer)
(A27.00) Substandard performance/behavior (Non-Petty Officer)
(A28.00) Condition/medical disability which interferes with performance of duties

*(A29.00) Entry level separation
**(A29.01/02) Member not properly counseled/rehabilitated by command before separation
**(A29.03/04) Member not discharged within 180 days of AD/LADT
**(A29.05/06) Member not separated within three duty days after approval by separation authority
**(A29.07/08) Statement/rebuttal not considered

*(A30.00) Convenience of the Government

**(A30.01/02) Parenthood
**(A30.03/04) Other designated physical or mental condition
*(A30.05/06) Review action
**(A30.07/08) Conduct adverse to the best interest of the service

(A31.00) Discharge for physical disability
(A32.00) Discharge (Characterization) as a result of DRB action
(A33.00) Discharge (Characterization) as a result of other official board action (e.g., clemency & parole, correction of military records)

(A34.00) Discharge for minority
(A35.00) Discharge for dependence or hardship
(A36.00) Discharge for security reasons
**(A37.00) Discharge in the interest of national security
*(A38.00) Failure in prisoner retraining

(A39.00) Discharge for unsuitability
*(A40.00) Discharge for unsuitability

(A40.03/04) Rehabilitative requirements not met or waived
(A40.05/06) Mental status evaluation (when required) not conducted
(A40.07/08) Requested psychiatric or psychological report not conducted

(A41.00) Inaptitude
(A42.00) Personality disorder (Old character & behavior disorder)

(A42.01/02) Neuropsychiatric (NP) evaluation not proper/present

(A43.00) Apathy
(A44.00) Enuresis
(A45.00) Alcohol abuse

(A46.00) Homosexual tendencies

*(A46.01/02) No verified record of homosexual acts prior to or during service
(A46.03/04) Did not exhibit, profess or admit to homosexual tendencies
(A46.05/06) Psychiatric/psychological evaluation (when required) not performed

(A47.00) Financial irresponsibility
(A48.00) Unsanitary habits

*(A49.00) Discharge for unsatisfactory performance
**(A49.01/02) Counseling and rehabilitative requirements not met or waived
**(A49.03/04) Notification requirements not met
**(A49.05/06) Mental status evaluation or psychiatric evaluation report (if applicable) not conducted

**(A49.07/08) Medical examination (if applicable) not conducted
**(A49.09/10) Statement/rebuttal not considered

(A50.00) Discharge for unfitness (see specific categories A51.–A58. below)

**(A50.01/02) Counseling requirements not met or waived
**(A50.03/04) Rehabilitative requirements not met or waived
**(A50.05/06) Mental status evaluation (when required) not conducted

**(A50.07/08) Requested psychiatric or psychological report not conducted

**(A51.00) Frequent involvement with civil or military authorities
**(A52.00) Sexual perversion
(A53.00) Drug use, sale, or possession
(A54.00) Established pattern of shirking
(A55.00) Established pattern of failure to pay debts

**(A56.00) Established pattern of failure to support dependents

**(A57.00) Homosexual acts

**(A57.01/02) No confirmed proposal, solicitation, attempt or performance of homosexual acts
**(A57.03/04) Isolated incident stemmed from immaturity, curiosity or intoxication

**(A57.05/06) Psychiatric/psychological evaluation (when required) not conducted

**(A58.00) Unsanitary habits

**(A59.00) Discharge for homosexuality

**(A59.01/02) Notification requirements not met
**(A59.03/04) Mental status evaluation not conducted

**(A59.05/06) Statement/rebuttal not considered

**(A59.07/08) With subordinate
**(A59.09/10) Location subject to military control

**(A59.11/12) For compensation
**(A59.13/14) With person under 16 years of age

**(A59.15/16) Openly in public view
**(A59.17/16) With use of force, coercion, or intimidation
**(A59.19/20) Other [Submit category/issue to: Administrative Director, Joint Service Review Activity, OASD(MI&L) (MP&FM), Washington, D.C. 20301]

**(A60.00) Discharge for Misconduct (See specific categories A61.–A67. below)

**(A61.00) Conviction by civil authorities (Foreign or domestic)

**(A61.01/02) No Conviction which met UCMJ punishment standards

**(A61.03/04) Discharged before appeal action completed

**(A61.05/06) Discharge not in accordance with policy for Non-U.S. convictions

**(A61.07/08) Mental status evaluation (when required) not conducted

**(A61.09/10) Improper discharge after constructive waiver

**(A61.11/12) Misconduct of inactive reservist discharged under other than honorable conditions based upon civilian misconduct found not
to have affected directly the performance of military duties.

(A61.13/14) Misconduct of inactive reservist discharged under honorable conditions based upon civilian misconduct found not to have had an adverse impact on the overall effectiveness of the military morale and efficiency

**[A61.15/16] Seriousness of offense**

(A62.00) Fraudulent enlistment

(A62.01/02) Fraudulent entry not substantiated

(A62.03/04) Mental status evaluation (when required) not conducted

(A62.05/06) Recruiter misconduct

(A63.00) Prolonged unauthorized absence (extended AWOL/desertion)

(A63.01/02) Unauthorized absence (AWOL/desertion) not continuous 1 year or more

(A63.03/04) Mental status evaluation (when required) not conducted

(A64.00) Frequent involvement with civil or military authorities (See procedural elements under unfitness A50.01-08)

**[A64.01/02] Criteria for under other than honorable conditions (UOTHC/UOHC) not met

(A65.00) Homosexual acts (See procedural elements under unfitness A50.01-08; and A5701-06)

**[A67.00] Acts or patterns of misconduct

**[A67.01/02] Minor disciplinary infractions

**[A67.03/04] Serious offense (civil or military)

**[A67.05/06] Pattern or misconduct

**[A67.07/08] Illegal use of drugs

(A68.00) Bad Conduct Discharge (BCD)

(A68.01/02) BCD not affirmed on appellate review

**[A69.03/04] Seriousness of offense

(A69.00) Discharge for alcohol/drug rehabilitation failure

(A69.01/02) SM was not rehabilitative failure

(A69.03/04) SM was discharged prior to minimal treatment

(A69.05/06) Discharge not properly characterized as honorable

(A69.07/08) Improper counsel for consultation

(A70.00) Request for discharge for good of service (GOS) for conduct which rendered SM triable by CM (See specific categories A71.-A77. below

(A70.01/02) Charges not preferred

(A70.03/04) Offense charged, not punishable by a "Punitive Discharge"

(A70.05/06) SM did not request for GOS discharge

(A70.07/08) SM not properly counseled by attorney

(A70.09/10) Request for withdrawal of GOS discharge not processed/considered

(A70.11/12) SM could not knowingly request GOS discharge at the time

(A70.13/14) No UCMJ jurisdiction over the person

(A70.15/16) No UCMJ jurisdiction over the offense

**[A70.17/18] Seriousness of charge(s)

(A71.00) Conduct triable by CM: AWOL

**[A70.01/02] Conduct triable by CM: Absent from appointed place of duty

**[A70.03/04] Conduct triable by CM: Missing movement

(A72.00) Conduct triable by CM: Larceny

(A73.00) Conduct triable by CM: Assault

(A74.00) Conduct triable by CM: Drugs

(A75.00) Conduct triable by CM: DOLO

(A75.01/02) Conduct triable by CM: Dereliction of duty

(A75.03/04) Conduct triable by CM: Sleeping on duty

(A76.00) Conduct triable by CM: Disrespect

(A76.01/02) Conduct triable by CM: Making a false official statement

**[A77.00] Conduct triable by CM: Homosexuality

(A78.00) Discharge for Inaptitude or unsuitability (Discharges prior to April 1959)

(A79.00) Discharge for undesirable habits or traits (Discharges prior to April 1959)

(A80.00) Officer resignation

(A80.01/02) Officer did not tender resignation

(A80.03/04) No elimination action initiated, when required

(A80.05/06) Request not forward to military department by GCM authorities

(A81.00) Officer elimination

(A82.00) Officer expiration of term of service

**[A83.00] Other [Submit category/issue to: Administrative Director, Joint Service Review Activity, OASD(MI&L) (MP&FM), Washington, D.C. 20301]

(A84.00) Discharge for unsatisfactory participation/attendance at drills/meetings

**[A84.01/02] Member not properly notified by command before separation

**[A84.03/04] Statement/rebuttal submitted not considered

Part D—Policy Changes Made Specifically Retroactive

(A85.00) Drug use/possession (Laird Memorandum)

(A85.01/02) Discharge based solely on drug related conduct

(A85.03/04) Discharge based solely drug on use/possession

(A85.05/06) Discharge based on sale, but mere conduct theory applies

(A85.07/08) Service record otherwise satisfactory

(A86.00) Personality Disorder (Old character and behavior disorder)

(A86.01/02) No NP evaluation

(A86.03/04) No NP evaluation diagnosing a personality disorder

(A86.05/08) No evaluation not conducted by proper medical authority

(A86.07/08) No clear and demonstrable reason for a less than honorable discharge

**[A87.00] Other [Submit category/issue to: Administrative Director, Joint Service Review Activity, OASD(MI&L) (MP&FM), Washington, D.C. 20301]

(A88.00)

(A88.09) Equity Considerations (Contentions, Issues or Considerations)

Part E—Policy Changes Not Specifically Retroactive

(A90.00) Procedural

(A90.01/02) Formal notification of separation action

(A90.03/04) Opportunity to respond (e.g. Submit statements)

(A90.05/06) Opportunity for a board hearing

(A90.07/08) Right to lawyer for consultation

(A90.09/10) Right to lawyer for representation

(A90.11/12) Opportunity to examine cross-examine witness(es)

**[A90.13/14] Other [Submit category/issue to: Administrative Director, Joint Service Review Activity, OASD(MI&L) (MP&FM), Washington, D.C. 20301]

(A91.00) Policy

(A91.01/02) Character of discharge received by SM is not now authorized or required when a SM is discharged for the same reason or conduct

(A91.03/04) Conduct for which SM was discharged no longer provides an authorized basis for separation

**[A91.05/06] Other [Submit category/issue to: Administrative Director, Joint Service Review Activity, OASD(MI&L) (MP&FM), Washington, D.C. 20301]

Part F—(A92.00) Quality of Service

(A92.01/02) Conduct and efficiency ratings
Part G

ServeJ

(A92.05/06) Letter of commendation

(A92.03/04) Awards and decorations

Factors Which Could Impair Ability to

Other acts of merit

(A92.15/16) Date and period of

Service which is subject of DRB

Review; Length and quality of

service under review

Prior (Honorable) military

service

Post service conduct (Good
citizenship)

Record of non-judicial

punishment

Record of Court(s)-

martial convictions

Record of conviction(s)

by civil authorities while in service

and part of service record

Record of unauthorized

absences

AWOL, extended or

multiple unauthorized absences

Record of confinement or

other lost time

Offenses of isolated/

minor nature

Guilty of offense

Uncorroborated drug

abuse charges

Other (Submit category/ issue to: Administrative Director,
Joint Service Review Activity,
OASD[M&L] [MP&FM],
Washington, D.C. 20301)

Age and maturity

Aptitude (Scopes and
education)

Deprived background

Marital/family problems

Personal problems

Financial problems

Discrimination: Religious

Discrimination: Racial

Drugs

Alcohol

Medical/physical

Psychiatric/psychological

problems (may include situational

maladjustment)

Matters of conscience

Waiver of moral standards for

enlistment

Counseling (by command, chaplain, etc.)

Other (Submit category/ issue to: Administrative Director,
Joint Service Review Activity,
OASD[M&L] [MP&FM],
Washington, D.C. 20301)

Part H—(A94.00) Other Equitable Considerations

Severity of punishment

(A94.01/02) (Civil or military): Current

standards

(A94.03/04) Inaptitude ("Would but

couldn't")

Too harsh: At issuance, discharge

inconsistent with

standards of discipline

Discharge in lieu of Court-

Martial: Although a punitive

discharge was authorized, an other

than honorable discharge was too

harsh under the circumstances

Multiple minor offenses

(Multiplicity)

Arbitrary and capricious

command actions that constitute a

clear abuse of authority, and which,

although not amounting to

prejudicial or legal error, may have

contributed to the decision to

discharge or the characterization of

service

Vietnam war syndrome

Received clemency

Discharge

Failed to complete alternate

service but reasonable explanation

Homosexual interest self-

admitted

Committed homosexual act(s)

committed with express/ implied

consent of an adult(s)

Homosexual act(s) off

military installation

Homosexual act(s) resulted

from duress

Drugs: Simple possession

(Small amount)

Drugs: Use off duty

Drugs: Use off military

reservation

Drugs: No use after

exemption granted

Drugs: No sale/trafficking

Drugs: Use/possession

Substantial enhancement of

rights (current standards)

Lack of alcohol/drug

treatment

Not within the purview of

DRB:

Not an element of fact,

law, or discretion

Counseling pertaining to

VA benefits not received

Counseling regarding

request for change in character/

reason of discharge not received

Other (Submit category/ issue to: Administrative Director,
Joint Service Review Activity,
OASD[M&L] [MP&FM],
Washington, D.C. 20301)

(A95.00) Other (Submit category/
issue to: Administrative Director,
Joint Service Review Activity,
OASD[M&L] [MP&FM],
Washington, D.C. 20301)

(A97.60)

(A98.00)

Other Considerations

Part I (A99.00) Administrative Actions

Indirectly Related to Discharge Process

(A99.01/02) Application for

conscientious objector (CO)

(A99.05/06) Application for hardship

discharge

(A99.07/06) Improper enlistment

(A99.09/10) Enlistment option not

satisfied or waived

(A99.11/12) Application for

compassionate reassignment

(A99.13/14) Evaluation/ consideration

for physical disability discharge

(A99.15/16) Selected changes in

service obligations

(A99.17/18) Other (Submit category/
issue to: Administrative Director,
Joint Service Review Activity,
OASD[M&L] [MP&FM],
Washington, D.C. 20301)

Part I—Special Programs

(A00.00) Presidential Proclamation

(PP43143), 19 SEP 74

(A00.10) Presidential Memorandum 9

JAN 77

SM who applied for
clemency UP, PP4313, and was
wounded in combat (Vietnam)

SM who applied for
clemency UP, PP4313, and was
decorated for valor (Vietnam)

(A00.20) Special Discharge Review

Program (SDRP)

(A00.21/22) Tour in Southeast Asia or

Western Pacific

(A00.23/24) Wounded in Combat

(A00.25/26) Decorated for Valor/ Merit

(A00.27/28) Previous Honorable

Discharge

(A00.29/30) Satisfactorily served 24

Months prior to Discharge

(A00.31/32) Completed Alternate

Service or was excused IAW

Presidential Proclamation 4313

(A00.33/34) Age, Aptitude, Length of

Service at time of Discharge

(A00.35/36) Education Level

(A00.37/38) Deprived Background

(A00.39/40) Personal Distress

(A00.41/42) Waiver to Enlist

(A00.43/44) Conscience

(A00.45/46) Drugs or Alcohol

(A00.47/48) Good Citizenship

(A00.49/50) Other factors
Awards And Decorations

An award or (Characterization) As A Result Of DRB ribbons or medals given to all persons in Board Action Discharge (Where SM Has a Right To Authority who exercised some influence consideration or service or campaign meritorious) or period of service —> This applies to (Influence) Improper member's impartiality.

recommend retention/separation.

Not Support Reason For Discharge —For general application in board-potential changes made by official Boards category which allows indexing of Or Other Official Board Action—A cases which relate to a Discharge command which influenced improperly, This is NOT INTENDED FOR USE IN cases regardless of whether or not a board was actually convened to recommend retention/separation. 4. A02.21/22: Command Intervention (Influence) Improper.—This applies to cases which relate to a Discharge Authority who exercised some influence over a board or a member of his command which influenced improperly, eliminated or reduced the board's or member's impartiality.

5. A03.03/04: Personal Decoration, Or Awards And Decorations—An award or a decoration given to an individual by name for a specific act (valorous or meritorious) or period of service (meritorious). This does NOT include consideration or service or campaign ribbons or medals given to all persons in a general category who served in an area or during a period.

6. A32.00 and 33.00: Discharge (Characterization) As A Result Of DRB Or Other Official Board Action—A category which allows indexing of changes made by official Boards (Review or Correction) which alter the original reason for discharge.

7. A50.00 and 60.00: Unfitness or Midconduct—Categories which are essentially the same in meaning and action but for which the title of the overall category of offenses has changed. UNFITNESS as a class of reasons for discharge was changed to MISCONDUCT in 1977.

8. A78.00 and 79.00: Discharge For Inaptitude Or Unsuitability And Discharge For Undesirable Habits Or Traits (Discharges prior to APR 59)—This is the term used as the "reason for discharge" for discharges prior to April 1959, for conduct which subsequently would have resulted in a discharge for UNSUITABILITY, UNFITNESS or MISCONDUCT.

9. A92.17/18: Date And Period Of Service Which Is Subject Of DRB Review—A category which relates to the period of service (dates inclusive) as compared to other periods when one could have served under less strenuous circumstances or in a less demanding environment. This also relates his length of service (period) to the term of his obligation (enlistment or induction); that is, how much of his obligations did he complete.

10. A94.08/10: Multiple Minor Offenses—This term describes the concept that while punishment may properly be imposed for each of two or more offenses arising out of the same act or transaction, what is substantially one act or transaction should not be made the basis for an unreasonable multiplication of charges against one person. This is not synonymous with "stacking of charges."

11. A99.00: Administrative Actions Indirectly Related to Discharge Process—Actions which require proper administrative disposition but which are not specifically regulatory or procedural steps in the discharge process or not directly related to one of those steps. Improper administrative disposition in these areas may reflect on the equity of the discharge while not rendering the discharge improper.

12. A90.20: Special Discharge Review Program—A special category of discharge reviews for SM who were separated from service on active duty (not including ACDUTRA between 4 August 1964 and 28 March 1973 [inclusive]); or who were discharged from the service under the Deserter—Returnee Program whose desertion began during the period of the SDRP (stated above) and who applied for review during the period 8 April 1977—4 October 1977, inclusive.

13. Prejudicial Error: An error of fact, law, or procedure associated with the discharge at the time of issuance which prejudiced the rights of the SM to the extent that there is substantial doubt that the characterization of service would have remained the same if the error had not been made.

Section II—Index Numbers to Index Non-Discharge Cases (Numerical Codes 100.00—199.99)

Correction Boards Index—Non-Discharge Cases

A

100.00 Administrative Matters
100.01 Change of Name/Sex
100.02 Change of Date/Place of Birth
100.03 Change of Reenlistment
100.04 Presumption of Death
100.05 Change of MOS/Designation
100.06 Bar to Reenlistment
100.07 Training
101.00 Archives Cases
101.01 Civil War
101.02 Desertion
101.03 Spanish-American War
101.04 Establish Service
101.05 Revolutionary War
102.00 Appointments
102.01 Effective Date
102.02 Grade
102.03 Component
102.04 Reason for Disqualification
102.05 Inter-Service Transfer
102.06 Termination
102.07 Date of Rank
102.08 Constructive Service for Officers

B

103.00

C

104.00 Cadets USMA/USNA/USAF
104.01 Restoration of Status
104.02 Graduation/Appointments
105.00 Courts Martial
105.01 Sentence (including Dismissal/Discharge)
105.02 Mental Incompetency/ Capacity
105.03 Lack of Opportunity for Restoration
105.04 Conscientious Objection
105.05 Impeachment of Testimony
105.06 Use of Possession of Drugs
106.00 Clemency Discharge/Pardon
107.00 Decorations and Awards
108.00 Disability Separation/ Retirement
108.01 Diagnosis
108.02 Percentage of Disability
108.03 Line of Duty Determination
108.04 Permanent
108.05 Temporary
108.06 Termination
108.07 Combat Incurred
108.08 Instrumentality of War
108.09 Grade

108.10 Effective Date

109.00 Discharge/Separation

Documents

110.01 Change in Date

110.02 Reason and Authority

**110.03 Reinstatement

111.00 Efficiency/Effectiveness

Reports

111.01 Officers and Warrant Officers

111.02 Enlisted Personnel

111.03 Bias/Prejudice—Rate/Indorser

111.04 Administrative/SRB Review

**111.05 Void

112.00 Enlistment/Reenlistment

Contract

112.01 Home of Record

112.02 Grade/Date of Rank

112.03 Term of Enlistment

112.04 Broken Enlistment

112.05 Date of Enlistment

112.06 Void

112.07 Constructive Service

112.08 Continuous Service

112.09 Base Pay Entry Date

**112.10 Waiver to Reenlist

113.00 Establishment of Service

113.01 Reserve Components

113.02 SATC

113.03 Furlough

**113.04 Active Duty Service

Commitment

113.04 WWI Railway Battalions

113.05 Civilian Conservation Corps

114.00 Fitness Reports (Navy/Marine Corps)

114.01 Removal of Officer Reports

114.02 Revised Reports

114.03 Enlisted Performance

Evaluation—Removal/Modify

115.00 Flying Status

115.01 Effective Date

115.02 Removal From

115.03 Qualifying Service

115.04 Aeronautical Ratings

G

116.00

H

117.00

I

119.00 Jurisdiction of Board

119.01 Philippine Guerrilla Cases

K

120.00

L

121.00 Leave Adjustment

121.01 Type of Leave

121.02 Lump Sum Settlement

**121.03 Restored

122.00 Line of Duty Status

122.01 Injury

122.02 Disease/EPTS

122.03 Mental Responsibility

123.00 Lost Time

123.01 Absence Without Leave/Desertion

123.02 Mental Incapacity

123.03 Injury or Illness on Leave

123.04 Error or Technicality

123.05 Port Call

123.06 Confinement

123.07 Removal

**123.08 Restored

124.00 Medical Records

124.01 Change in Diagnosis

124.02 Dates of Treatment

124.03 Establishment of Record of Treatment

**124.04 Removal

125.00 National Guard

125.01 Status

125.02 Federal Recognition

126.00 Nonjudicial Punishment

126.01 Improperly Filed

126.02 Excessive Punishment

126.03 Removal of Reprimands

126.04 Expunge Record

127.00

128.00 Pay and Allowance

128.01 Family Separation Allowance

128.02 Travel Pay

128.03 Dislocation Allowance

128.04 Flying/Incentive Pay

(including Submarine, Flight Deck, Experimental Stress duty, etc.)

128.05 Enlistment/Reenlistment

Bonuses

128.06 Variable Incentive Pay/Continual/Medical/Dental, etc.

128.07 Proficiency Pay

128.08 Severance Pay

128.09 Readjustment Pay

128.10 Remission/Cancellation of Indebtedness

128.11 Mustering-Out Pay

128.12 BAQ/Subsistence Allowance

**128.13 Uniform/Clothing Allowance

128.14 Other Types Pay

129.00 Service Credit

129.01 Service Credit

129.02 Revocation of Orders

129.03 Authority

129.04 Highest Grade Satisfactory Held for Pay Purposes

145.00 Physical Disability

145.01 Incurred while on unauthorized absence

145.02 Existed prior to entry/aggravated

145.03 Existed prior to entry/not aggravated

145.04 Incurred while not in receipt of basic pay

145.05 Disciplinary action pending: handling of

145.06 Administrative discharge: proceedings pending: handling of

130.00 Prisoner of War

131.00 Promotion

131.01 Selection Boards

131.02 Removal From Recommended List

131.03 Failure to be Considered

131.04 Effective Date

131.05 Date of Rank

131.06 Prisoner of War

131.07 Casualty Status

131.08 Terminal Leave Promotion

131.09 Advancement in Grade

131.10 Passover/Failure of selection—Removal

Q

132.00

R

133.00 Reduction in Grade/Rank

133.01 Misconduct

133.02 Inefficiency

133.03 Void/Removal Record

133.04 Technical Defect

134.00 Removal/Deletion of Records

134.01 Letters of Reprimand/Admonition

134.02 Derogatory Material

134.03 Remark of Desertion

135.00 Reserve Service Credit

135.01 Transfer Between Components

135.02 Retirement Point Credits

135.03 Change of Status

135.04 War/National Emergency Service

135.05 Date of Retirement

136.00 Retirement/Separation (Other Than Disability)

136.01 Effective Date

S

137.00 Survivors Benefit Plan and RSFP

137.01 Eligibility

137.02 Effective Date of Participation

137.03 Termination of Participation

137.04 Change in Election

T

138.00

U

139.00

V

140.00
Department of the Army

Privacy Act of 1974; Deletions of and Amendments to Notices for Systems of Records

AGENCY: Department of the Army, DoD.

ACTION: Deletion of and amendments to notices for systems of records.

SUMMARY: The Department of the Army proposes to delete 14 and amend 5 system notices for systems of records subject to the Privacy Act of 1974, as amended. Following identification of changes, amended notices are printed below in their entirety.

DATE: Actions shall be effective May 31, 1984.

ADDRESSES: Comments may be submitted to Headquarters, Department of the Army, ATTN: DAAG-AMR-S, 2461 Eisenhower Avenue, Alexandria, VA 22331.

FOR FURTHER INFORMATION CONTACT: Mrs. Dorothy Karkanen, Office of The Adjutant General, Headquarters, Department of the Army, at the above address; telephone: 703/325-6163.

SUPPLEMENTARY INFORMATION: The Army's system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register as follows:

FR Doc 83-12048 (48 FR 25502), June 6, 1983
FR Doc 83-18883 (48 FR 32048), July 13, 1983
FR Doc 83-24181 (48 FR 40231), September 6, 1983
FR Doc 83-28792 (48 FR 49086), October 24, 1983
FR Doc 84-14118 (48 FR 25506), June 24, 1983
FR Doc 84-23311 (48 FR 5170), February 27, 1984
FR Doc 84-6438 (49 FR 8993), March 9, 1984

DELETIONS

A0407.01aDAJA

Reason: Records are covered by proposed amended notice A0406.01DAJA, reidentified and reprinted in this Federal Register as A0406.08DAJA.

A0508.17cUSARJ
System Name: Transfer of POV Files (48 FR 25618), June 6, 1983.

Reason: Records are covered by system notice A0509.09aDAPE, "Traffic Law Enforcement Files".

A0509.05aTRA DO C
System Name: Camper Trailer Registration Card Files (48 FR 25621), June 6, 1983.

Reason: Records are covered by system notice A0509.09aDAPE, "Traffic Law Enforcement Files".

A0509.09aDAPE
System Name: Transfer of POV Files (48 FR 25618), June 6, 1983.

Reason: Records are covered by system notice A0509.09aDAPE, "Traffic Law Enforcement Files".

A0509.13bUSAREUR
System Name: US Army Europe Motor Vehicle Registry Files (48 FR 25625), June 6, 1983.

Reason: Records are covered by system notice A0509.09aDAPE, "Traffic Law Enforcement Files".

A0704.04dDASG
System Name: Medical and Dental Registrant Case File (48 FR 25647), June 6, 1983.

Reason: These records are no longer accumulated by the Army.

A0706.21aTRA DOC
System Name: TCATA Personnel Information System (48 FR 25671), June 6, 1983.

Reason: Records are covered in system notice A0715.09aDAPC, "Standard Installation/Division Personnel System".

A0716.04aDAAG
System Name: Military-Personnel Register Files (48 FR 25664), June 6, 1983.

Reason: Records are not subject to the Privacy Act "system of records" definition.

A0904.81aHSC
System Name: Medical Care Inquiry Files (48 FR 25709), June 6, 1983.

Reason: Records are covered by DOD system of records DOCHA 07, "Medical Claim Historical Files".

A1101.07aDAMO
System Name: Telephone Directories (48 FR 25746), June 6, 1983.

Reason: Information in this system is incorporated in proposed amended system of records A102.08DAAG printed in this Federal Register.

A1201.07bUSAREUR
System Name: Passenger Reservation Ref Paper Files (48 FR 25750), June 6, 1983.

Reason: Records are covered by system notice A1205.30aDAAG, Individual Travel Files.

A1205.17aDALO
System Name: Passenger Warrant Files (48 FR 25752), June 6, 1983.

Reason: Records are covered by system notice A1205.30aDAAG, Individual Travel Files.

A1205.27aDALO
System Name: Bus Pass File (48 FR 25753), June 6, 1983.
Reason:
Records are covered by system notice A1205.08aDALO, "Local Transportation Authorization Files".

A1207.08bUSAREU
System name:

Reason:
Records are covered by system notice A1207.08aDAPE, "Operator's Examination and Qualification Record Files".

A1302.15aDAJA
System name:
Unsolicited Proposal Files (48 FR 25757), June 8, 1983.

Reason:
Records are covered by proposed amended system notice A0406.01, reidentified and reprinted in this Federal Register as A0406.08DAJA.

AMENDMENTS
A0102.03aDAAG
System name:
Office Personnel Locator/Organizational Rosters.

Changes:
System ID and name:
Delete the suffix "a"; add to name: "Telephone Directory".
Categories of records in the system:
Change last sentence to read: "Military alert rosters, organizational telephone directories, and listings of office personnel are included in this system." Following "Authority for maintenance of the system", add: "Purpose:
To provide commanders and supervisors with emergency notification data, and operators and other users with locater data."
Routine uses of records maintained in the system, including categories of users and the purposes of such uses:
Delete entry; substitute therefor: "See blanket routine uses at 48 FR 25503, June 8, 1983."
Notification procedure:
Delete the last sentence.
Record access procedures:
Delete all information; substitute therefor: "Requests should be made as indicated under "Notification procedure". Individual should provide full name, and some detail such as organization of assignment that can be verified, except that, in cases where individual has provided written consent to release of home address/telephone number to the general public, no identification is required."

Contesting record procedures:
Delete entry; substitute therefor: "The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505)."

Record source categories:
Change "personnel" to "Army".

AO228.01DAAGH
System name:
Army History Files.

Changes:
Categories of individuals covered by the system:
After "individuals who", delete remainder of phrase and insert: "offer historically significant items or gifts of money to the Army Museum System".

Categories of records in the system:
Delete period and add: "copy of donor's proffer of gift agreement and correspondence with donor regarding status and/or location of donation(s)."
Following the caption "Authority for maintenance of the system", insert the following:
"Purpose:
To provide a record of donations and contributions of historical property to US Army museums and historical holdings; to enable Army museums and historical holdings to provide, upon request by the donor or donor's heirs, information concerning the status/location of his/her donation; to enable the US Army to establish title to the property."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:
Delete entry; substitute therefor: "See blanket routine uses at 48 FR 25503, June 8, 1983."

Notification procedure:
Delete the last sentence.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:
Retention and Disposal:
Add the following: "Inquiries about historical events or persons, and responses thereto, are destroyed when no longer needed."

AO406.01aDAJA
System name:
Patent, Copyright, Trademark, and Proprietary Data Files.

Changes:
System ID:
Change ID to read: "AO228.01DAAGH".

System location:
Delete second paragraph entitled "Decentralized System": substitute therefor: "Secondary: Office of the Staff Judge Advocate at major Army Commands, field operating agencies, and installations; addresses are listed in the Appendix to the Army inventory of system notices. (See 48 FR 25773, June 6, 1983.)

Categories of individuals covered by the system:
Add the following phrase: "and Government employees to whom copyright assistance has been rendered."

Categories of records in the system:
Delete entry; substitute therefor: "Documents relating to: Disposition of rights in Government employees' inventions; foreign patent filings; licensing of Government-owned patents, copyrights, and service marks; Government interest in or under patents, applications for patent, and copyrights procured on behalf of the Department of the Army; and invention disclosures including drawings, patentability search reports, evaluation reports, applications, amendments, petitions, appeals, interferences, licenses, assignments, other instruments, and relevant correspondence."
Following "Authority for maintenance of the system", insert:
"Purpose:
To determine the rights in Government employee inventions, and to maintain evidence and record of: Documents used in filing for foreign patents; invention disclosures submitted to the Department of the Army; patents and applications for patent procured on behalf of the Army or in which the Army has an interest; patent and copyright
licensing and assignments; and copyright assistance rendered."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor:
"Information from the system may be disclosed to the US Patent and Trademark Office, Department of Commerce, and/or to the Copyright Office, Library of Congress."

"In the event of legal proceedings and litigation, information may be disclosed to the Civil Division, Department of Justice."

"For foreign patent filings records are presented to the Director of Patent Administration, Department of National Defense in Ottawa, Ontario, Canada."

"Parties to a licensing arrangement have access to the specific files involved."

"Concerned contractors and/or Government agencies have access in order to conduct patent investigations and evaluations."

Notification procedure:

Delete entries; substitute therefor:
"Individuals desiring to know whether or not information on them exists in the system of records may write to the System Manager, furnishing full name, current address and telephone number; the case number or other identifying information on correspondence emanating from the Army."

Record access procedures:

Delete entries; substitute therefor:
"Individuals desiring access to their records in this system should write to the System Manager, furnishing information required under "Notification procedure".

Contesting record procedures:

After "determination", delete remainder and add: "are contained in Army Regulation 340-21 (32 CFR Part 505)."

Record source categories:

Delete entry; substitute therefor:
"From the individual, Army records, the Government agency interested in the invention or copyright, research material in libraries, the Patent and Trademark Office, and/or the Copyright Office."

System name:
Add "Ration Control/" before present title.

System location:
Add: "U.S. Army Europe and Seventh Army; U.S. Army Southern Command, U.S. Forces Korea/Eighth Army."

Categories of individuals covered by the system:

Delete entry; substitute therefor: "All members of the U.S. Army at overseas locations, their dependents, civilian employees, U.S. Embassy personnel, contract personnel, technical representatives, and individuals who are assigned to or under the judicial or administrative control of the U.S. Army who make purchases of controlled items from authorized resale activities at overseas locations, those authorized duty-free privileges at Class VI stores, commissaries, and retail outlets located on U.S. facilities and installations overseas."

Categories of records in the system:

So much as reads "Status of Forces Agreement between the United States of America and Japan" is changed to read: "Status of Forces * * * America and the host country in which U.S. Forces are located."

Add the following paragraph:

"Purpose:
To assist commanders and U.S. Armed Forces investigative agents in monitoring purchases of controlled items; to produce ration control plates for authorized users; to maintain record of selected controlled item purchases at retail facilities and suspected violators of the system; and to comply with Joint Service blackmarket monitoring control policy."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "To provide information to the host country, required by the Status of Forces Agreement between the United States of America and the host country."

System name:
Add "ration control/" before present title.

System location:
Add: "U.S. Army Europe and Seventh Army; U.S. Army Southern Command, U.S. Forces Korea/Eighth Army."

Categories of individuals covered by the system:

Delete entry; substitute therefor: "All members of the U.S. Army at overseas locations, their dependents, civilian employees, U.S. Embassy personnel, contract personnel, technical representatives, and individuals who are assigned to or under the judicial or administrative control of the U.S. Army who make purchases of controlled items from authorized resale activities at overseas locations, those authorized duty-free privileges at Class VI stores, commissaries, and retail outlets located on U.S. facilities and installations overseas."

Categories of records in the system:

So much as reads "Status of Forces Agreement between the United States of America and Japan" is changed to read: "Status of Forces * * * America and the host country in which U.S. Forces are located."

Add the following paragraph:

"Purpose:
To assist commanders and U.S. Armed Forces investigative agents in monitoring purchases of controlled items; to produce ration control plates for authorized users; to maintain record of selected controlled item purchases at retail facilities and suspected violators of the system; and to comply with Joint Service blackmarket monitoring control policy."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "To provide information to the host country, required by the Status of Forces Agreement between the United States of America and the host country."

System name:
Add "Ration Control/" before present title.

System location:
Add: "U.S. Army Europe and Seventh Army; U.S. Army Southern Command, U.S. Forces Korea/Eighth Army."

Categories of individuals covered by the system:

Delete entry; substitute therefor: "All members of the U.S. Army at overseas locations, their dependents, civilian employees, U.S. Embassy personnel, contract personnel, technical representatives, and individuals who are assigned to or under the judicial or administrative control of the U.S. Army who make purchases of controlled items from authorized resale activities at overseas locations, those authorized duty-free privileges at Class VI stores, commissaries, and retail outlets located on U.S. facilities and installations overseas."

Categories of records in the system:

So much as reads "Status of Forces Agreement between the United States of America and Japan" is changed to read: "Status of Forces * * * America and the host country in which U.S. Forces are located."

Add the following paragraph:

"Purpose:
To assist commanders and U.S. Armed Forces investigative agents in monitoring purchases of controlled items; to produce ration control plates for authorized users; to maintain record of selected controlled item purchases at retail facilities and suspected violators of the system; and to comply with Joint Service blackmarket monitoring control policy."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "To provide information to the host country, required by the Status of Forces Agreement between the United States of America and the host country."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:
Add: After "paper records", delete remainder, and add: "magnetic tapes, microfiche."

Retrievability:
Delete "unit or station".

Safeguards:
Add: "During off duty hours, the facility housing the records is secured by sound activated alarm."

Retention and disposal:
Delete entry; substitute therefor: "Records are retained for 1 year; violations data are retained until the end of the individual's tour of duty or employment, then destroyed."

System manager(s) and address:
Delete entry; substitute therefor: "Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, Washington, DC 20310."
Korea/Eighth U.S. Army, APO San Francisco 96301."

Categories of records in the system:

Delete entries; substitute the following: "Individual's name, SSN, date and place of birth, sex, citizenship, passport number, date arrived in and previous tours in the Republic of Korea, rotation date, service component, pay grade/position, marital status, dependency status, local address, religious preference, and selected skill specialties."

Following "Authority for maintenance of the system", add:

"Purpose:

Information is used for personnel management, strength accounting, manpower management, and contingency planning and operations."

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

Delete all information; substitute therefor: "Information required by the Status of Forces Agreement between the United States of America and the Republic of Korea, including number and location of contractor, technical representatives, and potential noncombatant evacuees may be disclosed to the Republic of Korea."

Policies and practices for storing retrieving, accessing, retaining, and disposing of records in the system:

Retrievability:

Delete "listed by area and geographical sub-areas:"

Retention and disposal:

Delete all entries; substitute therefor: "Information is destroyed 90 days after individual's tour or employment ends."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, U.S. Forces, Korea/Eighth U.S. Army, APO San Francisco 96301."

Record access procedures:

After "addressed", delete remainder and add: "as indicated under 'Notification procedure', and contain full name of the individual, current address, telephone number, and SSN."

Record source categories:

Delete entry; substitute therefor: "From the individual."

As amended, Systems AO102.03DAAG, AO226.01DAMH, AO406.00DAJA, AO508.17bDAPE, and AO715.07cUSPK read as follows:

AO102.03DAAG

SYSTEM NAME:
Personnel Locator/Organizational Roster/Telephone Directory.

SYSTEM LOCATION:
Segments are maintained by offices and/or Army telephone switchboards at Headquarters, Department of the Army, Staff and field operating agencies, commands, installations and activities. Official mailing addresses are the organizational directory in the appendix to Army system notices (48 FR 25773, June 6, 1983).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Military personnel, civilian employees, and in some instances their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:
Records include cards or listings/compilations of individual's name, Social Security Number, unit of assignment and/or home address, unit and/or home telephone number, and related information. Military alert rosters, organizational telephone directories, and listings of office personnel are included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
10 U.S.C., section 3012.

PURPOSE:
To provide commanders and supervisors with emergency notification data, and operators and other users with locator data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
See blanket routine uses at 48 FR 25505, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Paper records in file folders, card files, loose-leaf and bound notebooks; magnetic tape/disc.

RETRIEVABILITY:
By individual's surname. Rosters may be retrieved by unit or organization.

SAFEGUARDS:
Records are maintained in file cabinets, locked desks, or rooms accessible only to authorized personnel having official need therefor.

RETENTION AND DISPOSAL:
Individual records are destroyed upon transfer or separation of individual; rosters are destroyed upon update.

SYSTEM MANAGER(S) AND ADDRESS:
Commander or supervisor of organization maintaining locator or directory.

NOTIFICATION PROCEDURE:
Information may be obtained from commander or supervisor of organization to which individual is/was assigned or employed.

RECORD ACCESS PROCEDURES:
Requests should be made as indicated under "Notification procedure". Individual should provide full name, and some detail such as organization of assignment, that can be verified, except that, in cases where individual has provided written consent to release of home address/telephone number to the general public, no identification is required.

CONTESTING RECORD PROCEDURES:
The Army's rules for access to records and for contrasting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:
From the individual; official Army records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:
None.

AO226.01DAMH

SYSTEM NAME:
Army History Files.

SYSTEM LOCATION:
U.S. Army Center of Military History, Headquarters, Department of the Army, Washington, D.C. 20314.

Decentralized segments exist at historical offices at Headquarters, Department of the Army and field operating agencies, major commands, and the U.S. Army Military Historical Research Collection, Carlisle Barracks, PA 17013.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Military and civilian personnel associated with the Army; individuals who offer historically significant items or gifts of money to the Army Museum System.
CATEGORIES OF RECORDS IN THE SYSTEM:
Biographical résumés and personal working files of U.S. Army personnel; personal papers donated by individuals for historical research; photographs of Army personages; requests for historical documents regarding U.S. Army activities and responses thereto; copy of donor's proffer of gift agreement and correspondence with donor regarding status and/or location of donation(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
10 U.S.C., section 3012; 5 U.S.C., section 301.

PURPOSE:
To provide a record of donations and contributions of historical property to U.S. Army Museums and historical holdings; to enable Army museums and historical holdings to provide upon request by the donor or donor's heirs, information concerning the status/location of his/her donation; to enable the Army to establish title to the property.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
Information from this system may be disclosed to a municipal corporation, a soldier's monument association, a State museum, an incorporated museum or exhibition operated and maintained for educational purposes only, a post of the Veterans of Foreign Wars or the American Legion, or other Federal museums upon donation or transfer of the historical property to one of those organizations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:
STORAGE:
Paper records, magnetic tapes/discs, and photographs.

RETRIEVABILITY:
By individual's name.

SAFEGUARDS:
Records are maintained in secured areas accessible only to persons having need therefor in the performance of official duties.

RETENTION AND DISPOSAL:
Permanent. Some historical material and photographs are retired to the Washington National Records Center when no longer needed; other such material is transferred to the Military History Research Collection at Carlisle Barracks, PA for preservation. Inquiries about historical events or persons, and responses thereto, are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:
Chief of Military History, Headquarters, Department of the Army, Washington, DC 20314.

NOTIFICATION PROCEDURES:
Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager.

RECORD ACCESS PROCEDURES:
Individuals may request access to their records by writing to the System Manager, furnishing their full name, address, and signature.

CONTESTING RECORD PROCEDURES:
The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:
From the individual, his/her Army record, official Army documents, public records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:
None.

AO408.08DAJA
SYSTEM NAME:
Patent, Copyright, Trademark, and Proprietary Data Files.

SYSTEM LOCATION:
Primary: Headquarters, Department of the Army, Office of the Judge Advocate General, The Pentagon, Washington, DC 20310.

SECONDARY:
Office of the Staff Judge Advocate at major Army commands, field operating agencies, and installations; addresses are listed in the Appendix to the Army inventory of system notices. (See 48 FR 25773, June 6, 1983.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Individuals who have submitted inventions to the Government; inventors with patents, or applications for patent procured on behalf of the Department of the Army or in which the Government has an interest; authors of copyrightable or copyrighted material in which the Government has an interest; and Government employees to whom copyright assistance has been rendered.

CATEGORIES OF RECORDS IN THE SYSTEM:
Documents relating to: disposition of rights in Government employees' inventions; foreign patent filings; licensing of Government-owned patents, copyrights, and service marks; Government interest in or under patents, applications for patent, and copyrights procured on behalf of the Department of the Army; and invention disclosures including drawings, patentability search reports, evaluation reports, applications, amendments, petitions, appeals, interferences, licenses, assignments, other instruments, and relevant correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
5 U.S.C., section 301.

PURPOSE:
To determine the rights in Government employee inventions, and to maintain evidence and record of: Documents used in filing for foreign patents; invention disclosures submitted to the Department of the Army; patents and applications for patent procured on behalf of the Army or in which the Army has an interest; patent and copyright licensing and assignments; and copyright assistance rendered.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
Information from the system may be disclosed to the U.S. Patent and Trademark Office, Department of Commerce, and/or to the Copyright Office, Library of Congress.

In the event of legal proceedings and litigation, information may be disclosed to the Civil Division, Department of Justice.

For foreign patent filings records are presented to the Director of Patent Administration, Department of National Defense in Ottawa, Ontario, Canada.

Parties to a licensing arrangement have access to the specific files involved.

Concerned contractors and/or Government agencies have access in order to conduct patent investigations and evaluations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:
STORAGE:
Paper records in file folders.

RETRIEVABILITY:
By individual's surname.

SAFEGUARDS:
Records are maintained in buildings protected by security guards, and are accessible only to authorized persons
having need therefor in the performance of official duties.

RETENTION AND DISPOSAL:
At the primary location: records pertaining to patent matters are retained for 20 to 25 years depending on the specific case; those concerning copyright matters are retained either for 56 years or on expiration of copyright not renewed, after which they are destroyed by shredding. Records at the secondary location are destroyed after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:
The Judge Advocate General, Headquarters, Department of the Army, Washington, D.C. 20310; senior patent attorney at each secondary location.

NOTIFICATION PROCEDURE:
Individuals desiring to know whether or not information on them exists in the system of records may write to the System Manager, furnishing full name, current address and telephone number, the case number or other identifying information on correspondence emanating from the Army.

RECORD ACCESS PROCEDURES:
Individuals desiring access to their records in this system should write to the System Manager, furnishing information required under “Notification procedure”.

CONTESTING RECORD PROCEDURES:
The Army’s rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:
From the individual, Army records, the Government agency interested in the invention or copyright, research material in libraries, the Patent and Trademark Office, and/or the Copyright Office.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:
None.

AO508.17DAPE
SYSTEM NAME:
Ration Control/Blackmarket Monitoring Files.

SYSTEM LOCATION:

CATegories of Individuals Covered by the System:
All members of the U.S. Army at overseas locations, their dependents, civilian employees, U.S. Embassy personnel, contract personnel, technical representatives, and individuals who are assigned to or under the judicial or administrative control of the U.S. Army who make purchases of controlled items from authorized resale activities at overseas locations, those authorized duty-free privileges at Class VI stores, commissaries, and retail outlets located on U.S. facilities and installations overseas.

RETENTION AND DISPOSAL:
Records are retained for 1 year; violations data are retained until the end of the individual’s tour of duty or employment; then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:
Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, Washington, DC 20310.

NOTIFICATION PROCEDURE:
Information may be obtained from the Provost Marshal at the overseas Army installation which issued the ration control authorization.

RECORD ACCESS PROCEDURES:
Individuals desiring to access records pertaining to them should inquire as stated under “Notification procedure”, furnishing full name, SSN, and signature.

CONTESTING RECORD PROCEDURES:
The Army’s rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:
From individual’s application for ration control privileges; recorded sales at retail outlets and orders made through exchange catalog sales at U.S. military facilities in overseas locations.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:
None.

AO715.07cUSFK
SYSTEM NAME:
Command Unique Personnel Information Data System (CUPIDS).

SYSTEM LOCATION:

CATegories of Individuals Covered by the System:

CATegories of Records in the System:
Individual’s name, SSN, date and place of birth, sex, citizenship, passport number, date arrived in and previous tours in the Republic of Korea, rotation date, service component, pay grade/position, martial status, dependency status, local address, religious
preference, and selected skill specialties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

PURPOSE:
Information is used for personnel management, strength accounting, manpower management, and contingency planning and operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
Information required by the Status of Forces Agreement between the United States of America and the Republic of Korea, including number and location of contractor, technical representatives, and potential noncombatant evacuees may be disclosed to the Republic of Korea.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Magnetic tapes, microfiche, and paper printouts.

RETRIEVABILITY:
By surname of noncombatants; by SSN of all others.

SAFEGUARDS:
Records are accessible only to authorized personnel; during non-duty hours, the facility is locked and secured by sound activated alarm.

RETENTION AND DISPOSAL:
Information is destroyed 90 days after individual’s tour or employment ends.

SYSTEM MANAGER(S) AND ADDRESS:
Commander, U.S. Forces, Korea/ Eighth U.S. Army, APO San Francisco 96301.

NOTIFICATION PROCEDURE:
Information may be obtained from the System Manager, ATTN: AJ-PER-DM, Yongsan/Seoul, Korea.

RECORD ACCESS PROCEDURES:
Individuals should address requests as indicated under “Notification procedure”, and contain full name, current address, telephone number, SSN, and signature.

CONTESTING RECORD PROCEDURES:
The Army’s rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 540–21 [32 CFR Part 505].

RECORD SOURCE CATEGORIES:
From the individual; Army records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:
None.

[FR Doc. 84–11552 Filed 4–30–84; 8:45 am]
BILLING CODE 3710–08–M

Army Science Board; Meeting Change

The following changes have occurred for the meeting of the Army Science Board Functional Subgroup on Research and New Initiatives, which was originally announced in the Federal Register issue of Thursday, 19 April 1984 (49 FR 15600), FR Doc. #84–10567:
Meeting dates: Wednesday & Thursday, 23 & 24 May 1984 (instead of only on Thursday, 24 May 1984).
Place: The Pentagon, Washington, D.C. (both days).
Times: 1300–1730 hours on 23 May; 0830–1700 hours on 24 May.
Maria P. Winters,
Administrative Officer.

[FR Doc. 84–13393 Filed 4–30–84; 8:45 am]
BILLING CODE 3710–04–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates and Times of Meeting: Wednesday thru Friday, 30 & 31 May and 1 June 1984. Times of Meeting: 0830–1700 hours, all three days (Closed).
Place: The Pentagon, Washington, D.C.
Agenda: The Army Science Board Ad Hoc Subgroup on the Army’s LHX Aircraft Program will meet for classified briefings and discussions and report writing session. The Subgroup is tasked with a comprehensive review of LHX requirements, technology, and specific critical issues impacting on program development. This meeting will be closed to the public in accordance with section 552(b)(6) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0309 or 695–7049.

Maria P. Winters,
Acting Administrative Officer.

[FR Doc. 84–13100 Filed 4–30–84; 8:45 am]
BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates and Times of Meeting: Tuesday, 22 May 1984. Times: 0830–1600 hours (Open).
Place: The Pentagon, Washington, D.C.
Agenda: The Chairman of both the Army Science Board’s Ad Hoc Subgroup on AVRADA (Avionics Research and Development Activity, located at Fort Monmouth, New Jersey) Effectiveness Review and the Ad Hoc Subgroup on TACOM (Tank-Automotive Command R&D Center, located in Warren, Michigan) Effectiveness Review will meet for orientation briefings and discussions with the ASB Vice-Chair and Army officials to chart the courses of the two study efforts. The purpose of the external effectiveness reviews is to ensure the continuing excellence of both Army laboratories. The Subgroups are tasked with providing independent observations on potential and actual performance of the labs, including professional judgment on the cause of deficiencies, if any. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The Army Science Board Administrative Officer, Sally
Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).


Times of Meeting: 0830-1500 hours (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Steering Committee will meet for classified briefings and discussions of ongoing ASB study efforts. The Steering Committee is made up of the Functional Subgroup Chairs (Planning, Concepts and Management Support: Weapons Systems; C4: Human Capabilities/ Resources; Logistics & Support Systems; and, Research and New Initiatives), along with the Assistant Secretary of the Army (Research, Development and Acquisition) (ASA(RDA)), the Principal Deputy ASA(RDA), and the ASB Executive Director. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Maria P. Winters,
Acting Administrative Officer.

[FR Doc. 84-11947 Filed 4-30-84; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Correctional Education Policy Statement

AGENCY: Department of Education.


SUMMARY: The Secretary Announces the Correctional Education Policy for the Department of Education.


United States Department of Education Correctional Education Policy Statement

The Department of Education, under the direction of the Secretary of Education, is legislatively designated as the primary agency responsible for the administration of Federal programs of financial assistance to education. The Secretary is authorized, upon request, to provide technical assistance to State educational agencies, institutions of higher education, and local school systems. Legislation now pending in Congress will, if enacted, provide the Secretary with additional authority for carrying out grant programs.

The Department’s programs and budget are focused on two essential goals—

(a) To guarantee that students of all ages enrolled in our schools, colleges, and vocational centers have equal access to the best possible education; and

(b) To improve the quality of education for every student by supporting research, development, and dissemination of new teaching methods and materials.

Education is a necessity for every American, including the more than 2.2 million adults and juveniles who are under the jurisdiction of the criminal justice system. However, few of the Nation’s jails provide educational services. Most of the Nation’s prisons provide basic academic and vocational programs, but fewer than 12 percent of
the total prison population have access to such programs.

The men and women who serve time in the criminal justice system are among those the Department of Education has a responsibility to serve. It is, therefore, the policy of the Department to lend its efforts in upgrading and making more effective the educational programs in correctional institutions of the States. The Department's involvement in correctional education is further justified by the extremely low level of educational development found in the corrections population. By advocating improvement in the quality and quantity of education and training opportunities for adult and juvenile offenders, the Department of Education will redress this educational disability in the corrections population.

Compared to other educationally disadvantaged groups, the social and economic cost of the corrections population is extremely high. The criminal justice system places a heavy burden on the American taxpayer. Custody costs range from $13,000 to $40,000 per inmate each year. Added to that are court costs, welfare payments, construction costs, and other costs commonly associated with arrest, conviction, incarceration, release, rearrest, and reincarceration.

At the current rate of recidivism, it is estimated that of the 150,000 inmates who will be released this year, between 30 to 70 percent will be recommitted to a correctional facility within one year. Lack of basic education and marketable job skills aggravate a released offender's difficulties in securing employment, thus, influencing the return to crime. However, with the tools for survival—basic education and a marketable job skill—coupled with the rise in self-esteem which is the inevitable result of achievement—a released inmate's chances for rehabilitation are considerably increased.

It is, therefore, the policy of the Department of Education that through its leadership and resources—

The Department will, subject to availability of funds and appropriate statutory authority, assist State and local jurisdictions to develop, expand, and improve their delivery systems for academic, vocational, technical, social and other educational programs for juvenile and adult offenders in order to enhance their opportunities to become law-abiding, economically self-sufficient, and productive members of society.

To carry out this policy—

(a) The Office of Vocational and Adult Education will assume leadership for the Department's correctional education effort.

(b) The Department will establish an intra-departmental coordinating committee on Correctional Education to assist in bringing about greater cooperation and coordination in the Department's corrections-related programs in the areas of policy, use of existing resources, avoiding duplication of efforts and costs, and effecting a better delivery system for needed services at the State and local levels.

(c) The Department will play an active role in interagency corrections coordination activities.

(d) The Department expects to support research, development, and dissemination efforts to develop knowledge of special curricula, organization, personnel, and support services needed in correctional education.

All officers in the Department of Education and all State and local educational agencies receiving the Department's assistance are encouraged to act in accordance with this policy.


T. H. Bell,
Secretary of Education.

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Petroleum Carrier Co., Inc., Max B. Penn and Rodney Siegfried; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Robison Energy, Incorporated and Jerry D. Robison. This Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.186, 210.62(c) and 205.202 in the principal amount of $3,135,551.19 and 10 CFR 212.183 in the principal amount of $889,220.07 for the period April 1980 through January 1981.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Room 6E–055, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas on the 6th day of April, 1984.

Ben L. Lemos,
Director, Dallas Field Office, Economic Regulatory Administration.

BILLING CODE 6450-01-M

Robinson Energy, Inc., et al.; Proposed Remedial Order


SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of a Proposed Remedial Order which was issued to Robison Energy, Incorporated and Jerry D. Robison. 450 North East, Suite 181, Houston, Texas 77006. This Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.186, 210.62(c) and 205.202 in the principal amount of $3,135,551.19 and 10 CFR 212.183 in the principal amount of $889,220.07 for the period April 1980 through January 1981.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6C–030, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585 in accordance with 10 CFR 205.193.

Issued in Houston, Texas on the 12th day of April, 1984.

Sandra K. Webb,
Director, Houston Office, Economic Regulatory Administration.

BILLING CODE 6450-01-M
Take notice that on March 8, 1984, Colorado Interstate Gas Company [CIG], Post Office Box 1037, Colorado Springs, Colorado 80944, filed in Docket No. CP84-289-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that CIG proposes to construct and operate a sales tap in Douglas County, Colorado, in order to permit the delivery of natural gas to Public Service Company of Colorado (PSCo), an existing customer of CIG, under the authorization issued in Docket No. CP83-195-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG proposes to add a new delivery point for an existing customer, PSCo. In order to effect the delivery of gas to PSCo, CIG also proposes to construct and operate a sales tap, referred to as the South Quebec sales meter station (South Quebec), in Douglas County, Colorado. It is explained that, initially, CIG would deliver to PSCo a maximum of 600 Mcf of natural gas per day at the new delivery point, then increasing to a maximum delivery obligation of 45,000 Mcf per day in 1985. CIG states that PSCo's general daily entitlement and total annual entitlement from CIG, however, would remain unchanged from the current volumes of 602,173 Mcf and 126,866,000 Mcf, respectively.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb, Secretary.

[Docket No. CP84-344-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

April 25, 1984.

Take notice that on April 10, 1984, Columbia Gas Transmission Corporation [Columbia], 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84-344-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of General Battery Corporation (General Battery) under the authorization issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 900 million Btu of natural gas per day for General Battery for a term of one year. Columbia states that the gas to be transported would be purchased from Leader Equities, Inc. (Leader), and would be used for process gas in General Battery's plant in Reading, Pennsylvania.

Columbia states that it has released certain gas supplies which General Battery has purchased from Leader and that these supplies are subject to the ceiling price provisions of section 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is indicated that Columbia would receive up to 900 million Btu of natural gas per day delivered into its pipeline systems at existing interconnections in Miskingum, Noble, Guernsey and Morgan Counties, Ohio, and would deliver such gas to UGI Corporation (the distribution company serving General Battery).

Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either: (1) its average system-wide storage and transmission charge, currently 40.11 cents per dt of gas, exclusive of company-use and unaccounted-for gas; or (2) its average system-wide storage, transmission and gathering charge, currently 44.93 cents per dt, exclusive of company-use and unaccounted-for gas. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. Columbia also states that it is charging the Gas Research Institute Funding Unit.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 211 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb, Secretary.

[Docket No. TA84-2-23-001]

Eastern Shore Natural Gas Co.; Tariff Filing

April 24, 1984.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on April 18, 1984, tendered for filing the following revised substitute tariff sheets to Original Volume No. 1 of Eastern Shore's FERC Gas Tariff:

Substitute Alternate To Be Effective May 1, 1984

Substitute Alternate Twenty-Fifth Revised Sheet No. 5

Substitute Alternate Twenty-Fifth Revised Sheet No. 6

Substitute Alternate Tenth Revised Sheet No. 7

Substitute Alternate Twenty-Fifth Revised Sheet No. 10

Substitute Alternate Twenty-Fifth Revised Sheet No. 11

Substitute Alternate Twenty-Fifth Revised Sheet No. 12

Substitute Alternate Second Revised Sheet No. 13

Eastern Shore states that the purpose of the filing is to reflect: (1) A Purchased Gas Cost Current Adjustment, (2) a Demand Charge Adjustment, (3) a Deferred Gas Cost Adjustment, and (4) to report the Projected Incremental Pricing Surcharge. This filing is being made in accordance with sections 20, 21, and 23 of Eastern Shore's FERC Gas

Eastern Shore states that copies of the filing have been mailed to each of its jurisdictional customers and Interested State Commissions.

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 May 10, 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. 84-11753 Filed 4-30-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-395-000]
Illinois Power Co.; Filing

April 25, 1984.

The filing Company submits the following:

Take notice that on April 18, 1984, Illinois Power Company (Illinois) tendered for filing proposed changes in the following rate schedules:

Service Agreement under FERC Electric Tariff, Original Volume No. 1, applicable to the Village of Ladd, the City of Oglesby, to Cedar Point Light and Water Company and Mt. Carmel Public Utility Co.

Illinois states that the proposed changes would increase revenues from jurisdictional sales and service by approximately $850,000 based on the twelve month period ending December 31, 1984.

Illinois further states that with the present rates it would earn an inadequate rate of return on electric sales to these customers during the twelve months ending December 31, 1984. Continuing increases in cost of capital, labor, materials and supplies are expected to further reduce the Company's earnings. The Company states that the electric rate changes made by this filing are necessary to more fully provide compensation for these increasing costs.

Illinois proposes an effective date of May 31, 1984. Copies of this filing have been served upon the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-11756 Filed 4-30-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-394-000]
Kansas City Power & Light Co.; Filing

April 25, 1984.

The filing Company submits the following:

Take notice on April 6, 1984, Kansas City Power & Light Company (KCPL) tendered for filing a notice of cancellation of Rate Schedule FCC No. 73 (effective March 15, 1975), pursuant to which wholesale service has been provided to Missouri Power & Light Company (MPL).

MPL requests an effective date of May 31, 1984. Copies of this filing have been served upon MPL and the Missouri Public Service 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 May 10, 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. 84-11758 Filed 4-30-84; 8:45 am]
BILLING CODE 6717-01-M
No. 1 well qualifies under section 107(c)[1] of the NGPA as the reentry in 1979 does not constitute the commencement of “surface drilling” as required by that section. Relying on the order issued in Sun Exploration and Production Docket No. GP83-10-000, 23 FERC ¶ 61,300 (1983), Natural challenges the BLM determination on the grounds that Amoco made more than minimal use of the existing wellbore and did not incur almost the entirety of normal production costs.

Any person desiring to be heard or to protest this complaint should file within 30 days after notice is published in the Federal Register, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rules 211 or 214 of the Commission’s Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceedings. Kenneth F. Plumb, Secretary.

[Docket No. GP84-391-000]
Niagara Mohawk Power Corp.; Filing

April 25, 1984.

The filing Company submits the following:


Niagara states that the agreement provides for the sale of surplus energy as scheduled by Pennsylvania Power and Light Company.

Niagara requests waiver of the Commission’s notice requirements to allow effective dates of December 6, 1983 for the agreement and March 1, 1984 for the amendment.

Copies of this filing were served upon the Pennsylvania Power and Light Company and the Public Service Commission of the State of New York.

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 May 10, 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.

BILING CODE 6717-01-M
[Docket No. ER84-393-000]

Public Service Company of Indiana, Inc.; Filing

April 25, 1984.

The filing Company submits the following:

Take notice that on April 17, 1984, Public Service Company of Indiana, Inc. (PSI) tendered for filing a Short-Term Power Agreement, dated April 1, 1984, between PSI and American Municipal Power—Ohio, Inc. (AMPO).

PSI states that the Agreement provides for Short-Term Power by PSI to AMPO for periods of not less than one week. AMPO is to arrange with other utilities interconnected with PSI for receipt of such power for its transmission and distribution to only the delivery points located in the State of Ohio serving the patrons of AMPCO.

PSI requests an effective date of April 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon AMPCO, the Public Utility Commission of Ohio and the Public Service Commission of Indiana.

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 May 10, 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.

[BILLING CODE 6717-01-M]

[Docket No. CP84-324-000]

Southern Natural Gas Co.; Request Under Blanket Authorization

April 25, 1984.

Take notice that on March 29, 1984, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP84-324-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Southern proposes to abandon certain facilities and to construct, install, and operate certain other facilities in Talladega County, Alabama, in connection with a change in delivery point to the Alabama Gas Corporation (Alagasco) for delivery to the City of Talladega, Alabama, and surrounding areas under the authorization issued in Docket No. CP82-400-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it proposes to replace the metering facilities at Station No. 2 because its contract with Alagasco provides for a delivery pressure of 200 psia whereas the existing metering facilities have a maximum allowable working pressure of 150 psia. Southern further states that the existing facilities are obsolete and that it would become increasingly difficult to maintain the facilities in compliance with applicable pipeline codes. Southern alleges that the proposed facilities would enable it to deliver gas to Alagasco at the contract pressure and would eliminate the obsolescence and operational problems.

Southern states that the total estimated cost of the abandonment and subsequent construction and installation is approximately $47,163. Southern further states that there would be no increase in the Talladega Area contract demand associated with the proposed replacement.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[BILLING CODE 6717-01-M]

[Docket No. ER84-389-000]

Public Service Company of New Mexico; Cancellation

April 25, 1984.

The filing Company submits the following:


Copies of this filing were served upon EPE and the New Mexico Public Service 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 May 10, 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.

[BILLING CODE 6717-01-M]

[Docket No. CP84-361-000]

Valero Transmission Co.; Application

April 25, 1984.

Take notice that on April 23, 1984, Valero Transmission Company (Valero), P.O. Box 800, San Antonio, Texas 78222, filed in Docket No. CP84-361-000 an application pursuant to Executive Order Nos. 10485 and 12038, and Secretary of Energy Delegation Order No. 0204-112 for a permit authorizing the construction and operation of facilities on the international boundary between the United States and Mexico, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Valero proposes to construct or repair and operate on the international boundary near Eagle Pass, Texas, and Piedras Negras, Coahuila, Mexico, two parallel eight-inch pipelines to connect with the facilities of Petroleos...
Mexicanos (Pemex) in order to deliver natural gas to Pemex for resale to residential and industrial users in Piedras Negras. The facilities would cross the Rio Grande and Valero proposes to construct or repair and operate the facilities on the United States side at the international boundary.

Valero states that natural gas had been authorized to be exported to Mexico at the Eagle Pass location since 1940. Several preceding companies related to Valero held permits for the border facilities but these permits were deemed to be relinquished by the Commission as a consequence of the fact that the border facilities were washed away by floods on the Rio Grande during 1980, it is explained. (See Commission's order on June 9, 1981, in Valero Transmission Company et al., Docket No. CP82-283, et al. (15 FERC ¶ 61,244)).

Valero states that most if not all of its pipeline facilities remained in place after the 1980 flood and may simply require testing and repair, but Pemex's line was totally destroyed. Valero states that Pemex is prepared to reconstruct its facilities in the Rio Grande as soon as a permit is issued to Valero.

Applicant further states that it is not owned wholly or in part by any foreign government or directly or indirectly subventioned by any foreign government and that it has no contracts with anyone which in any way relate to the control or fixing of rates for the purchase, sale or transportation of natural gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 14, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the Commission's Rules of Practice and Procedure. 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 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. 84-11750 Filed 4-30-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF84-279-000]
Amoco Production Co., Beaver Creek; Application for Commission Certification of Qualifying Status of a Cogeneration Facility
April 25, 1984.

On April 12, 1984, Amoco Production Company, (Applicant) of 1670 Broadway, Denver, Colorado 80222, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Beaver Creek Oil and Gas Field, Fremont County, Wyoming. The facility will consist of a combustion turbine generator and a waste heat recovery boiler. The useful thermal energy output, which will be in the form of process steam, will be utilized in the Beaver Creek gas processing plant. The primary energy source for the facility will be natural gas. The electric power production capacity of the facility will be 2,300 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

[FR Doc. 84-11750 Filed 4-30-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF84-262-000]
Solar Energy Building, Ltd.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility
April 28, 1984.

On April 9, 1984, Solar Energy Building, Ltd., (Applicant) of 2145 Webster Avenue, Palo Alto, California 94301, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The combined-cycle cogeneration facility will be located adjacent to the Upjohn La Porte Chemical Plant in La Porte, Harris County, Texas. The facility will consist of four 75,000 kilowatt combustion turbine generators, four waste heat recovery boilers, and a steam turbine generator. The useful thermal energy output, which will be in the form of process steam, will be sold to Upjohn for use in its chemical production processes. The primary energy source for the facility will be natural gas, with No. 2 fuel oil as a standby energy source. The electric power production capacity of the facility will be 425,000 kilowatts at 74° F ambient (nominal rating) and approximately 475,000 kilowatts at 30° F ambient.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

[FR Doc. 84-11790 Filed 4-30-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF84-252-000]
GoGen Lynchburg, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility
April 25, 1984.

On April 5, 1984, GoGen Lynchburg, Inc., (Applicant) of Post Office Box 19398, Texas 77224, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The combined-cycle cogeneration facility will be located adjacent to the Upjohn La Porte Chemical Plant in La Porte, Harris County, Texas. The facility will consist of four 75,000 kilowatt combustion turbine generators, four waste heat recovery boilers, and a steam turbine generator. The useful thermal energy output, which will be in the form of process steam, will be sold to Upjohn for use in its chemical production processes. The primary energy source for the facility will be natural gas, with No. 2 fuel oil as a standby energy source. The electric power production capacity of the facility will be 425,000 kilowatts at 74° F ambient (nominal rating) and approximately 475,000 kilowatts at 30° F ambient.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

[FR Doc. 84-11790 Filed 4-30-84; 8:45 am]
BILLING CODE 6717-01-M
The combined-cycle cogeneration facility will be located at 2045 East Vernon Avenue, Vernon, California. The facility will consist of two combustion turbine generators, two waste heat recovery boilers, a steam turbine generator, and an ammonia-absorption refrigeration machine. The useful thermal energy output, which will be in the form of steam, will be used to produce -35°F ammonia through a refrigeration process to meet the cold storage refrigeration requirements of the U.S. Growers Cold Storage Warehouse No. 5. The primary energy source for the facility will be natural gas with fuel oil as a backup energy source. The electric power production capacity of the facility will be 58.2 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 225 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission’s Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-11765 Filed 4-30-84; 8:45 am]
BILLING CODE 6717-01-M

Oil Pipeline; Tentative Valuation

April 27, 1984.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to Section 19a of the Interstate Commerce Act.

Notice is hereby given that tentative valuations are under consideration for the common carriers by pipeline listed below:

1981 Annual Reports

Valuation Docket No. PV—1463-000; Western Oil Transportation Company, Inc., P.O. Box 1183, Houston, Texas 77001.

No. PV—14465-000; C & T Pipeline, Inc., P.O. Box 8317, Columbia, South Carolina 29260.

On or before June 5, 1984, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 214 of the Federal Energy Regulatory Commission’s “Rules of Practice and Procedure” (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of “additional parties as the FERC may prescribe” under section 19a(h) of the Act, thereby enabling it to...
file a protest. The petition to intervene must be served on the individual company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor, 
Administrative Officer, Oil Pipeline Board.

[FR Doc. 84-11627 Filed 4-30-84; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals
Cases Filed; Week of March 16 through March 23, 1984

During the Week of March 16 through March 23, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Parts 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.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS
(Week of March 16 through March 22, 1984)

<table>
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<tr>
<th>Date</th>
<th>Name and location of applicant</th>
<th>Case No.</th>
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ENVIRONMENTAL PROTECTION AGENCY

[FRL-2578-3]

Water Quality Criteria; Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Extension of public comment period.

SUMMARY: In the Federal Register of February 7, 1984 (49 FR 4551), EPA announced the availability for public comment of 10 water quality criteria documents. EPA asked that written public comments be submitted by May 7, 1984. EPA has determined that additional time should be allowed.

DATE: The deadline for submitting written public comments is hereby extended to June 8, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Gostomski, Criteria and Standards Division (WH-585), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.


Henry Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 84-11873 Filed 4-30-84; 8:45 am]

BILLING CODE 6450-01-M

Health Assessment Document for Chlorinated Benzenes

AGENCY: U.S. Environmental Protection Agency.


SUMMARY: This notice announces the availability of an external review draft of the Health Assessment Document for Chlorinated Benzenes. 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.

(2) Requesters should be sure to cite the EPA number assigned to this document, EPA 600/8-84-015A. To receive the document, requesters should send their names and addresses to CERI at this time.

(3) This 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: W. Bruce Peirano, Project Officer for Chlorinated Benzenes, Environmental Criteria and Assessment Office, U.S. Environmental Protection Agency, 26 W. St. Clair, Cincinnati, Ohio 45268.

DATES: The Agency will make this document available for public comment on or about May 21, 1984. Comments must be received by close of business on July 20, 1984, or be postmarked by that date.

SUPPLEMENTARY INFORMATION: The objective of the Health Assessment Document for Chlorinated Benzenes is to provide EPA with a sound scientific basis for the purpose of determining whether this compound should be regulated under the Clean Air Act.

FOR FURTHER INFORMATION CONTACT: W. Bruce Peirano, Environmental Criteria and Assessment Office, U.S. Environmental Protection Agency, 26 W. St. Clair, Cincinnati, Ohio 45268 (513) 684-7531.


Donald J. Ehreth,

Acting Assistant Administrator for Research and Development.

[FR Doc. 84-11872 Filed 4-30-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Part-Time Career Employment Program

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed procedure for comment.

SUMMARY: The FCC proposes to issue internal personnel procedures to implement a formal part-time career employment program in conformance with the Federal Employee Part-Time Career Employment Act of 1978. The proposed program will consolidate and document procedures and guidelines for establishing and filling part-time positions. Establish a process for considering requests from FCC employees for conversion to part-time employment, summarize the effect of part-time employment on Federal employment benefits programs, and outline reporting requirements. After consideration of comments received, final procedures will be issued as part of the FCC Personnel Manual, Chapter 340.

DATES: Written comment period expires June 28, 1984.

ADDRESS: Interested parties are invited to submit written comments to the Associate Managing Director-Personnel Management, Federal Communications Commission, Room 212, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur L. Curths, Office of the Associate Managing Director-Personnel Management, Federal Communications Commission (703-632-720).

Part-Time Employment Program

Subchapter 1: General Provisions

1-1. Introduction and Legal Basis.

This subchapter contains regulations to implement Pub. L. 95-437, the Federal Employees Part-Time Career Employment Act of 1978 [5 U.S.C. 3401 et seq.], and establishes a continuing program to provide part-time permanent employment opportunities in the Federal Communications Commission (FCC). In passing the Federal Employees Part-Time Career Employment Act of 1978, the Congress held that part-time career (permanent) employment benefits the Government as an employer by providing management with the flexibility to meet work requirements and benefits society by providing an alternative for those who require or
prefer shorter hours; for example, handicapped individuals, students, and parents with family responsibilities. The Act directs Federal agencies to provide increased part-time opportunities at grade levels up to GS-15.

1-2. Policy. The policy of the Commission is to provide part-time employment opportunities, consistent with available resources and mission requirements. Part-time opportunities may be provided by establishment of new part-time positions and/or conversion of current full-time employees to part-time tours of duty at their request.

1-3. Definition. The term "Part-Time Employment" is defined as employment of an individual under permanent appointment in the competitive or excepted service with a regularly scheduled tour of duty of at least 16 hours per week and up to a maximum of 32 hours per week. This means that an employee who is appointed or converted to a part-time permanent position after April 7, 1979, is covered by the Act and must have a regularly scheduled tour of duty of no less than 16 hours a week and no more than 32 hours a week, except as noted in section 1-5.

1-4. Positions Covered. This program applies to all FCC positions other than those excluded in section 1-5.

1-5. Positions Excluded From Coverage. The following employees are excluded from the 16 to 32 hours per week tour of duty and health insurance cost prorating provisions of the Act:

a. Positions in the Senior Executive Service or at GS-16 and above.

b. Positions that are to provide a regular work schedule of 1 to 15 hours per week is necessary for mission accomplishment.

c. Positions filled by employees with temporary, term, or indefinite appointments, or by employees with intermittent tours of duty.

d. Positions filled by employees who have continuously worked on part-time work schedules since or before April 8, 1979, provided they continue to work on a part-time work schedule without a break in service of three calendar days or more.

1-6. Ceiling for Part-Time Positions. For employment ceiling purposes, part-time employees are counted as occupying a fraction of a full-time work year, according to the number of hours in their part-time work schedules; e.g., two employees working 20 hours per week would occupy the same employment ceiling allocation as one full-time employee. Ceiling allocations for part-time employees are controlled under the full-time equivalent (FTE) monitoring system.

1-7. Responsibilities—.a. Managing Director. The Managing Director is responsible for:

(1) Overall direction of the Part-Time Employment Program;

(2) Establishment of part-time employment goals and timetables;

(3) Review and approval/disapproval of any Bureau/Office requests for additional resources required by proposed part-time actions;

(4) Control/allocation of employment ceilings; and

(5) Assessment of Bureau/Office Part-Time Employment Program activities to determine progress towards program goals and to ensure fair and equitable implementation of the program.

b. Bureau/Office Chiefs. Chiefs of Bureau and Offices are responsible for:

(1) Implementation of the Part-Time Employment Program within their organizations;

(2) Accomplishment of part-time employment goals determined in cooperation with the Managing Director;

(3) Review of vacancies to determine opportunities for establishing new part-time positions; and

(4) Careful consideration of employee requests for conversion to part-time tours to address employees' part-time employment needs to the maximum extent consistent with Bureau/Office work requirements.

c. Associate Managing Director—Personnel Management. The Associate Managing Director-Personnel Management is responsible for:

(1) Providing personnel support services to the Managing Director and Bureau/Office Chiefs regarding implementation of the Part-Time Employment Program;

(2) Assisting the Managing Director in establishment of part-time employment goals and timetables;

(3) Evaluating progress towards those goals; and

(4) Designating a Part-Time Employment Program Coordinator to assist in the accomplishment of these responsibilities.

d. Part-Time Employment Program Coordinator. The coordinator is responsible for:

(1) Assisting in development and implementation of part-time employment goals and timetables;

(2) Consulting on the part-time employment program with interested parties, e.g., EEO and Federal Women's Program officials, Handicapped Program coordinators and representatives of the union, etc.;

(3) Responding to requests for advice and assistance on part-time employment within the Commission;

(4) Maintaining liaison with groups interested in promoting part-time employment opportunities; and

(5) Preparing reports on part-time employment for the Office of Personnel Management and other appropriate organizations.

Subchapter 2: Program Implementation

2-1. Goals and Timetables. Each fiscal year, the Managing Director will establish annual goals and timetables for establishing part-time positions and converting full-time vacancies to part-time. Goals and timetables will be coordinated with Bureau/Office Chiefs and the Associate Managing Director-Personnel Management, and will include consideration of such factors as:

a. Organization mission and nature of work;

b. Workload fluctuations;

c. Turnover rate;

d. Affirmative Action Plan objectives;

e. Availability of any current FCC employees with full-time work schedules who have expressed interest in part-time employment; and

f. Costs of establishing part-time positions and converting full-time vacancies, such as increased furniture, space, and equipment needs.

2-2. Creation of Part-Time Positions. a. Positions occupied by full-time employees may not be abolished in order to create part-time positions. Full-time positions may, however, be converted to part-time when requested by the incumbent and approved by management or when positions are vacated. If such actions may have significant impact on other employees, the supervisor should first consult with the Labor Management and Employee Relations Staff in AMD-PM.

b. Any person who is employed on a full-time basis shall not be required to accept part-time employment as a condition of continued employment. This limitation does not preclude offering a part-time vacancy to a full-time employee in lieu of RIF separation.

2-3. Review of Vacancies. a. The administrative staffs of the Bureaus/Offices are responsible for reviewing vacancies prior to initiating recruitment requests in order to determine the feasibility of filling the vacancy on a part-time basis, considering the factors listed in section 2-1, along with other appropriate considerations.

b. The Position Management and Evaluation Branch in the Office of the Associate Managing Director-Personnel Management will include consideration of the feasibility of filling a vacancy on a part-time basis in their position review and classification process.
Establishment of new positions with part-time tours of duty, as opposed to conversion of existing full-time positions to part-time, require documentation and approval under the ceiling control system administered by the Position Management and Evaluation Branch. 2-4. Notifying Employees and the Public of Part-Time Vacancies. Part-time vacancies will be announced under the same conditions and through the same FCC Merit Promotion Plan procedures as full-time positions and announcements posted-distributed for employee and public information, as provided in those procedures. 2-5. Approval of Additional Office Space and Equipment Requests. A request for any additional office space or equipment needs that are anticipated due to the establishment or conversion of part-time positions must be submitted in advance to the Operations Support Division and approved by the Managing Director prior to taking action to fill part-time positions. 2-6. Establishment of Part-Time Work Schedules—a. Tour of Duty. (1) A tour of duty consists of the hours of a day and the days of an administrative workweek that constitute an employee's regularly scheduled workweek. (2) The tour of duty for a part-time employee must be no less than 16 and no more than 32 hours per week, except as provided in section 2-8. (3) When a part-time tour of duty involves five hours or more of schedule work on a day, the tour of duty for that day must include a one-half hour non-pay period for a lunch break (i.e., a four hour tour from 8:00 a.m. to 12:00 noon, but a five hour tour from 8:00 a.m. to 1:30 p.m.). b. Changing a Part-Time Tour of Duty. (1) The Commission may officially change a part-time employee's tour of duty due to work requirements or at the employee's request. A change should be made in advance of the administrative workweek in which the change is to occur. Such requests are to be submitted on Standard Form 52, Request for Personnel Action, following the same administrative procedures and channels as used for other personnel actions, for the approval of the Associate Managing Director-Personnel Management. It may also be possible to meet an employee's short term need for revised work hours through the Commission's flextime program. (2) When necessary due to urgent work needs, staff shortages, short deadlines in a case handled by a part-time employee that arise on a non-work day, etc., part-time employees may be required to work additional hours beyond their regular part-time tour of duty (e.g., eight hours on a day when six hours would be the regular tour or on a Thursday in addition to regularly scheduled work days of Monday, Wednesday, and Friday). Such additional work requirements do not constitute a "change" in the employee's regular part-time tour of duty and do not require the documentation discussed in section 2-6.c. (1), as long as the additional work is a temporary requirement and the limitations in section 2-6.b. (4) are observed. Although documentation of a change in tour of duty may not be required, all hours worked are to be shown on the Time and Attendance Card. See section 4-7 regarding compensation for additional work hours. (3) When additional work hours are needed or a schedule is changed, other than at the employees request, advance notice should be given whenever feasible. At least two weeks advance notice of a long term or permanent change should be given whenever practical. (4) Part-time employees may not work more than 32 hours per week for more than two consecutive pay periods, although they may be changed to a full-time tour of duty on either a temporary or permanent basis if the additional work requirement is expected to last longer (see section 2-9). (5) An involuntary reduction in the number of hours of a permanent part-time employee's scheduled tour of duty must be handled in accordance with procedures for adverse actions. See section 2-9.d. (2) for single exception. 2-7. Job Sharing—a. Definition. Job sharing is a form of part-time employment in which the tours of duty of two (or more) employees are arranged in such a way as to cover a single full-time position. b. Status. Although they share the duties of a full-time position, job sharers are considered to be individual part-time employees for purposes of appointment, tour of duty, pay, classification, leave, holidays, benefits, retirement, and merit promotion actions, service credit, recordkeeping, reduction in force, adverse actions, grievances, and personnel ceilings. c. Tour of Duty. A variety of different work scheduling arrangements can be used, for example: (1) Split days (one job sharer works mornings and the other afternoons); (2) Alternate days (one job sharer works Monday, the other Tuesday, etc.); or (3) Split weeks (one job sharer works from Monday morning through noon Wednesday and the other works from noon Wednesday through Friday). d. Coordination of Work Schedules. The work schedules of job sharers may overlap (one job sharer may work from 10 a.m. to 2 p.m. every day and the other from noon to 4 p.m.). This arrangement can provide the Commission with extra coverage during heavy workload periods without using overtime. A certain amount of overlap may also be desirable to enable job sharers to attend staff meetings or familiarize each other with work developments. Although most job sharers split the hours of a full-time position in half, this is not an absolute requirement. For example, one job sharer could work 24 hours each week and the other 16. e. Job Classification and Position Descriptions. Job sharers each have a separate position description which may or may not be identical. Duties of job sharers may be the same or different. It is also possible to have "split-level" job sharing in which one job sharer performs duties classified at a higher grade level than the duties performed by the other employee sharing the position. f. Merit Promotion Eligibility. A job sharing team may jointly or individual apply for a full-time position announced under merit promotion procedures, but the qualifications of each job sharer will be evaluated individually. If both job sharers are among the best qualified for a full-time position, they should be referred as a team to the selecting official. A job sharer may also apply individually for promotion to part-time or full-time position. In the latter case, the job sharer would have to agree to convert to a full-time work schedule if selected for the position. 2-8. Employees Whose Part-Time Employment Began Before April 8, 1979. a. Basic Exemption. Any individual who has been employed on a part-time permanent basis with out a break in part-time service since before April 8, 1979, is exempt from provisions of the Federal Employees Part-Time Career Employment Act of 1978 regarding the requirement for a tour of duty of between 16 and 32 hours per week, and the requirement for a prorating of contributions to health benefits program costs (see section 4-6. regarding health benefits). Promotion, reassignment or transfer to another part-time position has no effect on the exemption. b. Effect of a Break in Part-Time Service. A break in Federal service of more then 3 calendar days or movement to a full-time position for more than 2120 days would mean that if the employee later returned to a part-time work schedule, he or she would be covered by all provisions of the Act. For this purpose a temporary promotion or detail
2-3. Change to a Full-Time Work Schedule—Authority. It is contrary to merit principles to appoint an individual to work part-time with the intent to convert the employee to full-time after a brief interval. Unexpected increases in workload may, however, require a Bureau/Office to change the work schedule of a part-time employee to full-time on either a short term (i.e., not to exceed a certain date in excess of two consecutive pay periods) or a permanent basis.

b. Documentation. A request for change to a full-time work schedule is initiated by the Bureau/Office administrative staff on Standard Form 52, Request for Personnel Action, in accordance with the procedures for other personnel actions.

c. Notice. If an involuntary change to a full-time work schedule creates a hardship to the employee, for example, by disrupting school or child care arrangements, the Bureau/Office should first determine if there are other ways to accomplish the added work within available resources. If not, the maximum feasible notice of the change should be given to the employee.

d. Temporary Changes to a Full-Time Work Schedule. (1) If the change is temporary, the not-to-exceed date should be specified in the remarks section of the SF-52, Request for Personnel Action, and the SF-50, Notification of Personnel Action.

(2) Termination of a temporary change to a full-time work schedule and return to a part-time work schedule consisting of the same or greater number of scheduled work hours than existed prior to the temporary change to full-time does not constitute an involuntary reduction in work hours, as discussed in section 2-6.b.(5). A request to terminate a temporary change to full-time work schedule should be initiated by the Bureau/Office on SF-52, Request for Personnel Action.

(3) A temporary change to a full-time work schedule of less than two consecutive pay periods does not need to be documented by SF-52. All hours worked, however, are to be recorded on the Time and Attendance Card.

e. Eligibility for a Full-Time Work Schedule. Any permanent part-time employee is eligible to request conversion to a full-time work schedule, subject to Commission resource needs and availability of full-time positions, and subject to the merit considerations outlined in section 2-9.a. Part-time employees do not, however, have an entitlement to conversion to a full-time tour of duty.

Subchapter 3: Changing from Full-Time to Part-Time Employment

3-1. Purpose. This subchapter establishes Commission policy and procedures for handling requests from FCC employees to change from full-time to part-time employment. Requests for conversion to part-time employment are most likely to arise from employees whose family obligations have changed or who have decided to pursue academic studies. Approval of such requests provides opportunities to contribute to the Commission's goal of expanding part-time employment and may also provide a number of advantages to management, including:

a. Filling a part-time position with an individual already trained and familiar with the specific responsibilities of the job results in the maximum utilization of the part-time hours available.

b. Experience has shown that part-time employees often have high levels of motivation and can be very productive relative to the number of hours worked.

c. Approval of such a request will often result in the retention of an experienced employee who may otherwise have no alternative but to leave the Commission.

d. The retention rate part-time employees is higher than for full-time employees due to the more limited opportunities to move elsewhere. This can be a significant advantage in the case of an employee with critical or difficult-to-develop skills.

While there are often advantages to the approval of requests for conversion to part-time employment, it must be recognized that management has the right to determine how positions are allocated and how work is to be carried out. There may be situations where the requirements of a position cannot be effectively carried out with the interruptions or lapses in coordination/follow up that may result from part-time employment, where it is not possible or feasible to locate other part-time personnel with necessary skills to carry out remaining requirements of a highly specialized full-time position, or where the remaining requirements cannot be accommodated by alternative methods.

3-2. Coverage. Any employee, other than those occupying a position listed in section 1-5, may request a change to part-time employment under the provisions of this program.

3-3. Criteria. An employee's request for conversion to part-time employment should be considered against the following criteria:

a. Specific Requirements of the Employee's Position. Consideration should include how the duties of the position could be carried out on a part-time basis, such as a division of workload by cases, assigned areas, or discrete stages of action; whether major problems in coordination, responsiveness, effectiveness of follow up activities, additional costs, etc. can realistically be expected and would be of significant impact; and whether the duties can be restructured, with some responsibilities redistributed to other full-time or part-time staff.

b. Alternatives Available for Work Accomplishment. Consideration should include the feasibility of creating an additional part-time position(s) within the immediate office or elsewhere in the Bureau/Office to handle any critical work of the employee’s full-time position that could not be accommodated within the requested part-time work schedule and possible alternatives in scheduling or assigning work to accommodate a part-time employee. Supervisors should discuss any proposed changes that might significantly affect other employees with the Labor Management and Employee Relations Branch in AMD-PM.

c. Benefit to Employee. Consideration should be given to the possible benefits to the employee resulting from part-time employment in comparison to any problems that are realistically expected to result from approving the request.

3-4. Procedures. Employee requests for a change from full-time to part-time employment should be handled in accordance with the procedures outlined below:

a. Employees who wish to consider changing from full-time to part-time employment should informally discuss part-time employment with their supervisors, and should consider the effects such a change will have on employment rights and benefits (discussed in subchapter 4).

b. If employees wish to request conversion to part-time employment, the request form shown in Appendix A should be completed and given to their immediate supervisors. Employees should also send an information copy of the request to the Part-Time Employment Coordinator in the Office of the Associate Managing Director-Personnel Management. Specific reasons for the request, along with the benefits the employee hopes to gain, should be described in an attachment to the request form. Any suggestions or recommendations that employees may have about how their duties could be
carried out on a part-time basis may also be included on the attachment.

c. Upon receipt of a formal request, supervisors should evaluate the request in terms of the criteria outlined in section 3-3. Supervisors should then indicate his/her recommendation in the space provided on the form, attach a brief analysis of the circumstances that support the recommendation, and forwards the request through the Bureau/Office administrative staff to the Bureau/Office Chief for review and decision.

d. Bureau/Office Chiefs should review and evaluate submissions in terms of the criteria stated in section 3-3. Consideration should also be given to any resources outside employees' immediate offices that might be available to accommodate requests, and to encourage a consistent approach to part-time employment requests within the Bureau/Office when work requirements are similar. If any significant resource impact is involved, coordination with OMD should be completed at this point (see section 2-5). Bureau/Office Chiefs then record their approval or disapproval on the request forms. If a request must be disapproved, a determination should also be made as to whether there are any other appropriate part-time employment opportunities within the Bureau/Office that may address an employee's need.

3-5. Documentation—
a. Approved Requests. Upon approval of an employee’s request for change to part-time employment, a copy is sent to the employee and the administrative staff of the Bureau/Office prepares an SF-52. Request for Personnel Action, attaches the original copy of the approved request for change to part-time employment, and forwards the documents to the Office of the Associate Managing Director-Personnel Management.

b. Denied Requests. A copy of the employee’s request for change to part-time employment, with attachments, indicating the Bureau/Office Chief’s disapproval should be sent to the employee and another copy should be forwarded to the Part-Time Employment Program Coordinator in the Office of the Associate Managing Director-Personnel Management.

3-8. Part-Time Placement Assistance—
a. Applicant File. The Office of the Associate Managing Director-Personnel Management (AMD-PM) will carry out a “clearing house” function by establishing file of applications of employees who are interested in part-time basis. This information may also assist supervisors who need to fill new part-time positions quickly by lateral assignment, and assist supervisors who may need to know if part-time candidates are available to complement the part-time tours of other employees on their staff. It is important to note that such applications would be maintained only for consideration for part-time assignment or voluntary change to lower grade, actions that would not ordinarily be announced under merit promotion procedures. Part-time positions involving promotional opportunities would have to be filled in accordance with FCC merit promotion procedures, and employees interested in a particular posted vacancy must apply specifically for that vacancy by following the procedures listed on the announcement.

b. Application Procedures. Employees may apply for consideration for other part-time opportunities, as described in section 3-6.a, by furnishing the Part-Time Qualifications Statement, along with a covering note that indicates the types of positions, grade levels, occupational/organizational areas and minimum/maximum work schedules that the employee would consider.

Employees will be responsible for periodically updating their application forms. Other FCC employees who are interested in part-time employment may also apply.

Subchapter 4: Personnel Policies and Benefits

This subchapter will summarize information previously published by the Office of Personnel Management regarding the impact of part-time employment on employment procedures and benefit programs. (Not reproduced herein.)

Subchapter 5: Reports and Program Evaluation

5-1. Reporting. The Associate Managing Director-Personnel Management will survey the Bureau/Office twice a year regarding their activities under the Part-Time Employment Program and their progress toward meeting program goals. The results of these surveys, along with other available data, will be used to complete biannual reports to the Office of Personnel Management on part-time employment. Information to be requested includes:

a. Specific information on the organization’s progress in meeting FCC part-time career employment goals;

b. An explanation of any impediments encountered in meeting such goals or in carrying out the provisions of the Part-Time Employment Program and a description of any actions taken to overcome those impediments;

c. Information on opportunities for part-time employment which have been extended to older individuals, the handicapped, students, and parents with family responsibilities;

d. A copy of any internal Bureau/Office issuances on part-time permanent employment; and

e. The number of new part-time permanent positions established and/or full-time vacancies converted to part-time during the reporting period.

5-2. Evaluation. The Part-Time Employment Program will be reviewed and evaluated by the Associate Managing Director-Personnel Management in conjunction with other personnel management reviews.

William J. Tricarico,
Secretary, Federal Communications Commission.
[FR Doc. 84-11538 Filed 4-30-84; 8:45 am]
BILLING CODE 8732-01-M

[Report No. 1457]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

April 24, 1983.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Policies governing the ownership and operation of domestic satellite earth stations in the Bush communities in Alaska. (CC Docket No. 80-584, RM-3304)

Filed by: Alan Y. Naftalin, George Y. Wheeler, Margot S. Humphrey & Gregory C. Staple, Attorneys for Alascom, Inc., on 4-16-84.

Subject: Investigation of Access and Divestiture Related Tariffs. (CC Docket No. 83-1145, Phase I)

The Western Union Telegraph Company
Wolfe & Thomas J. Casey, Attorneys for
Secretary, Federal Communications
Commission.

BILLING CODE 6712-01-M

[FR Doc. 84-11637 Filed 4-30-84; 8:45 am]

CORPORATION

AGENCY:
OMB for Review
FEDERAL DEPOSIT INSURANCE

ACTION:
Information Collection Submitted to
Management and Budget a form SF-83,
has submitted to the Office of
35), the FDIC hereby gives notice that it
Reduction Act of1980 (44 U.S.C. Chapter

SUMMARY:
Collection: Summary of Deposits
(Commercial and Savings Banks) (OMB
No. 3094-0061).
Background: In accordance with
requirements of the Paperwork
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.

BILLING CODE 6714-01-M

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.

SUPPLEMENTARY INFORMATION: The
FDIC is requesting OMB to approve
revisions to the annual Summary of
Deposits survey form FDIC 3020/05. The
form is being revised to correspond with the
deposit data collected on the March
1984 Call Report. The revised form will be
used on the June 1984 Summary of
Deposits survey. The FDIC uses the
annual Summary of Deposits survey to obtain the amount of deposits in various
levels of deposits in various
types of categories held at all offices of
banks with branches in the United
States. The survey includes both
corporate banks and savings banks.
The survey data provide a basis for
measuring the competitive impact of
bank mergers and have additional use
for studies in banking research. The
revisions to the survey form will not
affecit the current estimated reporting
burden of one hour annually for each
reporting office.

Federal Deposit Insurance Corporation.
Hyde L. Robinson,
Executive Secretary.

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

[Notice 1984-6]

Filing Dates for New Jersey Special
Primary and General Elections

AGENCY: Federal Election Commission.
ACTION: Notice of filing dates for New
Jersey special primary and general

SUMMARY: Committees required to file
reports in connection with only the
special primary election to be held in the
13th Congressional District of New
Jersey on June 5, 1984, must file a 12-day
pre-primary report by May 24, 1984, and
a July 15 quarterly report due on July 15,
1984. Committees required to file reports in connection with both the special
primary election and the special general
election to be held on June 5, 1984, and
November 6,1984, respectively, must file a 12-day pre-primary report by May 24,
1984, a July 15 quarterly report by July 15,
1984, an October 15 quarterly report by October 15, 1984, a 12-day pre-
general election report due on October 25,
1984, and a 30-day post-election report
due on December 6, 1984, with coverage dates from October 16, 1984, through
November 26, 1984.

After filing these reports, committees
should resume filing reports on a
quarterly basis.

Lee Ann Elliott,
Chairman, Federal Election Commission.

BILLING CODE 6716-01-M

FEDERAL EMERGENCY
MANAGEMENT AGENCY

Financial Assistance; Massachusetts
et al.

Notice of award of Financial
Assistance is hereby given that the
Federal Emergency Management
Agency, under the Fire Prevention and
Control Act of 1974, will award
assistance to ten key states in each of
the Federal Emergency Management
Agency's (FEMA) regions:
Massachusetts, New York,
Pennsylvania, Tennessee, Illinois,
Louisiana, Iowa, Utah, California and
Alaska.

The purpose of this assistance is to
increase the scope and effectiveness of
local fire prevention and control efforts
through a unique merger of the resources of federal, state and local fire services
with the resources of the private sector
to create and support existing
community-based volunteer programs.
The proposed assistance will enhance
community-based fire prevention and
control programs using federal funding
and/or technical assistance delivered
through a well defined network of
resources of the private sector
community-based volunteer programs.
The purpose of this assistance is to increase
the scope and effectiveness of
local fire prevention and control efforts
through a unique merger of the resources of federal, state and local fire services
with the resources of the private sector
to create and support existing
community-based volunteer programs.
The proposed assistance will enhance
community-based fire prevention and
control programs using federal funding
and/or technical assistance delivered
through a well defined network of
federal, state, local and private sector
support activities.

This assistance will strengthen
existing fire safety programs and create
new ones, all across the spectrum of fire protection, through financial and technical assistance and educational outreach. FEMA will enlist and use community volunteers as the principal agent through which the program can work.

Award of this assistance is expected August 1, 1994.

Fred J. Villella,
Associate Director, Training and Fire Programs/National Emergency Training Center.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of May 1994.

Rape Prevention and Control Advisory Committee

Meetings:
- May 14–15; 9:00 a.m.
  Conference Room "T", Parklawn Building, 5000 Fishers Lane, Rockville, Maryland 20857

Open

Contact: Mary Lystad, Ph.D., Executive Secretary, Rape Prevention and Control Advisory Committee, Parklawn Building, 5000 Fishers Lane, Rockville, Maryland 20857, (301) 433-1910

Purpose: The Rape Prevention and Control Advisory Committee advises the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities for drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Agenda: From 9:00 a.m.—12 noon, May 15, and from 9:00 a.m.—5:00 p.m., May 16, the meeting will be open for discussion of administrative announcements, program development and policy issues. Otherwise, the Council will be performing final review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

As time permits on May 16, from 3:30-5:00 p.m., the Council will hear statements from interested organizations in the drug abuse field. Persons interested in appearing should contact the Executive Secretary to be scheduled. The oral presentation shall be no longer than 10 minutes, although written statements may be submitted in supplement.

National Advisory Council on Drug Abuse

Meetings:
- May 15–16; 9:00 a.m.

National Institutes of Health, Building 31C, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20820

Open—May 15; 9:00 a.m.—12 noon, May 16; 9:00 a.m.—5:00 p.m.

Closed—Otherwise

Contact: Ms. Sheila Gardner, Room 10A-53, Parklawn Building, 5000 Fishers Lane Rockville, Maryland 20857, (301) 433-6720

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administration, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Agenda: From 9:00 a.m.—12 noon, May 15, and from 9:00 a.m.—5:00 p.m., May 16, the meeting will be open for discussion of administrative announcements, program development and policy issues. Otherwise, the Council will be performing final review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Board of Scientific Counselors, NIMH

Meetings:
- May 22–23; 9:00 a.m.

National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20820

Purpose: The Board of Scientific Counselors provides expert advice to the Director, NIMH, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Agenda: The Board will meet in Building 31C, Conference Room 10, Bethesda, Maryland, for approximately 15 minutes for a report by the Director of Intramural Research, NIMH, on recent
remainder of the sessions will be devoted to a review of the intramural research projects from the Laboratory of Cell Biology, and the evaluation of individual scientific programs, and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-483 (5 U.S.C. Appendix I).

Board of Scientific Counselors, NIAAA
May 28; 9:00 a.m.
Flow Building, Room 51, 12501 Washington Avenue, Rockville, Maryland 20852
Open—May 25; 9:00-9:15 a.m.
Closed—Otherwise
Contact: Laura S. Rosenthal, Deputy Director, Division of Intramural Research, NIAAA, Flow Building, Room 2, 12501 Washington Avenue, Rockville, Maryland 20852, (301) 443-1073

Purpose: The Board of Scientific Counselors provides expert advice to the Director, NIAAA, on the alcohol intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Agenda: The Board will meet in the Flow Building for approximately 15 minutes for a report on recent administrative developments. The remainder of the session will be devoted to a review and evaluation of intramural projects and individual staff scientists in the Division of Intramural Research, and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-483 (5 U.S.C. Appendix I).

Services Research Subcommittee of the Epidemiologic and Services Research Review Committee
May 29-31; 9:00 a.m.
Georgetown Hotel, 2121 P Street, NW., Washington, D.C. 20037
Open—9:00-10:00 a.m.
Closed—Otherwise
Contact: Gloria Yockelson, Parklawn Building, Room 9C-18, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1367

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., May 29, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-483 (5 U.S.C. Appendix I).

National Advisory Council on Alcohol Abuse and Alcoholism
May 31-June 1; 9:00 a.m.
National Institutes of Health, Wilson Hall, Building 1, 9000 Rockville Pike, Bethesda, Maryland 20892
Open—May 31; 9:00 a.m.-1:00 p.m., June 1; 9:00 a.m.-adjournment
Closed—Otherwise
Contact: Mr. James Vaughan, Room 16C-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4375

Purpose: The Council advises the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Alcohol Abuse and Alcoholism regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Agenda: On May 31, from 9:00 a.m.-1:00 p.m. and June 1, from 9:00 a.m. to adjournment (open sessions), the meeting will be devoted to general business of the Council and a discussion of current budget, legislative and program activities.

On May 31, from 1:00 p.m. to adjournment (closed session), the Council will conduct a final review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552b(c)(6), and section 10(d) of Pub. L. 92-483 (5 U.S.C. Appendix I).

Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee
May 31-June 1; 9:00 a.m.
Sheraton Washington Hotel 2660 Woodley Road, N.W., Washington, D.C. 20009
Open—May 31; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Ms. Pamela J. Mitchell, Room 9C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1367

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., May 31, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-483 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained as follows: NIAAA: Mrs. Diana Widner, Committee Management Officer, Room 10C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4375. NIDA: Ms. Claudette Wright, Committee Management Officer, Room 10-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1644. NIMH: Ms. Helen W. Garrett, Committee Management Officer, Room 0C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.
Food and Drug Administration

Revisions of Certain Food Chemicals Codex, 3d Ed., Monographs; Opportunity of Public Comment; Extension of Comment Period

Correction

In FR Doc. 84-9301 appearing on page 13925 in the issue of Monday, April 9, 1984, make the following correction: In column one, SUMMARY, line nineteen, "Infact" should read "Infant".

Effective Date for Action Levels for Ethylene Dibromide in Processed Grain Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the effective date for the action levels for residues of ethylene dibromide (EDB) in processed grain products that were established in its announcement of the availability of FDA's Compliance Policy Guide 7120.23, Attachment M. These action levels are based on recommendations from the Environmental Protection Agency (EPA) and are established in conjunction with EPA's tolerance for residues of EDB per se in grains. In the Federal Register of April 23, 1984, EPA revoked the exemption from the requirement of a tolerance for organic bromide residues in grains resulting from the use of EDB as a postharvest fumigant, as well as companion proposals (49 FR 6699, 6700, and 6702) to revoke the tolerances for inorganic bromide residues in grains and grain-based products. In the same issue of the Federal Register (49 FR 6697), EPA also proposed a tolerance of 900 ppb for residues of EDB in barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat to cover residues that resulted from treatment of the grain with EDB before the effective date of the suspension order.

In the Federal Register of April 23, 1984 (49 FR 17144–17149), EPA published the final rules based on the February 22 proposals. The effective date of these final rules is April 23, 1984.

FDA announces that the action levels described in the April 3, 1984 notice were effective April 23, 1984, the effective date of EPA's final rules regarding residues of EDB in grains (49 FR 17144).


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

Public Health Service

National Center for Health Services Research; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, appropriateness and use (indication) of Nuclear Magnetic Resonance (NMR) imaging. Specifically, we are interested in: (1) Data that would support specific applications of this technology where it has been demonstrated to be effective as a method of diagnostic imaging, (2) specific indications for use of NMR imaging, and (3) a comparison of NMR imaging with other diagnostic techniques, (4) a comparison as to where NMR fits into the overall scheme of diagnostic imaging in the evaluation of disease states. Moreover this assessment seeks to identify specific and unique applications of this diagnostic imaging modality.

For purposes of this assessment, the term NMR includes all methods of zeugmatographic imaging that employs a gradient magnetic field joining a radio frequency magnetic field at a desired local spatial region through magnetic resonance. It includes those devices with permanent, resistive or super conductive magnets. We are interested in all medical uses of computer-assisted tomographic magnetic imaging (NMR). The PHS assessment will consist of a synthesis of information obtained from appropriate organizations in the private sector, from PHS agencies, and from other Departments and agencies throughout the Federal Government. PHS assessments are based on the most current clinical and scientific knowledge concerning the safety, clinical effectiveness and acceptability of a technology. Based on this assessment, a PHS report as well as a recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than July 30, 1984, or within 90 days of the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the
patient population most most likely to benefit, the clinical acceptability, and the effectiveness of this technology is also being sought. Proprietary information is not being requested, but any published information may be submitted.

Written material should be submitted to: National Center for Health Services Research, Office of Health Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, Maryland 20857.

Further information is available at the above address or by telephone (301) 443-4490.


Enrique D. Carter,
Director, Office of Health Technology Assessment; National Center for Health Services Research.

[FR Doc. 84-11728 Filed 4-30-84; 8:45 am]
BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Assistant Secretary for Housing—Federal Housing Commissioner

[July 20, 1984]

Mutual Mortgage Insurance and Rehabilitation Loans; Changes to the Maximum Mortgage Limits

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

ACTION: Notice of revisions to the FHA single family maximum mortgage limits for high-cost areas.

SUMMARY: This Notice revises the listing of areas eligible for “high-cost” mortgage limits under HUD’s single family insuring authorities by adding six new areas. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: May 1, 1984.

FOR FURTHER INFORMATION CONTACT: John J. Coonta, Director, Single Family Development Division, Room 9270, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-6720. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA) (12 U.S.C. 1701-1749) authorizes HUD/FHA to insure mortgages for single family residences. These include one- to four-family residences (see section 203) and one-family units in condominiums (see section 234(c)). The Housing and Community Development Act of 1980 amended the NHA to permit HUD to change the maximum mortgage amounts under these programs to reflect regional differences in the cost of housing.

Section 214 of the NHA provides special high-cost limits for Alaska, Guam, and Hawaii.

Section 203 Programs. Sections 203 of the NHA is the seminal provision for the insurance of mortgages covering single family residences, and many other NHA sections adopt the basic provisions contained in section 203. Other sections to which this Notice applies include: section 233(k), loan insurance for rehabilitation of a structure used primarily as a residence; section 213, cooperative housing insurance; section 223, rehabilitation and neighborhood conservation housing; section 224, mortgage insurance for farm; section 240, financing purchases for homeowners of the fee simple title to property on which homes are located; section 244, coinsurance; section 245, graduated payment mortgages; and sections 809 and 610, armed services housing mortgage insurance.

Under section 203, the Secretary may increase maximum mortgage limits on an area-by-area basis if the Secretary deems it necessary after considering the extent to which middle- and moderate-income persons have limited housing opportunities in the area due to high prevailing housing prices.

Section 203 provides that the increase may not exceed the lesser of the following:

A. 133 1/3 percent of $67,500 in the case of a one-family residence; 133 1/3 percent of $76,000 in the case of a two-family residence; 133 1/3 percent of $82,000 in the case of a four-family residence; or

B. 85 percent of the median one-family house price in the area, as determined by the Secretary for a one-family

Statement of Organization, Functions and Delegations of Authority; Office of the Assistant Secretary for Health

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 6138, December 2, 1977, as amended most recently at 49 FR 4437, February 8, 1984), is amended to reflect revisions to the functional statement for the Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, and to abolish the Office of Health Information, Health Promotion, and Physical Fitness and Sports Medicine.

Under Part H, Chapter HA, Office of the Assistant Secretary for Health (OASH), Section HA—20 Functions, delete in their entirety the titles and statements for the Office of Disease Prevention and Health Promotion (HA8) and substitute the following:

Office of Disease Prevention and Health Promotion (HA8). The Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion) serves as the principal advisor to the Assistant Secretary for Health and the Surgeon General on policies and procedures which relate to disease prevention, health promotion, and preventive health services. The Office: (1) Provides a focal point for coordinating all policies and activities within the Department which relate to disease prevention, health promotion, preventive health services, and health information and education with respect to the appropriate use of health care; (2) coordinates these activities with similar activities in the private sector; (3) provides leadership, coordination and monitoring for the national effort to achieve the measurable objectives which provide the basis for the U.S. national prevention strategy; (4) sponsors the National Health Promotion Program and provides management oversight for cooperative agreements with major national organizations to fund special health promotion activities such as community networks, schools, clinical, and worksite initiatives, and other prevention initiatives; (5) disseminates information to the public through a national health information clearinghouse concerning matters relating to health information and health promotion, preventive health services, and education in the appropriate use of health care and assists in the analysis of issues and problems relating to these matters; (6) supports projects, conducts research, evaluates programs, and disseminates information relating to disease prevention, health promotion, and physical fitness; and (7) coordinates and provides advice and direction on special departmental initiatives on disease prevention and health promotion activities such as risk assessment and nutrition policy.


Edward N. Brandt, Jr.,
Assistant Secretary for Health.

[FR Doc. 84-11729 Filed 4-30-84; 8:45 am]
BILLING CODE 4160-17-M

Further information is available at the above address or by telephone (301) 443-4490.

Research, Office of the Assistant Secretary for Health (Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, and to abolish the Office of Health Information, Health Promotion, and Physical Fitness and Sports Medicine.

Under Part H, Chapter HA, Office of the Assistant Secretary for Health (OASH), Section HA—20 Functions, delete in their entirety the titles and statements for the Office of Disease Prevention and Health Promotion (HA8) and substitute the following:

Office of Disease Prevention and Health Promotion (HA8). The Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion) serves as the principal advisor to the Assistant Secretary for Health and the Surgeon General on policies and procedures which relate to disease prevention, health promotion, and preventive health services. The Office: (1) Provides a focal point for coordinating all policies and activities within the Department which relate to disease prevention, health promotion, preventive health services, and health information and education with respect to the appropriate use of health care; (2) coordinates these activities with similar activities in the private sector; (3) provides leadership, coordination and monitoring for the national effort to achieve the measurable objectives which provide the basis for the U.S. national prevention strategy; (4) sponsors the National Health Promotion Program and provides management oversight for cooperative agreements with major national organizations to fund special health promotion activities such as community networks, schools, clinical, and worksite initiatives, and other prevention initiatives; (5) disseminates information to the public through a national health information clearinghouse concerning matters relating to health information and health promotion, preventive health services, and education in the appropriate use of health care and assists in the analysis of issues and problems relating to these matters; (6) supports projects, conducts research, evaluates programs, and disseminates information relating to disease prevention, health promotion, and physical fitness; and (7) coordinates and provides advice and direction on special departmental initiatives on disease prevention and health promotion activities such as risk assessment and nutrition policy.


Edward N. Brandt, Jr.,
Assistant Secretary for Health.

[FR Doc. 84-11729 Filed 4-30-84; 8:45 am]
BILLING CODE 4160-17-M
residence; 107 percent of that median for a two-family residence; 130 percent of that median for a three-family residence; 150 percent of that median for a four-family residence.

Section 234 Program. Section 234 of the NHA authorizes mortgage insurance for one-family units in condominium projects. Under this section, the Secretary may increase the maximum mortgage amount on an area-by-area basis if the Secretary deems it necessary after considering the extent to which middle- and moderate-income persons have limited housing opportunities in the area due to high prevailing housing prices. Section 234 provides that the increase may not exceed the lesser of the following:

A. 111 percent of $67,500; or
B. 95 percent of the median one-family house price in the area, as determined by the Secretary.

Section 420 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-161, November 30, 1983) authorizes the Department to provide for maximum mortgage limits for one-family units in condominiums which are the same as maximum mortgage limits for one-family residences under section 203(b) of the NHA. The Department published on April 11, 1984 (49 FR 14336), a final rule to implement that provision. The final rule will be effective on May 22, 1984. A comprehensive revision of high-cost limits, including revised high-cost limits for condominium units, will be published by notice in time for effectiveness on May 22, 1984. The high-cost limits announced in this notice will be included as well in the upcoming comprehensive revision.

Section 214 Program. In addition to the "high-cost" limits discussed above, the NHA provides special limits for Alaska, Guam, and Hawaii. Section 214 states that if the Secretary determines that, because of higher prevailing costs, it is not feasible to construct dwellings in those areas without sacrificing sound standards of construction, design or livability, the mortgage limits may be increased beyond the statutory "high-cost" area limits indicated above. These limits, however, may not exceed the otherwise applicable amounts by more than one-half.

This Notice

This Notice identifies six new "high-cost" areas and the new maximum mortgage limits for these areas. The statutory NHA mortgage dollar limits are specified in 24 CFR 203.18(a) and 234.27(a). 24 CFR 203.18(a) and 234.27(b) authorize the Federal Housing Commissioner to raise these statutory mortgage limits and previously published increased amounts by publishing revised dollar limitations in the Federal Register.

A complete, updated list of all "high-cost" areas previously was published in the Federal Register on December 6, 1983 (see 49 FR 54703).

Future Changes to Maximum Mortgage Amounts

Any party is invited to request a change in a maximum mortgage limit if the party believes that the otherwise applicable limit for the area (whether or not it contains a "high-cost" adjustment) does not accurately reflect the extent to which moderate- and middle-income persons have limited housing opportunities because of high prevailing housing sales prices. Any person may submit documentation in support of an alternative maximum mortgage limit. Where possible, the documentation should include: (1) A sample listing of actual sales prices for both new and existing one-family homes, including condominium sales prices. This listing should contain a brief address of each property, county location, the sales price, month and year of sale and whether the property is new or existing; and (2) the actual or estimated median sales price for all new and existing home sales included in the sample. Any sample should be representative of the total sales that were made during a recent period of at least three months for the entire geographic area for which the request is made. In areas where the ratio of existing sales to new sales is three-to-one or greater, an increase in the mortgage limit may be based on 95 percent of the average of the new and the existing median sales prices. Therefore, in these areas, the documentation may also include separate median sales prices for both the new existing homes. If a party believes that the otherwise applicable mortgage limit in Alaska, Guam or Hawaii needs to be increased to reflect the extent to which high costs make it infeasible to construct dwellings without sacrificing sound standards of construction, design or livability, the party may submit documentation in support of an alternative mortgage limit. This documentation should include actual or estimated costs of such items as design, construction, materials, and labor. In addition, actual sale prices of new homes may be submitted, together with any other documentation requested by the Commissioner.

In all cases, requests for adjustments to maximum mortgage limits, together with supporting documentation, should be sent to the appropriate HUD field office. The field office will forward the documented request and supporting material, with the field office's recommendations, to the Commissioner for determinations.

The information collection procedure described above was submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501—3520) and has been assigned OMB Control Number 2502-0302.

Accordingly, the Commissioner is hereby expanding the list of section 203(b) and section 234(c) "high-cost" area, with revised dollar limits as set forth below:

### UPDATING OF FHA SECTION 203(b) AND SECTION 214 AREA WIDE MORTGAGE LIMITS

<table>
<thead>
<tr>
<th>Market area designation and local jurisdictions</th>
<th>Mortgage limits</th>
</tr>
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<tbody>
<tr>
<td>Region IV</td>
<td></td>
</tr>
<tr>
<td>Macomb County, IL</td>
<td>$79,000 $86,500 $90,500 $105,500 $125,500</td>
</tr>
<tr>
<td>Region V</td>
<td></td>
</tr>
<tr>
<td>Cincinnati (OH-KY-IN PMSA) (part)</td>
<td></td>
</tr>
<tr>
<td>Boone County, KY</td>
<td>$80,750 $90,950 $110,500 $127,500</td>
</tr>
<tr>
<td>Campbell County, KY</td>
<td></td>
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<tr>
<td>Kenton County, KY</td>
<td></td>
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<tr>
<td>Region X</td>
<td></td>
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<tr>
<td>Cincinnati (OH-KY-IN PMSA) (part)</td>
<td></td>
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<tr>
<td>Clermont County, OH</td>
<td>$80,750 $90,950 $110,500 $127,500</td>
</tr>
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<td>Hamilton County, OH</td>
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<td>Warren County, OH</td>
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<tr>
<td>Butler County, OH</td>
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<td>Region X</td>
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<tr>
<td>Cincinnati (OH-KY-IN PMSA) (part)</td>
<td></td>
</tr>
<tr>
<td>Dearborn, MI</td>
<td>$80,750 $90,950 $110,500 $127,500</td>
</tr>
</tbody>
</table>

The Department published on April 11, 1984 (49 FR 14336), a final rule to implement that provision. The final rule will be effective on May 22, 1984. A comprehensive revision of high-cost limits, including revised high-cost limits for condominium units, will be published by notice in time for effectiveness on May 22, 1984. The high-cost limits announced in this notice will be included as well in the upcoming comprehensive revision.
3. Review of FY 1984 range improvement projects
4. Discussion and Recommendations for proposed FY 1985 & 1986 range improvement projects; Cody Resource Area (RA), Washakie RA, and Grass Creek RA.


6. Recommendations for Cooperative Management Agreements
7. Opportunity for the public to present information or make comments

The meeting will be open to the public. Interested persons may make oral statements to the Board during the public comment period, or file written statements for the Board’s consideration. Anyone wishing to make an oral statement must notify the District Manager by May 30, 1984.

DATE: June 5, 1984, 9:00 a.m.
ADDRESS: Elks Club, 604 Coburn Avenue, Worland, Wyoming.

FOR FURTHER INFORMATION CONTACT:
Chester E. Conard, District Manager,

SUPPLEMENTARY INFORMATION:
Summary minutes of this meeting will be on file in the District Office and available for public inspection (during regular business hours) within 30 days of the meeting.
Chester E. Conard, District Manager.

Copies of the Spokane RMP summary of proposed land use alternatives have been sent to the District’s current mailing list. Copies also are available for review at:

BLM, Spokane District Office, East 4217 Main Avenue, Spokane, WA 99202
BLM, Coeur d’Alene District Office, 1908 North 3rd Street, Coeur d’Alene, ID 83814
BLM, Oregon State Office, 825 N.E. Multnomah Street, Portland, OR 97230
Yakima Valley Regional Library, 102 N. 3rd Street, Yakima, WA 98901
The Lamplighter Tape and Book Library, 716 S. College, College Place, WA 95324
Goldendale E. Community Library, 131 W. Burgen, Goldendale, WA 98620
University of Washington Library, Government Publications Division FM-25, Seattle, WA 98195
Washington State University, 310 Holland, Sciences Library, Pullman, WA 99163
King County Library System, 200-8th North, Seattle, WA 98109

SUPPLEMENTARY INFORMATION: The plan will result in land use allocations and resource management directions for approximately 307,000 acres of public land in Washington. The planning area is located in eastern Washington and is bordered by the Cascade Mountain Range to the west, Canadian Border to the north, and the states of Oregon to the south, and Idaho on the east. BLM administers the public land in this area from the District Office in Spokane, Washington. The major issues which were used to help direct the formulation of land use plan alternatives for the planning area, were identified through the judgment of the interdisciplinary planning team, from inter-governmental consultation, public input and review by BLM managers. The major resource management issues include grazing management, land tenure adjustment, access to public land, minerals management, recreational management, and wildlife habitat management.

The draft plan and EIS will be available for public review in the fall of 1984, and the final statement is scheduled to be completed in May of 1985. Decision making will take place in the fall of 1985, and include publication of a Record of Decision and Rangeland Program Summary. The original notice of intent to prepare the Spokane RMP/ EIS was published in the Federal Register and local news media on July 21, 1983.

Copies of the Spokane RMP summary of proposed land use alternatives have been sent to the District’s current mailing list. Copies also are available for review at:

BLM, Spokane District Office, East 4217 Main Avenue, Spokane, WA 99202
BLM, Coeur d’Alene District Office, 1908 North 3rd Street, Coeur d’Alene, ID 83814
BLM, Oregon State Office, 825 N.E. Multnomah Street, Portland, OR 97230
Yakima Valley Regional Library, 102 N. 3rd Street, Yakima, WA 98901
The Lamplighter Tape and Book Library, 716 S. College, College Place, WA 95324
Goldendale E. Community Library, 131 W. Burgen, Goldendale, WA 98620
University of Washington Library, Government Publications Division FM-25, Seattle, WA 98195
Washington State University, 310 Holland, Sciences Library, Pullman, WA 99163
King County Library System, 200-8th North, Seattle, WA 98109
The plat of survey of the following described lands was officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., April 24, 1984.

The plat representing the dependent survey of a portion of the subdivisonal lines, and the survey of the subdivision of section 22, T. 3 N., R. 102 W., Sixth Principal Meridian, Colorado, Group No. 742, was accepted April 18, 1984.
Comments should be submitted by May 16, 1984.
Carol D. Shull,
Chief of Registration, National Register.

ALABAMA

Jefferson County

Birmingham, Claridge Manor Apartments
(Apartment Hotels in Birmingham, 1900–1930, TR), 1100 27th St. S.
Birmingham, Highland Plaza Apartments
(Apartment Hotels in Birmingham, 1900–1930, TR), 2250 Highland Ave. S.
Birmingham, Ridgely Apartments (Apartment Hotels in Birmingham, 1900–1930, TR), 608 31st St. N.

Madison County

Huntsville, Building at 105 N. Washington Street (Downtown Huntsville MR A), 105 N. Washington St.

Montgomery County

Montgomery, Jackson, Jefferson Franklin House, 409 S. Union St.

ARIZONA

Pima County


CALIFORNIA

Los Angeles County

Los Angeles, Alvarado Terracce Historic District, Alvarado Terr., Bonnie Brae and 14th Sts.
Los Angeles, Friday Morning Club, 936–940 S. Figueroa St.

Orange County

Balboa, Balboa Pavilion, 409 Main St.

Sacramento County

Sacramento, Calpak Plant No. 11, 1721 C St.

Santa Cruz County

Santa Cruz vicinity, Glen Canyon Covered Bridge, Branciforte Dr.

COLORADO

Denver County

Denver, Denver City Railway Company Building, 1635 17th St., 1734–1736 Wynkoop St.

El Paso County

Colorado Springs, Emmanuel Presbyterian Church, 419 Mesa Rd.

Gunnison County

Gunnison, Webster Building, 229 N. Main St.

Logan County

Sterling vicinity, Luff, Conrad Sr., House, 1429 CO 14
Sterling, Harris, W.C., House, 102 Taylor St.

Otero County

La Junta, Finney, Dr. Frank, House, 608 Bellevue Ave.
La Junta, Sciumbato, Daniel, Grocery Store, 706 Second St.

Pueblo County

Pueblo, Rooled Candy Company Building, 406–416 W. 7th St.
Pueblo, Walter, Martin, House, 300 W. Abriendo Ave.

Teller County

Goldfield, Goldfield City Hall and Fire Station, Victor Ave. and 9th St.
Victor, Midland Terminal Railroad Depot, 230 N. Fourth St.

Weld County

Greeley, Woodbury, Joseph A., House, 1124 Seventh St.

CONNECTICUT

Fairfield County

Norwalk, Loth, Joseph, Company Building, 25 Grand St.

GEORGIA

Clay County

Fort Gaines, Fort Gaines Historic District, Roughly bounded by Chattahoochee River, GA 37, GA 38, College, Commerce and Jefferson Sts.

Fulton County

Atlanta, Peachtree Christian Church, 1500 Peachtree St. NW.

Marion County

Buena Vista vicinity, Shiloh-Marion Baptist Church and Cemetery, GA 41.

Muscogee County

Columbus, Adams Cotton Gin Building, 9001 Hamilton Rd.
Columbus, Liberty Theater, 821 Eighth Ave.

ILLINOIS

Washington County

Nashville, Louisville and Nashville Depot, 101 E. Railroad St.

INDIANA

Lake County

Gary, West Fifth Avenue Apartments Historic District, Roughly 5th Ave. from Taft to Pierce St.

Marion County

Indianapolis, General German Protestant Orphans Home, 1404 S. State St.
Indianapolis, Seig's Dry Goods Company Building, 20 W. Washington St.

TIPTON COUNTY

Tipton, Tipton County Jail and Sheriff's Home, 203 S. West St.

VANDERBURGH COUNTY

Evansville, Oliver Historic District, Roughly bounded by Madison Ave., Riverside Dr., Emmett and Venice Sts.

MASSACHUSETTS

Bristol County

Attleboro, Hanoverville Mill Historic District, Knight Ave., Reed and Phillip Sts.
New Bedford, Smith, Bradford, Building, 1927–1941 Purchase St.

Hampden County

Monson, Memorial Town Hall, Main St.

Middlesex County

Monson, Hoyt-Sheild Estate, 365–393 Andover St., 560–579 E. Merrimack St.

Norfolk County

Wrentham, Roebuck Tavern, 21 Dedham St.

MICHIGAN

Ingham County

Lansing, State Office Building, 318 S. Walnut St.

MINNESOTA

Freeborn County

Albert Lea, Albert Lea City Hall, 212 N. Broadway Ave.

Redwood County

Delhi, Delhi Coronet Band Hall, Third St.

MISSISSIPPI

Harrison County

Biloxi, Bailey House (Biloxi MR A), 1333 E. Beach Blvd.
Biloxi, Barq, E., Pop Factory (Biloxi MR A), 224 Keller Ave.
Biloxi, Biloxi's Tivoli Hotel (Biloxi MR A), 863 E. Beach Dr.
Biloxi, Bond House (Biloxi MR A), 925 W. Howard Ave.
Biloxi, Briezmacher House (Biloxi MR A), 436 Main St.
Biloxi, Bruet-Pourchy House (Biloxi MR A), 138 Magnolia St. Mall.
Biloxi, Church of the Redeemer (Biloxi MR AJ, Bellman St.
Biloxi, Clemens House (Biloxi MR A), 120 W. Water St.
Biloxi, Fisherman's Cottage (Biloxi MR A), 262 E. Bayview Ave.
Biloxi, Gulf Coast Center for the Arts (Biloxi MR A), 138 Lameuse St.
Biloxi, Hermann House (Biloxi MR A), 523 E. Beach Blvd.
Biloxi, House at 121 W. Water Street (Biloxi MR A), 121 W. Water St.
Biloxi, Nativity B.V.M. Cathedral (Biloxi MR A), W. Howard Ave. and Fayard St.
Biloxi, Peoples Bank of Biloxi (Biloxi MR A), 318 Lameuse St.
Biloxi, Redding House (Biloxi MR A), 128 W. Jackson St.
Biloxi, Swanger Theater (Biloxi MR A), 418 Reynoir St.
Biloxi, Scherer House (Biloxi MR A), 206 W. Water St.
Biloxi, Seashore Campground School (Biloxi MR A), Leggett Dr. and Chalmers St.
Biloxi, Suter House (Biloxi MR A), 105 Suter Pl.
Biloxi, Sweetman, Glann, House (Biloxi MR A), 2770 Wilkes Ave.
Biloxi, West Beach Historic District (Biloxi MR A), Roughly U.S. 90 between Rossel and Chalmers Ave.
Biloxi, West Central Historic District (Biloxi MR A), Roughly bounded by U.S. 90, Hopkins Blvd., Howard and Benachi Aves.

Jackson County

Pascagoula, Front Street Historic District, 2310, 2510, 2906, 2914, 2916 Front St.
NEW MEXICO
Grant County
Pinos Altos, Pinos Altos Historic District, roughly bounded by Gold Ave., Cherry, Main, Church and Silver Sts.

PENNSYLVANIA
Lancaster County
Marietta, Marietta Historic District (Boundary Increase), bounded by Waterford Ave., Clay, Prospect, and Front Sts.

SOUTH CAROLINA
Dillon County
Latta, Latta Historic District No. 1 (Latta M R A), Church, Marion, Bethel, Rice, Dew, Mauldin, and Main Sts.
Latta, Latta Historic District No. 2 (Latta M R A), Richardson St., Bamberg to Oak Sts.
Latta, McMillan House (Latta M R A), 200 Marion St.
York County
Rock Hill, Stokes-Mayfield House, 353 Oakland Ave.

TENNESSEE
Hamilton County
Hampton Place Archeological Site (40 H A 146) (Moccasin Bend M R A),
Mollards Dozen Archeological Site (40 H A 147) (Moccasin Bend M R A),
Stringer Ridge Historic District (Moccasin Bend M R A),
Vulcan Archeological Site (40 H A 140) (Moccasin Bend M R A),
Woodland Mound Archeological District (Moccasin Bend M R A),

UTAH
Duchesne County
Roosevelt, Toyack Future Farmers of America Chapter House, 340 N. 300 West
Salt Lake County
Sandy, Jordan High School, 9351 S. State St.
Summit County
Francis, Mitchell, Byron T. House, U.S. 189 and U T 35
Tooele County
Tooele, Tooele Valley Railroad Complex, 35 N. Broadway

[FR Doc. 84-1168 Filed 4-30-84; 8:45 am]
BILLING CODE 4310-70-M

Proposed Revised Park Road Standards

AGENCY: National Park Service, Interior.

ACTION: Public Review and Opportunity For Comment.

SUMMARY: The National Park Service is proposing to adopt revised Park Road Standards to supercede existing standards adopted in 1968. The proposed standards will provide guidance for the planning, design, construction and rehabilitation of all park roads and parkways in the National Park System.

DATE: The National Park Service will consider all written comments received on or before May 31, 1984.

ADDRESS: Copies of the draft standards may be obtained by writing to Chief, Engineering and Safety Services Division, National Park Service, Department of the Interior, Washington, DC 20240, or in Room 2431, 1100 L Street NW, Washington, DC between 8 am and 4 pm Monday through Friday. Comments may be mailed to the above address or delivered to Room 2431, 1100 L Street NW.

FOR FURTHER INFORMATION CONTACT:
George Walvoort, Chief Highway Engineer, Engineering and Safety Services Division, National Park Service (202-343-7042) or Jim Straughan, Chief, Branch of Transportation, Denver Service Center (303-234-4567).

Stanley T. Albright,
Associate Director, Park Operations.

FINANCE DOCKET No. 01000

CSX Corp.-Control-American Commercial Lines, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of oral argument for the purpose of supplementing the record in proposed control proceeding.

SUMMARY: On November 4, 1983, as supplemented on November 25, 1983, CSX Corporation (CSX) and American Commercial Lines, Inc. (ACL) jointly filed an application under 49 U.S.C. 11321, 11343, and 11344 seeking authority for CSX to acquire control of ACL and its certificated water carrier subsidiary American Commercial Barge Lines, Inc. (ACBL). The application was accepted in a decision served December 2, 1983, 49 FR 54402 (December 2, 1983). Because of the importance of this application, oral argument will be heard on June 7, 1984, in Washington, D.C.

INTERSTATE COMMERCE COMMISSION

ADDRESS: Office of Legislative Counsel, Interstate Commerce Commission, 12th and Constitution Ave., NW., Washington, D.C.

If you desire to participate, please contact, as appropriate:
WTA, c/o Richard A. Zellner, Loeser, Freedheim, Dean & Wellman, 600 National City E. 6th Building, Cleveland, Ohio 44114, 216-621-0150.

FOR FURTHER INFORMATION CONTACT:
Louis E. Gilmour, (202) 275-7245.

SUPPLEMENTARY INFORMATION:
Approximately one hour at the beginning of the oral argument will be allowed for appearances by Members of Congress and individuals representing federal, state, and local governments or agencies who wish to be heard. These persons should contact the Commission’s Office of Legislative Counsel no later than May 24, 1984, to indicate their intention to appear. The request should indicate the amount of time sought for argument.

 Parties supporting approval of the application will then be given one hour for argument. Any part of that time may be reserved for rebuttal following opponents’ arguments. Counsel for CSX shall coordinate the appearances and time allocations for these parties. The next hour of argument will be designated for parties opposed to the application. Counsel for the WTA shall coordinate the appearances and time allocations for the opponents. Each party designated to speak should be assigned no less than 10 minutes for presentation of argument.

On May 31, 1984, Counsel for CSX and Counsel for WTA shall provide a list of the order of persons in support of and opposed to the application and the time allocated to each. A schedule of appearances will be issued before the argument, naming the individuals contact the Commission’s Office of Legislative Counsel.

DATES: The oral argument will be heard at 9:30 a.m. on June 7, 1984. Parties wishing to participate should contact CSX, WTA, or the Office of Legislative Counsel no later than May 24, 1984. CSX and WTA must submit to the Commission the list of parties who will speak no later than May 31, 1984. The Commission will then issue a schedule of appearances.

ADDRESSES: The oral argument will be heard in Hearing Room A at the Interstate Commerce Commission Building, 12th and Constitution Ave., NW., Washington, D.C.
presenting argument and their time allocations.

All parties presenting arguments shall, at the time of argument, submit to the Commission 10 written copies of their prepared argument and any supporting exhibits. The written argument should correspond to the oral argument, and will be made part of the record. The points in the record will be considered even if not reached during the oral presentations.

This notice is issued under the authority of 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.


By the Commission, Chairman Reese H. Taylor, Jr.


James H. Bayne,

 Acting Secretary.

[FR Doc. 84-11677 Filed 4-30-84; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 7, 1983, Bio-Fine Pharmaceuticals, Inc., 3000 Cambridge, Las Vegas, Nevada 89109, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Diversion Control, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than May 31, 1984.


Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-11690 Filed 4-30-84; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council Committees; Meetings and Agenda

The regular spring meetings of committees of the Labor Research Advisory Council will be held on May 15, 16, and 17. The meetings on Tuesday, May 15, and Thursday, May 17, will be held in Room N–2437, and the
Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 11, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 11, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 23rd day of April 1984.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

BILLING CODE 4510-30-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Calhoun Manufacturing et al.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 23rd day of April 1984.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

BILLING CODE 4510-30-M

APPENDIX

Petitioner Union/workers or former workers of—

<table>
<thead>
<tr>
<th>Petitioner Union/workers or former workers of—</th>
<th>Location</th>
<th>Date received</th>
<th>Date of petition</th>
<th>Petition No.</th>
<th>Articles produced</th>
</tr>
</thead>
<tbody>
<tr>
<td>G.H. Bass &amp; Co. (company)</td>
<td>Berlin, NH</td>
<td>4/18/84</td>
<td>4/12/84</td>
<td>TA-W-15,305</td>
<td>Shoes and sandals—ladies'</td>
</tr>
<tr>
<td>Papel Mechatronic Corp. (wkrs)</td>
<td>Middletown, RI</td>
<td>4/11/84</td>
<td>4/12/84</td>
<td>TA-W-15,310</td>
<td>DC brushless motor spindles and floppy disc drives</td>
</tr>
</tbody>
</table>
Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Portec, Inc., et al.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period April 16, 1984–April 20, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers’ firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,046; Portec, Inc., Forgings Div., Canton, OH
TA-W-15,026; Diamond Chain Co., Indianapolis, IN
TA-W-15,038; Orient International Corp., Monroe Furniture Div., Tampa, FL
TA-W-15,038; Kanawha Manufacturing Co., Foundry Department & Yard Department, Charleston, WV
TA-W-14,804; Jade Handbag, Inc., New York, NY
TA-W-14,837; Ravenware Co., Brooklyn, NY
TA-W-14,972; Distribution Center, Bobbie Brooks Div., Bobbie Brooks, Inc., Cleveland, OH
TA-W-15,063; Western Electric Co., Inc., Indianapolis, IN

A certification was issued covering all workers separated on or after September 20, 1982.

TA-W-14,982; General Instrument Corp., RF Systems Div., Sherburne, NY
TA-W-14,982; Harris Graphics Corp., Bindery Systems Div., Elyria, OH
TA-W-15,073; Thompson Steel Co., Inc., Worcester, MA

A certification was issued covering all workers separated on or after December 1, 1982.

TA-W-15,075; DaMille Handbag Co., Middlesex, NJ
TA-W-15,066; Cords Dow Corp., Hialeah, FL
TA-W-15,068; General Instrument Corp., RF Systems Div., York, NY
TA-W-15,068; Farmland Industries, Inc., Hialeah, FL
TA-W-15,068; Farmland Industries, Inc., Ft. Dodge, IA

A certification was issued covering all workers separated on or after December 1, 1982.

TA-W-14,982; Royal China Co., Sebring, OH
TA-W-14,985; Royal China Co., Sebring, OH

A certification was issued covering all workers separated on or after August 25, 1982.

TA-W-14,941; W. R. Case & Sons Cutlery Co., Bradford, PA
TA-W-15,073; Thompson Steel Co., Inc., Worcester, MA

A certification was issued covering all workers separated on or after January 1, 1984.

TA-W-14,926; C.P. & M Corp., Akron, OH

A certification was issued covering all workers separated on or after November 1, 1982.

TA-W-15,075; DaMille Handbag Co., Middlesex, NJ
TA-W-15,066; Cords Dow Corp., Hialeah, FL

A certification was issued covering all workers separated on or after September 13, 1982 and before September 20, 1983.

TA-W-15,068; Farmland Industries, Inc., Ft. Dodge, IA

A certification was issued covering all workers separated on or after March 1, 1983.

TA-W-15,068; Farmland Industries, Inc., Ft. Dodge, IA

A certification was issued covering all workers separated on or after June 1, 1983 and before October 1, 1983.

I hereby certify that the aforementioned determinations were issued during the period April 16, 1984–April 20, 1984. Copies of these determinations are available for inspection in Room 5120, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.


Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-11738 Filed 4-30-84; 8:45 am]
BILLING CODE 4510-36-M

Employment Standards Administration

Advisory Committee on Sheltered Workshops; Meeting

A meeting of the Advisory Committee on Sheltered Workshops will be held in the Frances Perkins Building, 200 Constitution Avenue, NW., Washington, D.C. on May 17, 1984, from 9:00 a.m. to 5:30 p.m. and on May 18, from 9:00 a.m. until 3:00 p.m. The Committee will meet in Rooms N-5437 A, B, and C. Seven Subcommittees of the Committee will meet on Wednesday, May 18 at various times beginning at 9:00 a.m.

The mission of the Advisory Committee is to provide guidance to the Department regarding the administration and enforcement of the Fair Labor Standards Act and other Federal minimum wage laws as they relate to the employment of handicapped individuals with impaired productivity at special lower minimum wages in sheltered workshops, hospitals, or institutions.

The following subcommittees are scheduled to meet on May 18:

9:00 a.m. Place Rate (N5437A)
9:00 a.m. Application Forms (N5437B)
9:00 a.m. Patient Worker Regulations (N5437C)
1:00 p.m. Special Enforcement Problems (N3437C)
2:00 p.m. Education and Training (N3437C)
3:00 p.m. Compliance Activities (N3437C)

Among the agenda items to be considered by the Advisory Committee are: the review of the various subcommittees reports and recommendations; a review of the Department’s position on the applicability of the minimum wage and overtime provisions of the Fair Labor Standards Act to sheltered workshops operated by State or local governments; the final report on the Washington State pilot project which has provided for the evaluation of handicapped individuals in competitive industry; the problems of determining prevailing wages for the purpose of finding a handicapped
Pension and Welfare Benefit Programs

[Application No. D-3918]
Withdrawal of Proposed Exemption; Gerber & Linton Self-Employed Retirement Plan—H.R. 10 Plan (the Plan) Located in Reading, Pennsylvania

In the Federal Register of March 11, 1983, (48 FR 10500), the Department of Labor (the Department) published a notice of pendency of a proposed exemption from the sanctions resulting from the application of the prohibited transaction restrictions of the Internal Revenue Code of 1954. The notice of pendency concerned an application filed on behalf of the Plan.

In a letter dated April 11, 1984, the applicant's representative notified the Department that an exemption for the transaction described in the above cited notice was no longer sought. Accordingly, the representative requested that the application for exemption be withdrawn from consideration by the Department.

The notice of pendency is hereby withdrawn.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Great Western Savings and Subsidiaries Employees' Deferred Profit Sharing Plan (the Plan) Located in Seattle, Washington


Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The purchase by a Plan of a loan participation (the Participation Interest) in a note originated and held by Great Western Union Federal Savings and Loan Association (the Employer), the sponsor of the Plan, provided that the terms and conditions of such purchase are at least as favorable to the Plan as those which the Plan could receive in a similar transaction with an unrelated party; and (2) the possible buyback of the Participation Interest by the Employer from the Plan provided that the price the Plan will receive for the Participation Interest is at least the fair market value of the Participation Interest at the time of such buyback.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 28, 1984 at 49 FR 7310.

For Further Information Contact: Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

Connelly Containers, Inc. Retirement Income Plan (the Plan) Located in Bala-Cynwyd, Pennsylvania

[Prohibited Transaction Exemption 84-36; Exemption Application No. D-4600]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the
sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan of $300,000 by the Plan to Connelly Containers, Inc. for a period of five years, provided that the terms of the loan are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party on the date of the consummation of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 28, 1984 at 49 FR 7213.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Drs. Mauder, Fincus, Schissel and Barricks Keogh Pension Plan (the Plan) Located in Minneapolis, Minnesota

[Prohibited Transaction Exemption 84-37; Exemption Application No. D-4672]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of the Plan's interest in a Contract for Deed on property located in 2910 Cavell Avenue S., St. Louis Park, Minnesota, for $20,000 in cash, provided that the net cash proceeds to the Plan are at least equal to the Plan's fair market value of the Interest on the date of sale and further provided that the net cash proceeds to the Plan are at least equal to the Plan's cash outlay for the property to the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 28, 1984 at 49 FR 7315.

Temporary Nature of Exemption: The exemption is temporary and will expire five years after the date of grant with respect to the making of any loan. Subsequent to the expiration of this exemption, the Plan may hold loans originated during this five year period for an additional five years. Should the applicant wish to continue entering into loan transactions beyond the five year period, the applicant may submit another application for exemption.

For Further Information Contact: Alan H. LeVitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Kinzel, Acheson & Cowan, Inc. P.S. Profit Sharing Plan (the Plan) Located in Bellevue, Washington

[Prohibited Transaction Exemption 84-39; Exemption Application No. D-4820]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, for a period of five years, to the proposed loans by the Plan of up to 25% of their assets to Huntington Mechanical Laboratories, Inc., provided that the terms of the transactions are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of each transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 28, 1984 at 49 FR 7315.

Temporary Nature of Exemption: The exemption is temporary and will expire five years after the date of grant with respect to the making of any loan. Subsequent to the expiration of this exemption, the Plans may hold loans originated during this five year period for an additional five years. Should the applicant wish to continue entering into loan transactions beyond the five year period, the applicant may submit another application for exemption.

For Further Information Contact: Alan H. LeVitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Huntington Medical Laboratories, Inc. Defined Benefit Pension Plan and Huntington Mechanical Laboratories, Inc. Profit Sharing Plan (the Plans) Located in Mountain View, California

[Prohibited Transaction Exemption 84-38; Exemption Application Nos. D-4678 and D-4679]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, for a period of five years, to the proposed loans by the Plans of up to 25% of their assets to Huntington Mechanical Laboratories, Inc., provided that the terms of the transactions are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of each transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 28, 1984 at 49 FR 7315.

Temporary Nature of Exemption: The exemption is temporary and will expire five years after the date of grant with respect to the making of any loan. Subsequent to the expiration of this exemption, the Plans may hold loans originated during this five year period for an additional five years. Should the applicant wish to continue entering into loan transactions beyond the five year period, the applicant may submit another application for exemption.

For Further Information Contact: Alan H. LeVitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Drs. Wolfe, Vore & Caron, P.C. Profit Sharing Plan and Trust (the Plan) Located in Milwaukee, Oregon

[Prohibited Transaction Exemption 84-40; Exemption Application No. D-5021]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the December 30, 1974 loan of $87,000 by the Plan to a partnership comprised of Gordon F. Wolfe, M.D., J. Victor Vore, M.D. and Gordon A. Caron, M.D., under the terms described in the notice of proposed exemption, provided such terms were not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 2, 1984 at 49 FR 7869.

Effective Dates: This exemption is effective from January 1, 1975 through June 30, 1983.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 406(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/
or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 26th day of April, 1984.

Elliot I. Daniel,

[FR Doc. 84-11701 Filed 4-30-84; 8:45 am]
BILLING CODE 4510-20-M

[Application No. D-3604 et al.]

Proposed Exemptions; Third Revised Profit Sharing and Retirement Plan of International Rectifier Corporation et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1984 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Third Revised Profit Sharing and Retirement Plan of International Rectifier Corporation (the Plan) Located in El Segundo, California.

[Application No. D-3604]

Proposed Exemption

The Department is considering granting an exemption under the section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed continuation past June 30, 1984, of the leases of five parcels of real property (the Properties) by the Plan to International Rectifier Corporation (the Employer), the sponsor of the Plan, provided that (1) the terms and conditions of the leases are at least as favorable to the Plan as the Plan could obtain in similar transactions with unrelated parties; and (2) after December 31, 1987 the aggregate value of the Properties is paid to the Employer at anytime will not exceed 25 percent of the assets of the Plan.

Effective Date: The effective date of this exemption, if granted, would be July 1, 1984.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with approximately 955 participants and total assets of approximately $9,840,157 as of September 30, 1983. The Plan is managed and administered by a committee of employees of the Employer. Union Bank of Los Angeles, California (Union) is the trustee of the Plan. The Properties consist of five separate buildings all located in El Segundo, California and are used by the Employer in its manufacturing business. The Properties have been leased to the Employer under separate leases. Each Property acquired by the Plan was leased to the Employer prior to July 1, 1974. The applicant asserts that none of the leases constitute a prohibited transaction under section 406 of the Act and 4975 of the Code because each qualifies for the transitional relief provided by section 414(c)(2) and 2003(c)(2)(B) of the Act.

2. Each lease for the five parcels is for a three year term expiring at various times in 1983, 1984 and 1985. The applicant represents that each renewal prior to July 1, 1984 was and will be in accordance with the provisions of section 414(c)(2) of the Act. The applicant proposes that after these expiration dates each lease may be renewed for five additional periods of three years each. Each lease is a triple net lease pursuant to which the Employer is responsible for the costs of all insurance, taxes, utilities, maintenance and repairs. As of June 18, 1982, the five Properties had a collective fair market value of $3,391,000, as determined by R. A. Eigenbrodt, M.A.I., an independent appraiser from Los Angeles, California. The fair market values of the Properties range from

1 The Department offers no opinion as to whether the leases qualify for the transitional relief provided by section 414(c)(2) and 2003(c)(2)(B) of the Act.
$235,000 to $949,000. The Properties represent approximately 35 percent of the assets of the Plan. Monthly rentals under the leases have always been paid.

3. As of July 1, 1984, Union will act as an independent fiduciary for the subject transactions. Union is independent of the Employer and presently manages many employee benefit plan accounts, the total market value of which is $237,362,000. As of July 1, 1984 and upon subsequent lease renewals the fair market rental values on the leases will be determined by Union and, if necessary, rentals will be adjusted accordingly. Union represents that the leases will at all times be at fair market rental value. Union has examined the terms of the leases and represents that the continuation of the leases past June 30, 1984 is in the best interests of the Plan. As of July 1, 1984, Union will also monitor the terms of the leases on the Plan's behalf and enforce the rights of the Plan under the leases throughout their durations. In addition, Union will review the terms of any future sale of the Property to determine whether the proposed sale is reasonable and appropriate. Union represents that no sale will be permitted below fair market value, that each Property has proven to be an excellent investment for the Plan, and, because of their separate locations in one of the prime commercial districts of Los Angeles County, the Properties can be sold or leased independently should the need arise. Union further represents that the remainder of the Plan's portfolio is invested in highly liquid assets which would be more than adequate to cover the cash needs of the Plan. Also, Union represents that the Plan will sell two additional buildings which are leased to the Employer prior to June 30, 1984. Union represents that a sale of any of the remaining Properties prior to June 30, 1984 to further reduce the percentage of the assets of the Plan involved in leases with the Employer will depress the selling price of those Properties and the fair market value of any remaining Properties held by the Plan and as a result would cause a loss to the Plan. The applicant represents that as of December 31, 1987, the Properties will comprise no more than 25 percent of the assets of the Plan and no more than 25 percent of the assets of the Plan upon the renewal of any of the leases of the Properties occurring after December 31, 1987.

4. The applicant represents that the proposed transactions satisfy the statutory criteria of section 406(a) of the Act because: (a) As of July 1, 1984, Union will act as independent fiduciary for the subject transactions; (b) Union represents that the continuation of the leases past June 30, 1984 is in the best interests of the Plan; (c) rentals under the leases will be determined and will be periodically adjusted by Union; (d) Union will monitor the terms of the leases and enforce the rights of the Plan under the leases and will review the terms of any sale of a Property to determine whether the sale is at least at fair market value; and (e) as of December 31, 1987 and upon any subsequent lease renewal the Properties will represent no more than 25 percent of the assets of the Plan.

For further Information Contact: Louis Campagna of the Department, telephone (202) 523-6973. (This is not a toll-free number.)

The Kimball International, Inc. Indirect Retirement Plan (the Indirect Plan) and the Kimball International, Inc. Direct Retirement Plan (the Direct Plan; Collectively, the Plans) Located in Jasper, Indiana

[Application Nos. D-3940 and D-3641]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(e)(2) of the Code in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 23, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(e)(1)(A) through (E) of the Code, shall not apply: (1) to the proposed continuation past June 30, 1984 of a lease (the Indirect Lease) by the Indirect Plan of certain improved real property in Kimball Intercantional, Inc. (the Employer), the sponsor of the Plans; (2) effective January 1, 1975, to October 5, 1982, to the past lease (the Direct Lease) by the Direct Plan of certain improved real property (the Warehouse Property) to the Employer; and (3) effective October 6, 1982, to the lease (the New Direct Lease) of the Warehouse Property by the Direct Plan to the Employer.

Summary of Facts and Representations

1. The Indirect Plan is a defined contribution profit sharing pension plan with approximately 1,198 participants and with assets of $40,300,950 as of June 30, 1982. The Direct Plan is a defined contribution profit sharing pension plan with approximately 3,520 participants and with assets of $22,433,936 as of June 30, 1982. The Employer is engaged in the manufacture and marketing of pianos, organs, furniture, contract cabinets and processed wood products. The assets of the Plans are held and managed by the Spring Valley Bank and Trust Company (the Trustee) located in Jasper, Indiana. The Trustee is not related to the Employer.

2. On April 1, 1974, the Trustee, acting on behalf of the Indirect Plan, entered into the Indirect Lease with the Employer under which the Indirect Plan leased to the Employer three parcels of real property (the Properties) consisting of three production facilities used by the Employer: the Electronics Division Plant and the Stylemasters Production Plant, both of which are located in Jasper, Indiana, and the Piano Plant located in West Baden, Indiana. The Indirect Lease is a triple net lease which obligates the Employer to insure the Properties against loss by fire or other hazards to provide public liability, bodily injury and property damage insurance on the Properties, and to pay all taxes and utility and maintenance costs of the Properties. The Indirect Lease provides for an initial term of ten years, renewable for an additional 10 year term. The amount of annual rent under the Indirect Lease was initially set at $450,000 and the Indirect Lease provided that the amount of rental would be subject to adjustment at five year intervals to reflect increases in the fair market rental value of the Properties as determined by independent professional appraisals of the Properties. Such an adjustment was made in 1979. In addition, periodic reappraisals of the Properties have been made as a result of additions to the Properties. The total rental received by the Indirect Plan under the Indirect Lease in 1982 was $591,370. An appraisal of the Properties was made on July 28, 1981 by James A. Theiman and Edwin H. Pieper (Theiman and Pieper), professional property appraisers located in Jasper, Indiana. Theiman and Pieper determined that as of July 28, 1981 the Electronics Plant, the Stylemasters Production Plant and the Piano Plant had fair market values of $2,400,000, $770,500 and $2,700,000, respectively. The Employer represents that as of May 18, 1983 the Properties constituted approximately 12.9% of the total assets of the Indirect Plan. On August 14, 1982 the Trustee and the Employer executed amendments to the Indirect Lease which updated the legal description of the Properties and provided for three additional five-year renewal terms beyond the original ten-year renewal term, subject to mutual agreement by the Trustee and the Employer. These amendments also provided that rent under the Indirect Lease will be subject to adjustment at...
three-year intervals by two independent professional appraisers, one selected by the Trustee and one selected by the Employer, who jointly will select a third appraiser, in the event of disagreement, to resolve any differences between the appraisals.

3. On October 6, 1982 Trustee and Arthur L. Dillard, Esq. (Dillard), who is unrelated to the parties to the Indirect Lease, executed an agreement (the Appointment) under which the Trustee appointed Dillard as an independent fiduciary to represent the Indirect Plan with respect to the Indirect Lease. Pursuant to the Appointment, Dillard will represent the interests of the Indirect Plan under the Indirect Lease by monitoring performance of the terms and conditions of the lease, receiving rental payments from the Employer and acting in the place of the Trustee in the triennial rental adjustments required by the lease. According to the terms of the Appointment, no transaction for which this exemption is requested may be entered into without the prior approval of Dillard. Dillard is an attorney who has practiced law in Indiana over ten years with particular experience in real estate matters and with experience under the Act. The Employer asserts that the Indirect Lease is a lease involving a party in interest pursuant to a binding contract in effect on July 1, 1974, as defined under sections 414(c)(2) and 2003(c)(2)(B) of the Act, and therefore is statutorily exempt until June 30, 1984 from the prohibitions of sections 406 and 407(a) of the Act and section 4973 of the Code by virtue of sections 414(c)(2) and 2003(c)(2)(B) of the Act. The Employer is requesting an exemption to permit the continuation of the Indirect Lease, as amended, past June 30, 1984 according to its terms.

4. Dillard represents that he has reviewed, evaluated and approved the New Direct Lease, including and concluding with the Indirect Lease, whether the Indirect Lease constituted a lease pursuant to a binding contract in effect on July 1, 1974 and 2003(c)(2)(B) of the Act, or whether the Indirect Lease in performance of the Employer as lessee, pursuant to the Indirect Lease, executed an agreement (the Appointment) under which the Trustee appointed Dillard as an independent fiduciary to represent the Indirect Plan with respect to the Indirect Lease. Pursuant to the Appointment, Dillard will represent the interests of the Indirect Plan under the Indirect Lease by monitoring performance of the terms and conditions of the lease, receiving rental payments from the Employer and acting in the place of the Trustee in the triennial rental adjustments required by the lease. According to the terms of the Appointment, no transaction for which this exemption is requested may be entered into without the prior approval of Dillard. Dillard is an attorney who has practiced law in Indiana over ten years with particular experience in real estate matters and with experience under the Act. The Employer asserts that the Indirect Lease is a lease involving a party in interest pursuant to a binding contract in effect on July 1, 1974, as defined under sections 414(c)(2) and 2003(c)(2)(B) of the Act, and therefore is statutorily exempt until June 30, 1984 from the prohibitions of sections 406 and 407(a) of the Act and section 4973 of the Code by virtue of sections 414(c)(2) and 2003(c)(2)(B) of the Act. The Employer is requesting an exemption to permit the continuation of the Indirect Lease, as amended, past June 30, 1984 according to its terms.

5. On September 15, 1974, the Trustee, acting on behalf of the Direct Plan, entered into a lease (the Direct Lease) with the Employer under which the Direct Plan leased to the Employer a parcel of real property (the Warehouse Property) on which the Direct Plan constructed a general purpose warehouse in 1974 and 1975. The Direct Lease is a triple net lease with terms substantially identical to the original terms of the Indirect Lease, including the provisions for insurance and rental adjustments. The Direct Lease provided for an initial term of 10 years, renewable for an additional ten-year term. The amount of annual rental under the Direct Lease was initially set at $75,000. The terms of the Direct Lease required a review of the annual rental amount in 1979 to determine whether the rental should be increased because of any increase in the fair market rental value of the Warehouse Property since the execution of the Direct Lease in 1974. The Employer represents that the Trustee determined that the fair market rental value of the Property was below the amount of annual rental required under the Direct Lease and that as a result the annual rental under the Direct Lease was not adjusted in 1979. An appraisal of the Warehouse Property was made on July 23, 1961 by Theiman and Pieper who determined that the Warehouse Property had a fair market value of $724,000. The Employer represents that as of May 18, 1993 the Warehouse Property constitutes less than 3% of the total assets of the Direct Plan.

6. On August 14, 1982 the Trustee and the Employer executed amendments to the Direct Lease which updated the legal description of the Warehouse Property and provided for three additional five-year terms beyond the original ten-year renewal term, subject to mutual agreement by the Trustee and the Employer. These amendments also provided that the amount of rental under the Direct Lease would be subject to adjustment at three-year intervals pursuant to the same procedure provided for rental adjustment in the amendments to the Indirect Lease.

On October 6, 1982 the Trustee and Dillard executed the Appointment under which the Trustee appointed Dillard as an independent fiduciary to represent the interests of the Direct Plan under the Direct Lease. The Employer maintains that by the amendments to the Direct Lease, including and concluding with the October 6, 1982 appointment of Dillard to act as an independent fiduciary, the Direct Lease was effectively terminated and the resulting lease arrangement constitutes a new lease (the New Direct Lease). The Appointment requires Dillard to monitor performance of the terms and conditions of the New Direct Lease, receive rental payments from the Employer and act in the place of the Trustee in the triennial rental adjustment required by the New Direct Lease. According to the terms of the Appointment, no transaction for which this exemption is requested may be entered into without the prior approval of Dillard. Dillard is an attorney who has practiced law in Indiana over ten years with particular experience in real estate matters and with experience under the Act. The Employer asserts that the Indirect Lease is a lease involving a party in interest pursuant to a binding contract in effect on July 1, 1974, as defined under sections 414(c)(2) and 2003(c)(2)(B) of the Act, and therefore is statutorily exempt until June 30, 1984 from the prohibitions of sections 406 and 407(a) of the Act and section 4973 of the Code by virtue of sections 414(c)(2) and 2003(c)(2)(B) of the Act. The Employer is requesting an exemption to permit, effective January 1, 1975 through October 5, 1982, the Direct Lease and to permit, effective October 6, 1982, the New Direct Lease and its proposed continuation according to its terms.

7. Dillard represents that he has reviewed and evaluated the past performance of the Employer as lessee under the Direct Lease and the New Direct Lease in consideration of the suitability of the Employer as a tenant under the proposed continuation of the New Direct Lease. Dillard has determined that such past performance of the Employer has been excellent. Dillard notes that the Employer has met and exceeded its contractual obligations under the leases, making all rental payments when due and making improvements to the Warehouse Property beyond its fulfilled duty of maintenance and repair. Dillard also notes that the Employer has continuously satisfied its obligations to insure the Warehouse Property against all risks and to maintain all necessary records relating to the leases. In Dillard's opinion, the Employer has been and will be a very reliable and favorable tenant under the Direct Lease and the New Direct Lease. Dillard represents that he has reviewed and evaluated and approved the New Direct Lease and its proposed continuation, and has determined that it has been and
will be in the best interests and protective of the participants and beneficiaries of the Direct Plan.

8. In summary, the applicant represents that the statutory criteria of section 408(a) of the Act will be satisfied with respect to the proposed continuation of the Indirect Lease past June 30, 1984 because: (1) the terms of the Indirect Lease provide for rental at the fair market rental values of the Properties and require increases in rentals commensurate with increases in the fair market rental values of the Properties; (2) the Indirect Lease has been amended to require triannual rental review; (3) the interests of the Indirect Plan under the Indirect Lease will be represented by an independent fiduciary who, for the duration of the Indirect Lease, will monitor performance of the terms and conditions of the Indirect Lease, receive rental payments from the Employer, act in the place of the Trustee in the triannual rental review, and pursue appropriate remedies on behalf of the Indirect Plan in the event of the Employer’s default or any defect in the Employer’s performance under the Indirect Lease; and (4) the independent fiduciary has reviewed the proposed continuation of the Indirect Lease past June 30, 1984 and has determined that it will be an appropriate investment for the Indirect Plan and will be in the best interests and protective of the participants and beneficiaries of the Indirect Plan.

The applicant represents that the statutory criteria of section 408(a) of the Act have been and will be satisfied with respect to the Direct Lease and the New Direct Lease because: (1) the initial annual rental under the Direct Lease constituted the fair market rental value of the Warehouse Property; (2) the Direct Lease has provided for periodic increases in rental commensurate with the fair market rental value of the Warehouse Property; (3) from the date of execution of the Direct Lease, through October 5, 1982, the interests of the Direct Plan under the Direct Lease were represented for all purposes by an independent fiduciary, the Trustee; (4) since October 6, 1982, the interests of the Direct Plan under the New Direct Lease have been represented for all purposes by an independent fiduciary, Dillard; (5) the Employer’s past performance under the Direct Lease and the New Direct Lease have been reviewed and evaluated by an independent fiduciary, Dillard, who has found that such past performance has been excellent and that the Employer met and exceeded its contractual obligations under such leases; (6) the interests of the Direct Plan under the New Direct Lease will be represented by Dillard, an independent fiduciary who, for the duration of the New Direct Lease, will monitor performance of the terms and conditions of the New Direct Lease, receive rental payments from the Employer, act in the place of the Trustee in the triannual rental review, and pursue appropriate remedies on behalf of the Direct Plan in the event of the Employer’s default or any defect in the Employer’s performance under the New Direct Lease; (7) the New Direct Lease provides for triannual rental review; and (8) the independent fiduciary has reviewed the Direct Lease and the New Direct Lease and has determined that they have been and will be appropriate investments for the Direct Plan and in the best interests and protective of the participants and beneficiaries of the Direct Plan.

Finally, the applicant represents that the Direct Lease was executed prior to the effective date of the Act without knowledge that the Direct Lease would become prohibited on January 1, 1975. As soon as the applicant realized that the Direct Lease had become prohibited, the applicant effectively terminated the Direct Lease by the amendment of its terms and the appointment of an independent fiduciary to act in the place of the Trustee, and applied for an exemption of the resulting New Direct Lease.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

The Western Conference of Teamsters Pension Trust Fund (the Plan) Located in Seattle, Washington

[Application No. D-3960]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, effective August 1, 1982, to the acquisition or holding on behalf of the Plan of a security issued by an employer of employees covered by the Plan, an affiliate of such an employer as defined in section 407(d)(7) of the Act, or a person who is a party in interest with respect to the Plan by virtue of a relationship described in Act section (3) (14), (E), (G), (H) or (J) to such an employer, provided that the fiduciary responsible for the Plan’s engaging in the transaction is the Equitable Life Assurance Society of the United States (Equitable), the Aetna Life Insurance Company (Aetna) or the Prudential Insurance Company of America (Prudential), and further provided that the Plan pays no greater than the fair market value of the security at the time of acquisition.

Effective Date: If the proposed exemption is granted, it will be effective August 1, 1982.

Summary of Facts and Representations

1. The Plan was established in 1955 and currently is the largest private collectively bargained multiemployer pension plan in the United States. The Plan has approximately 556,000 participants, including 110,000 persons receiving benefits. There are approximately 15,000 contributing employers in the Plan. The largest single employer, a steel company, contributed approximately 5.02 percent of employer contributions received by the Plan during the past year. No other single employer contributes as much as 5 percent of total Plan contributions. The Plan has total assets of approximately $4 billion.

2. Until July 1982, the assets of the Plan were managed exclusively by Prudential pursuant to the terms of an Immediate Participation Guarantee contract issued by Prudential to the trustees of the Plan. Assets held by Prudential under the contract were allocated to Prudential’s general account (approximately $2.3 billion) and to various pooled separate accounts.

3. Between July and October, 1982, the trustees of the Plan modified the above described arrangements by instituting two new investment programs. In July 1982, the Plan’s trustees entered into agreements with Equitable, Aetna and Prudential (together, the Companies) for the creation, by each of the Companies, of a single customer separate account to be invested primarily in common stocks. The accounts were to funded over a one-year period beginning August 1, 1982, in the amount of $120 million each. As of June 30, 1983, the value of the Prudential account was approximately $137 million, the Equitable account $142 million and the Aetna account $141 million. In July, 1983, the Plan’s trustees authorized the allocation of an additional $30 million to each of the single customer common stock. In October 1982, the trustees authorized Prudential to establish another single customer account in the nature of a dedicated bond fund to be known as the 1982 Annuity Account.
This account was funded in the amount of $500 million. The objective of Prudential in managing the 1982 Annuity Account is to match the maturities and yields of the Account’s portfolio of debt investments with the projected cash flow requirements necessary to meet benefit payments to the group of retirees for whom the Account is dedicated. As of June 30, 1983, the value of the assets in the 1982 Annuity Account was approximately $221 million.

4. With respect to each of these new single customer accounts, the Companies will have full discretion within the investment policies established for the accounts in selecting investments. The Companies will not be subject to any policies or direction from the Plan’s trustees with respect to investments in securities issued by contributing employers, their affiliates or other parties in interest who are related to contributing employers. In investing the Plan’s assets, the Companies will consider an enormous number of possible investments and will engage in numerous investment transactions each year.

5. Prudential and Equitable are mutual life insurance companies organized under the laws of the States of New Jersey and New York, respectively. Aetna is a stock life insurance company organized under the laws of the State of Connecticut. All three Companies are among the largest life insurance companies in the United States: currently, Prudential ranks first in size, Equitable is third, and Aetna is fourth. The total amount of assets of each of the Companies (including general account, separate account and investment advisory account assets) as of December 31, 1982 was as follows: (1) Prudential—$66.7 billion; (2) Equitable—$48.8 billion; and (3) Aetna—$25.5 billion. Total Plan assets as of June 30, 1983 had a value of approximately $4.6 billion. As a percentage of total Company assets, the Plan assets allocated to each of the Companies (taking into account the additional $30 million authorized by the Plan’s trustees in July, 1983) is approximately as follows: (1) Prudential—6.4%; (2) Equitable—0.4%; and (3) Aetna—0.6%.

6. None of the trustees of the Plan is an officer, director or employee of any of the Companies. Further, none of the officers, directors or employees of the Companies has any discretionary authority or responsibility with respect to the selection, retention or removal of investment managers for the Plan. In addition, none of the Companies is a contributing employer to the Plan or an affiliate (as defined in section 407(d)(7) of the Act) of any contributing employer.

7. Because the Plan has a large number of contributing employers, their affiliates and other employer-related parties in interest, it is likely that some of the securities which the Companies will acquire or hold may be issued by such persons. Where the Companies acquire or hold securities issued by employers or affiliates of employers which are not qualifying employer securities, or acquire or hold qualifying employer securities of a value in excess of 10% of the value of the Plan’s assets, or acquire or hold securities issued by persons who are parties in interest with respect to the Plan by virtue of a relationship to a contributing employer but are not affiliates, sections 406(a) and 407(a) of the Act may be violated in the absence of the requested exemption. Such violations may be deemed to have occurred even where the Companies are unable, as a practical matter, to determine whether the securities are qualifying or whether the issuers are employers, affiliates or have party in interest relationships through an employer and where the transaction is advantageous to the Plan.

8. The applicant represents that the Companies will have extreme difficulty ascertaining whether or not the issuer of a security is an employer or an affiliate of an employer because: (1) the Plan has more than 15,000 contributing employers; (2) there are likely to be as many as 100,000 corporate affiliates of these contributing employers; (3) the list of the employers and their affiliates is constantly changing; and (4) there are untold thousands of issuers of publicly traded and privately issued bonds and other debt securities. The applicant represents that it will be similarly difficult or impossible to determine whether debt securities acquired or held for the Plan in, for example, the 1982 Annuity Account will satisfy the various conditions required for “marketable obligations” so as to constitute qualifying employer securities.

9. The applicant represents that the difficulty of complying with the prohibited transaction restrictions in the context of securities issued by employers, affiliates and related parties in interest leaves the Plan’s asset managers in a constant condition of uncertainty with respect to whether they may be engaging in inadvertent violations of the Act. Finally, the applicant represents that the application of the restrictions and the Plan’s efforts to comply with them would result in an unnecessary narrowing of potential investments for the Plan and a loss of attractive investment opportunities.

10. In summary, the applicant represents that the subject transactions meet the criteria contained in section 406(a) of the Act because: (1) the Plan’s trustees have determined that it is prudent and in the interests of Plan participants and beneficiaries to have a portion of the Plan’s assets invested in securities by means of single customer accounts managed by several investment managers; (2) transactions covered by the proposed exemption may be engaged in only by professional, independent investment managers, namely the Companies, acting on behalf of the Plan; (3) the Plan’s investment managers have full discretion in selecting investments within the investment policies for each account; (4) no policies, guidelines or directives are given to the investment managers regarding investments in securities issued by employers, their affiliates or related parties in interest; (5) securities purchased pursuant to the proposed exemption may be acquired for no more than adequate consideration; and (6) the percentage of total assets managed by the Companies represented by Plan assets is very small for each of the three companies.

For Further Information Contract: Gery H. Lefkowitz of the Department, telephone (202) 529-8881. (This is not a toll-free number.)


The Department is considering granting an exemption under the authority of section 406 of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1976). If the exemption is granted the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The sale of a parcel of real estate (the Property) from the Plan to Drs. L. J. Jensen, R. C. Shroyer and E. W. Anderson (the Trustees) at the higher of (a) its appraised fair market value or (b) the total expenditures incurred by the Plan in connection with the acquisition and holding of the Property through the date of sale. In addition, the Trustees will assume the unpaid balance due on the land contract (the Contract) which
Summary of Facts and Representations

1. The Plan is a defined benefit plan with 86 participants. The Plan had total assets of $130,412 as of September 30, 1982. Doctors Jensen, Shroyer and Anderson serve as trustees of the Plan and have complete discretion with respect to the investment of Plan assets. The Trustees also serve as officers and directors of Drs. Jensen, Shroyer and Anderson, P.C., a professional corporation engaged in the practice of dentistry.

2. On September 21, 1979 the Plan purchased for investment purposes undeveloped land from Robert Horan, Jr., an unrelated party with respect to the Plan for a total price of $93,250, which included a cash down payment of $15,000 and a $78,290 land contract for 105 months at 9% interest, payable quarterly. Since the purchase, the Property has produced no income for the Plan.

3. Since the purchase, the Property has been held in connection with the acquisition and holding of the Property; (c) the sale will not incur any sales commissions or expenses of any kind with respect to the proposed sale.

4. As of May, 1983, the total real estate taxes paid on the Property were $3,809.55. In addition, the Plan has paid $55,234.68 in interest payments and $71,920.22 in principal payments on the Contract, leaving $43,469.78 in unpaid principal due on the Contract. Therefore, as of May, 1983, the Plan’s total cash expenditures in connection with the acquisition and holding of the Property amounted to $79,664.45. Thus, a purchase price of $123,334.23 ($79,664.45 and $43,669.78) is necessary to insure that the Plan suffers no loss as a result of the acquisition and holding of the Property.

5. The applicant seeks an exemption to allow the Plan to: (1) Sell the Property to the Trustees at the higher of (a) its appraised fair market value or (b) the total expenditures incurred by the Plan in connection with the acquisition and holding of the Property through the date of sale. In addition, the Trustees will assume the unpaid balance due on the Contract. (2) Assign the Contract to the Trustees. Mr. James Kuenzel, a member of the American Association of Certified Appraisers, appraised the Property and determined that, as of February 1, 1983, it has a fair market value of $92,000. Mr. Kuenzel represents that the highest and best use of the Property is residential use. The purchase price will be no less than $123,334.23. Of this amount, the Plan will receive no less than $79,664.45 in cash, while each of the three purchasers would acquire a one-third interest in the Property and assume one-third of the balance due under the Contract, which as of May, 1983 was $43,469.78. The Plan will incur no commissions or expenses of any kind with respect to the proposed sale.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 406(a) of the Act because: (a) the Plan will be able to dispose of a non-income producing asset which has been decreasing in value; (b) the Property will be sold at a price which ensures that it will not sustain a loss on its investment and expenditures in connection with the holding of the Property; (c) the sale will be a one-time transaction and the Plan will not incur any sales commissions or other expenses with respect to the sale; and (d) the Trustees of the Plan represent that the proposed transaction will be in the best interests of the Plan.

For Further Information Contact:
David M. Cohen of the Department, telephone (202) 523-5971. (This is not a toll-free number.)

Stair Cargo Services, Inc. Employees Profit-Sharing Plan (the Plan) Located in Miami, Florida

[Application No. D-4419]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 401(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 72-1 (40 FR 16471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The sale of a parcel of real estate (the Property) from the Plan to Stair Reality (Stair), a party in interest with respect to the Plan, at the higher of (a) its appraised fair market value or (b) the total expenditures incurred by the Plan in connection with the acquisition and holding of the Property through the date of sale. In addition, Stair will assume the unpaid balance due on the land contract (the Contract) which encumbers the Property. (2) The possible assignment of the Contract by the Plan to Stair.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 86 participants. The Plan had total assets of $528,605.62 as of December 31, 1982. Mr. Cesareo Liano, Mr. Carlos Murchiano and Mr. Francisco Bernal are the trustees (the Trustees) of the Plan and principal shareholders of Stair Cargo Services, Inc. (the Employer). The Trustees have complete discretion with respect to investment of Plan assets.

2. The Plan presently holds the Property, an unimproved parcel of real estate located in Romulus, Michigan, near the Detroit Metropolitan Airport. The Plan acquired the Property, on September 29, 1981, from Central Distributors of Beer, Inc. (the Seller), a party unrelated with respect to the Plan. The Plan purchased the Property for $87,000. The Plan made a $30,000 down payment and executed a $57,000 3-year land Contract at 11% interest with the Seller.

3. Since the purchase, the Property has produced no income for the Plan. The applicant represents that owing to the general decline in Michigan real property values, the Property may be expected to decline in value during the foreseeable future. The applicant further represents that the sale will allow the Plan to secure a positive return upon its reinvestment of the proceeds. Therefore, the applicant represents that the sale of the Property will be in the best interests of the Plan, its participants and beneficiaries.
4. In addition to the $30,000 cash downpayment, as of July 1, 1983, the Plan had paid $1,996.36 in real estate taxes, $6,600.37 in interest costs and $532 in closing costs. In addition, the Plan has made $29,631.23 in principal payments on the Contract, leaving $27,168.77 in unpaid principal due on the Contract. Therefore, the Plan has incurred $70,959.96 in expenditures in connection with the acquisition and holding of the Property. Thus a purchase price of $96,128.73 ($70,959.96 and $27,168.77) is necessary to insure that the Plan suffers no loss as a result of the acquisition or holding of the Property. The Property has produced no income for the Plan.

5. The applicant seeks an exemption to permit the Plan to: (1) Sell the Property to Stair at the higher of (a) its appraised fair market value or (b) the total expenditures incurred by the Plan in connection with the acquisition and holding of the Property through the date of sale. In addition, Stair will assume the unpaid balance due on the Contract. (2) Assign the Contract to Stair. On April 27, 1982 and June 23, 1983, Mr. Donald H. Treadwell, Jr., M.A.I. appraised the Property and determined that as of those dates, the Property had a fair market value of $87,000. On June 14, 1983, Mr. Treadwell indicated that the Property was not a special purchase property to Stair nor to the Employer and that no premium price was warranted. The purchase price will be no less than $86,128.73. Of this amount, the Plan will receive no less than $70,959.96 in cash while Stair will assume the balance due under the Contract, which is currently $27,168.77. The applicant represents that the Seller has agreed to release the Plan from liability under the Contract contingent upon receipt by the Seller of a fully executed copy of an assignment by which Stair assumes all liabilities of the Plan. The applicant further represents that the Plan will pay no fees nor commissions with respect to the proposed sale.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) the Plan will be able to dispose of a non-income producing asset; (b) the Property will be sold at a price which ensures that it not sustain a loss on its investment and expenditures in connection with the holding of the Property; (c) it will be a one-time transaction and the Plan will not incur any sales commissions or other expenses with respect to the sale; and (d) the Trustees have determined that the proposed transaction is in the best interests and protective of the Plan and its participants and beneficiaries.

For further information contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Preamble

On March 23, 1979, the Department published a class exemption, PTE 79-9, which permits employee benefit plans to purchase certain notes from employers any of whose employees are covered by the plan where the employers receive such notes in the ordinary course of business and the notes are collateralized by security agreements on the property purchased by the customers. Among other conditions, PTE 79-9 provides that with respect to such notes secured by tangible personal property other than heavy equipment or motor vehicles, the term of the notes shall not exceed 36 months. Pursuant to PTE 79-9, the Plan has been investing in the Plan sponsor’s customer notes with terms of 36 months or less where the notes are secured by tangible personal property other than heavy equipment or motor vehicles. The trustees of the Plan now wish to purchase customer notes secured by tangible personal property other than heavy equipment or motor vehicles with remaining terms of 36 to 48 months (the Additional Notes). The Plan must review such proposed purchase transactions with respect to such notes secured by tangible personal property other than heavy equipment or motor vehicles. The trustees of the Plan now wish to purchase customer notes secured by tangible personal property other than heavy equipment or motor vehicles with remaining terms of 36 to 48 months (the Additional Notes), in order to increase the Plan’s investment in customer notes. Because the terms of the Additional Notes would exceed 36 months, such transactions would not be covered by PTE 79-9. However, because the Plan’s trustee has agreed to meet additional conditions in place of the 36-month limitation of PTE 79-9 and to meet all other conditions of PTE 79-9, the Department believes that relief comparable to that afforded by PTE 79-9 would be appropriate.

Summary of Facts and Representations

1. The Plan is a profit sharing pension plan with 257 participants and assets of approximately $6,489,139 as of September 30, 1983. The Plan’s sponsor is Carvel, a Delaware Corporation engaged in the business of licensing and servicing retail ice cream stores under the Carvel trade name. Carvel had net assets of $30,775,676, as of June 30, 1983. Carvel represents that the Plan is an eligible individual account plan as defined in section 407(c)(5) of the Act. The Plan is administered by three trustees (the Trustees), one of whom is an officer and director of Carvel and two of whom (the Independent Fiduciaries) are not otherwise related to Carvel. The Independent Fiduciaries are William O. Burnett (Burnett) and Robert N. Ettlinger (Ettlinger). Burnett is a Certified Financial Analyst who represents that he has substantial fiduciary expertise under the Act and that he is independent of and unrelated to Carvel and its principals except as...
Trustee of the Plan. Ettlinger is a Certified Public Accountant who represents that he has substantial fiduciary experience under the Act and that he is independent of and unrelated to Carvel and its principals except as Trustee of the Plan.

2. Upon the licensing and opening of new Carvel stores, Carvel finances approximately two-thirds of each dealer’s license and equipment costs and each dealer executes a two-party promissory note in that amount (the Notes) in favor of Carvel. The Notes are payable in monthly installments over seven years with an effective annual interest rate of approximately 15%. Each Note is secured by a security agreement and recorded lien on the dealer’s store and equipment. Carvel represents that the Notes are customer notes within the definition of PTE 79-9.

3. Pursuant to PTE 79-9, since 1979 on behalf of the Plan the Trustees have been purchasing from Carvel on a monthly basis all of Carvel’s customer notes with remaining terms of 36 months or less. As of September 30, 1983 the value of the Notes held by the Plan was $1,795,856, which represented approximately 28.5% of total Plan assets. In 1982, the annual yield on the Notes held by the Plan was 14.7% and the annual yield on total Plan assets was 14.2%.

4. As of March 31, 1983, approximately $1,500,000 of Additional Notes issued to Carvel with remaining terms of 36 to 48 months would have been available for purchase by the Plan but for the 36-month term limitation imposed by PTE 79-9. The Trustees now wish to purchase from Carvel such Additional Notes with remaining terms of 36 to 48 months and are requesting an exemption to allow such purchases on behalf of the Plan for a period of five years.

5. The Trustees represent that all purchases of the Additional Notes will continue to satisfy all conditions of PTE 79-9 except for the condition relating to the remaining term of the notes. The Trustees agree that the following conditions, as substitute for the 36-month term condition of PTE 79-9, shall apply to all purchases of the Additional Notes:

(A) Prior to each purchase of an Additional Note, such proposed purchase shall be reviewed and evaluated by the Independent Fiduciaries. The Plan may purchase an Additional Note only after approval by both of the Independent Fiduciaries, who must determine that the proposed purchase will be for the exclusive benefit of the Plan and in the best interests and protective of the participants and beneficiaries of the Plan.

(B) The Plan may purchase an Additional Note only if, after such purchase, no more than five percent of the Plan’s assets would be invested in the customer notes of any one Carvel dealer.

(C) Additional Notes purchased by the Plan must yield an annual return of no less than 10 percent.

(D) Carvel shall repurchase any Additional Note from the Plan for its unpaid principal amount at any time upon the request of both of the Independent Fiduciaries, with the proceeds of such repurchase shall bear all expenses in connection with such repurchase.

6. The applicants agree that this exemption, if granted, shall expire five years from the date it is granted. The Trustees represent that as of September 30, 1983, aside from customer notes, the only assets of the Plan to which Carvel had any relationship are 28,000 shares of common stock of Carvel with a total value of $732,830.

7. In summary, the applicants represent that the purchases of Additional Notes will satisfy the terms of PTE 79-9 relating to the purchase and repurchase of customer notes, except for the limitation of 36 months on the term of customer notes secured by tangible personal property other than heavy equipment or motor vehicles, which will be satisfied by the purchases of Additional Notes; (3) a purchase shall occur only after both Independent Fiduciaries have determined that such purchase will be for the exclusive benefit of the Plan and in the best interests and protective of its participants and beneficiaries; and (4) the Trustees have agreed that the purchases of Additional Notes will satisfy additional conditions imposed by this proposed exemption as substitute for the condition in PTE 79-9 limiting the term of customer notes to 36 months.

For Further Information Contact: Ronald B. Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Equitable Life Leasing Corporation (the Company) Located in San Diego, California

[Application No. D-4700]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 408(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to (1) the extension of credit by a plan with respect to which the Company is a party in interest, arising from the acquisition or holding by the plan of notes (the Notes) as described in this notice of proposed exemption; and (2) the sale by the Company, directly or indirectly, of the Notes to a plan with respect to which the Company is a party in interest, provided that the terms of such extension of credit or sale are at least as favorable to the plan as those obtainable in an arm’s-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Equitable Life Assurance Society of the United States (Equitable) is a mutual life insurance company organized under the laws of the State of New York. It is the third largest life insurance company in the United States, having total assets, as of December 31, 1982 of approximately $41.1 billion. Among the wide variety of insurance products and services it offers, Equitable provides funding, asset management and other services for thousands of employee benefit plans (the Plans) subject to Title I of the Act.

2. The Company is an indirect wholly-owned subsidiary of Equitable. All of the outstanding stock of the Company is owned by the Equitable Life Holding Corporation, which is a wholly-owned subsidiary of Equitable. All of the directors of the Company are employees of Equitable or its subsidiaries. The Company was incorporated in Delaware in 1962 and its principal executive offices are in San Diego, California. The Company, directly and through its wholly-owned subsidiary Equitable/ Omnicar Corporation, is engaged in the business of providing equipment lease financing to a wide variety of commercial and industrial users of capital goods.

3. The Company is presently a party to approximately 34,000 leases and finance contracts. The Company offers lease and financing arrangements with original terms ranging from two to ten years. As of December 31, 1982, the Company had total assets of $438,445,012. Funds required to finance the Company’s investments in leases and financing contracts have been generated from its asset portfolio, from
capital contributions and from the issuance of commercial paper, short-term bank borrowings and fixed-rate term debt. The Company anticipates that, in the future, funds will be obtained from these sources to a lesser extent and will be supplemented by public offerings of senior debt and preferred stock.

4. On June 1, 1983, the Company issued to the public 350,000 shares of cumulative preferred stock (the Stock). On July 22, 1983, the Company filed with the Securities and Exchange Commission (SEC) a registration statement (the Registration Statement) covering the Notes, which are to be issued by the Company at various times during the effective period of the Registration Statement. The Registration Statement was filed with the SEC under Temporary Rule 415 which authorizes the registration of securities for issuance on a delayed or continuous basis—a so-called "shelf registration". Consistent with the requirements of Temporary Rule 415 and the practices of the securities industry, the Registration Statement and the base prospectus (the Prospectus) contained in the Registration Statement generally describe the Notes to be issued.

5. The Notes will differ in amount, interest rate, maturity date and issue date, and may contain provisions for redemption, amortization and sinking fund payments. The amount, interest rate, maturity date and issue date of the Notes will be disclosed in Prospectus Supplements to be filed with the SEC and provided to purchasers as required under the securities laws. The Notes will bear interest from the dates issued at the annual rate stated on the face thereof. The interest will be paid by the Company semi-annually. The Notes will be direct, unsecured obligations of the Company, and will rank on a parity with all other unsecured and unsubordinated debt of the Company. The Notes will bear interest from the dates issued at the annual rate stated on the face thereof. The interest will be paid by the Company semi-annually. The Notes will be direct, unsecured obligations of the Company, and will rank on a parity with all other unsecured and unsubordinated debt of the Company.

6. The Notes are to be issued under an indenture (the Indenture) dated July 1, 1983, between the Company and Morgan Guaranty Trust Company of New York as Indenture Trustee. The Indenture contains a detailed statement of the rights and obligations of the Company, the Indenture Trustee and the holders of the Notes. The Indenture Trustee is not affiliated with either Equitable or the Company, but does have normal banking relationships with both.

7. The Notes will be issued in registered form only, without coupons, will have maturities of from more than 9 months to 10 years from the date of issue, and will be issuable at 100% of the principal amount in any denomination of $25,000 and integral multiples of $1,000 in excess thereof. The exact terms of each issuance of Notes will be described in supplements to the Prospectus. The Notes to be issued under the Prospectus are limited to $200,000,000 aggregate principal amount. The Notes will not be listed on a securities exchange; however, it is expected that the Notes will be traded in a secondary market. The applicants represent that the terms of the Indenture and the form of the securities to be issued thereunder are customary and usual terms employed in connection with the issuance of similar notes.

8. Under the terms of the Registration Statement, the Notes will be offered by the Company through Morgan Stanley & Co. Incorporated (the Agent) as agent on a best efforts basis, and may also be sold to the Agent for resale to investors at varying prices related to prevailing market prices at the time of resale as determined by the Agent. The Company reserves the right to sell Notes directly on its own behalf. Except where Notes are purchased by the Agent and resold for the Agent's account, the offering price of all Notes in a group of Notes issued by the Company will be the same to all purchasers.

9. The applicants have requested an exemption to permit Plans to acquire and hold the Notes. Because Equitable is a service provider to thousands of Plans, the acquisition and holding of the Notes by such Plans could constitute prohibited transactions. The applicants represent that they believe the acquisition and holding of the Stock by the Plans are not prohibited transactions because the Stock does not constitute a debt security and the Stock was issued through a firm commitment underwriting. The applicants represent that neither the Company nor Equitable will exercise any authority, discretion or control over the decision of any Plan to purchase Notes. Any such decisions will be made by the responsible fiduciaries of the Plan acting independently of the Company and Equitable. Plans maintained by the Company and by Equitable for their own employees will not purchase these Notes, nor will any separate accounts or investment advisory accounts managed by Equitable for other employee benefit plans.

10. In summary, the applicants represent that the proposed transactions meet the criteria of section 408(a) of the Act because: (1) the Plans will be acquiring the Notes in the open market or on the same terms as the Notes could be acquired on the open market; (2) any decision to enter into the proposed transactions will be made by fiduciaries to the Plans who are independent of the Company and Equitable; and (3) Plan fiduciaries making a decision to purchase Notes in an offering covered by the Registration Statement will have available current information relating to the Notes as required under the disclosure provisions of the federal securities laws.

Notice to Interested Persons

Because the applicants do not know and may be unable to determine which Plans may acquire these Notes, it has been determined that the only practical means of notification of interested persons is by publication in the Federal Register. Comments are due within thirty days of the date of publication of this notice.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone, (202) 523-8881. (This is not a toll-free number.)

J.C. Penney Co., Inc. (Penney)
Located in New York, New York

(Application No. D-4740)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (a) and (b) of the Act shall not apply, effective December 29, 1982 through December 31, 1984, to the reinsurance of risks and the receipt of premiums therefrom by J.C. Penney Life Insurance Company (Penney Life) from the life insurance contracts sold by the Great American Reserve Insurance Company (GARCo) to provide benefits to various employee benefit plans (the Plans) maintained by Penny Life and J.C. Penney Casualty Insurance Company (Penney Casualty), provided the following conditions are met:

(a) Penney Life—
(1) Is a party in interest with respect to the Plans by reason of section 3(14)(C) of the Act or by reason of a stock or partnership affiliation with Penney Casualty that is described in section 3(14)(E) or (G) of the Act.
(2) Is licensed to sell insurance in at least one of the United States or in the District of Columbia.
(3) Has obtained a Certificate of Compliance from the Insurance...
Department of its domiciliary state, Vermont, which has neither been revoked nor suspended; and
(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or
(B) Has undergone a financial examination (within the meaning of the law of its domiciliary state, Vermont) by the Vermont Commissioner of Insurance within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plans pay no more than adequate consideration for the insurance contracts;
(c) No commissions are paid with respect to the direct sale of the contract, or the reinsurance thereof; and
(d) For each taxable year of Penny Life, the gross premiums and annuity considerations received in that taxable year by Penny Life for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which Penney Life is a party in interest by reason of a relationship to such employer described in section 3(14) (E) or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by Penney Life. For purposes of this condition (d):
(1) The term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by Penney Life. This total is to be reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by Penney Life.
(2) All premium and annuity considerations written by Penney Life for plans which it alone maintains are to be excluded from both the numerator and denominator of the fraction.

Effective Date: If the proposed exemption is granted, it will be effective from December 29, 1982 through December 31, 1984.

Summary of Facts and Representations

1. Penney is a large publicly held corporation organized under the laws of the State of Delaware. The dominant portion of its business consists of providing merchandise and services to consumers through retail stores, including catalog operations.

2. The Plans which are the subject of this proposed exemption are welfare benefit plans. They are: (1) a group medical insurance plan for employees of Penney Life and Penney Casualty; (2) group term life insurance plans for employees of Penney Life and Penney Casualty including accidental death and dismemberment and business travel accident coverage; and (3) a group disability policy for employees of Penney Life and Penney Casualty. There are approximately 2,500 participants covered under the Plans.

3. Penney Life is a stock life insurance company which was incorporated in 1957 under the laws of the State of Ohio. Penney Casualty has been wholly owned by Penney since 1973. Penney Casualty is currently qualified to conduct an insurance business in 42 states and the District of Columbia, and it actively solicits automobile, fire and casualty insurance business in those jurisdictions.

4. GARCO is a stock insurance company which was incorporated in 1957 under the laws of the Commonwealth of Puerto Rico. At the end of 1982, it had capital paid in of $2,087,130 and surplus of $18,197,818. During 1982, GARCO collected $86,881,927 in total gross premiums and annuity considerations.

5. GARCO is a stock insurance company which was incorporated under the laws of the State of Texas and was acquired by Penney in 1970. Pursuant to a reorganization, GARCO became a wholly owned subsidiary of Penney Life in 1975. On December 29, 1982, GARCO was sold to an unrelated third party, Lumberman's Investment Corporation. GARCO actively solicits life and health insurance business in those jurisdictions where it is licensed. GARCO is currently qualified to conduct a life and health insurance business in 45 states and the District of Columbia and to conduct a life insurance business in 46 states and the District of Columbia. At the end of 1982, it had capital paid in of $18,197,818 and surplus of $18,197,818. During 1982, GARCO collected $86,881,927 in total gross premiums and annuity considerations. GARCO's executive offices are in Dallas, Texas.

6. Before the sale of GARCO to Lumberman's Investment Corporation on December 29, 1982, the Plans were entirely funded through the purchase of group insurance contracts at competitive rates from GARCO. The benefits that were being received by participants of the Plans were significantly greater than the premiums being received by GARCO. Therefore, upon the sale of GARCO, GARCO indicated that it would only continue to insure the Plans with the same benefit coverage if the premiums for the Plans were significantly increased. Penney Life agreed to reissue 100 percent of the risks of the Plans, thereby bearing any losses from the insuring of the Plans. The applicant represents that from January 1, through September 30, 1983, the amount of premiums paid for these Plans was approximately $1,640,000, while the benefits received for this
period totaled approximately $1,706,000, and the cost for administering the business was approximately $140,000. Thus, Penney Life lost approximately $206,000 as a result of this reinsurance business. It is expected that the figure will be approximately $300,000 by the end of 1983. Because the losses to Penney Life will be so large for 1983, it is expected that the premiums for the Plans will have to be increased for 1984, but even with this increase, Penney Life still anticipates significant losses in 1984 for reinsuring the Plans.

7. Under the reinsurance contracts which Penney Life has entered into with GARCO, GARCO pays Penney Life approximately 90 percent of the premiums and payments received in exchange for which Penney Life reinsures GARCO for 100 percent of the risk. The difference between the percentage of the risk reinsured by Penney Life and the percentage of premiums it receives represents a service fee to GARCO for administering the policies. The applicant represents that this fee is less than GARCO’s typical service fee. These reinsurance contracts in no way affect GARCO’s liability for all of the benefits promised under its insurance contracts with the Plans. The premiums to be received by Penney Life from these reinsurance contracts during 1983 are estimated to be 2 percent of Penney Life estimated 1983 total gross premiums and annuity considerations (excluding any premiums and annuity considerations it may otherwise receive from any of its affiliated companies). The applicant represents that the subject reinsurance transaction will be terminated as of December 31, 1984.

8. The applicant represents that the subject reinsurance transactions will meet all of the conditions of PTE 79-41 covering direct insurance transactions:

(a) Penney Life is a party in interest as described in section 3(14)(G) of the Act with respect to the Plans because of its stock affiliation with the employer (Penney Casualty) maintaining the Plans.

(b) Penney Life is licensed to sell insurance in at least one of the United States.

(c) Penney Life was authorized to do business (as the Vermont Accident Insurance Company) in 1900. Such authorization is automatically renewed each year by the Vermont Department of Banking and Insurance and continues to be effective unless rescinded. Penney Life’s certificate has never been rescinded.

(d) Penney Life underwent a financial examination by the Department of Banking and Insurance of the State of Vermont for the five years ending December 31, 1978. Since January 1983, the Vermont Commissioner of Banking and Insurance has been conducting a financial examination of Penney Life for the years 1979-1982.

(e) Penney Life has undergone in the past an annual examination by an independent certified public accountant in connection with the annual audit of Penney.

(f) The Plans pay no more than adequate consideration for the insurance contracts. GARCO’s premium charge to the Plans is highly competitive. The reinsurance transactions are not a factor in the premium computation and thus do not in any way affect the cost to the Plans.

(g) No commissions will be paid in connection with the insurance contracts with GARCO or the reinsurance contract between GARCO and Penney Life.

(h) The gross premiums to be received in 1983 by Penney Life for its reinsurance under the proposed contract is not expected to exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in 1983 by Penney Life. It is projected that such premiums will only amount to approximately 2 percent of Penney Life’s 1983 gross premiums and annuity considerations. The applicant represents that for the future Penney Life will derive not more than 50 percent of its gross premiums (including reinsurance receipts) from transactions involving the subject reinsurance contract.

9. In summary, the applicant represents that the subject reinsurance transactions meet the criteria of section 408(a) of the Act because: (1) the insurance could not be purchased directly from Penney Life more economically than it is purchased from GARCO; (2) participants and beneficiaries of the Plans are afforded insurance protection at competitive rates arrived at through arm’s-length negotiations; (3) Penney Life is a sound insurance company which has been in business for many years, and which does a substantial amount of business outside its affiliated group of companies; and (4) each of the protections provided by PTE 79-41 to the Plans has been and will continue to be met under the subject reinsurance transactions.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Profit Sharing Plan and Trust of J. Gordon Gaines, Inc. (the Plan) Located in Akron, Ohio

[Application No. D-4788]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale by the Plan to J. Gordon Gaines, Inc. (the Employer) of a $100,000 obligation (the Debenture) of Bayse & Associates (Bayse) for $100,000 in cash, provided that the amount paid by the Employer is no less than the fair market value of the Debenture as of the date of sale. In addition, the Employer shall pay the Plan all accrued interest due on the Debenture through the date of sale.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan with 65 participants as of December 31, 1982. As of December 31, 1982 the Plan has assets of $297,570. The trustees of the Plan (the Trustees) are John W. Spiegel, Karl K. Schmidt and Margaret A. Atwood. The Trustees are also members of the Plan’s administrative committee which conducts the Plan’s business. The Employer is an insurance Managing General Agent. The Employer places insurance with fire and casualty insurance companies for independent, nonrelated agents. The Employer does not solicit insurance directly from individuals or companies. Approximately 80% of the insurance placed by the Employer is for trucking companies. On July 30, 1983 the stock of the Employer was sold to Liberty Management Services, Inc. In connection with the sale, the Employer’s board of directors elected to terminate the Plan, liquidate its assets and distribute the proceeds. A termination application was filed with the IRS on July 25, 1983, and approved on January 10, 1984.

2. Among the assets of the Plan to be liquidated is the Bayse Debenture. The Plan purchased the Debenture directly from Bayse, at par, on July 1, 1980, the applicant represents that the Plan bought the Debenture because of its 14% interest rate; the relatively short term to
the June 30, 1987, date of maturity; and
because through the Employer’s
insurance business, the Trustees were
familiar with the management and
operation of Bayse.

3. Neither Bayse nor its subsidiary,
Priority Freight Systems, Inc. (Priority)
has been a direct client of the Employer
or any of its subsidiaries. The Employer
has, however, written physical damage
insurance on trucks owned by
independent operators and leased to
Priority. Additionally, the Employer has
also written several general liability
policies through another independent
agency which solicited business from
Priority. The applicant represents that
any indirect business between the
Employer and Priority never exceeded
one-hundredth of one percent of the
total business of the Employer in any
year. In addition to the aforementioned
transaction on June 30, 1981, the
Employer sold 100% of the stock in its
Dixie Express, Inc. subsidiary to Bayse
in exchange for 125 shares of Bayse,
representing 12 1/4% of Bayse’s total
outstanding shares.

4. The applicant seeks an exemption
permit the Plan to sell the Bayse
Debenture to the Employer for $100,000
in cash, provided that this amount is no
less than the fair market value of the
Debenture as of the date of sale. In
addition, the Employer shall pay the
Plan all accrued interest due on the
Debenture through the date of sale. In a
letter dated October 19, 1983, David C.
Vernon, Senior Vice President of Bank
One, Akron, N.A. appraised the
Debenture and determined that the fair
market value of the Debenture as of that
date was par value and thus its
purchase price should be $100,000 plus
accrued interest from the date of the last
interest payment date. The applicant
represents that it is highly unlikely that
the Plan would realize the fair market
value of the Debenture if it was sold to a
third party. In a letter dated October 28,
1983, Mr. Vernon indicates that the
Debenture is not marketable and would
probably only be purchased by a
sophisticated investor should one be
found with sufficient expertise to put a
value on the Debenture. The applicant
further represents that a distribution of
an undivided interest in the Debenture
to Plan participants would preclude
their ability to roll-over their
distribution on a tax-free basis and
could result in current taxation on the
distribution. Thus the applicant
represents that a cash sale at fair
market value would be in the best
interests and protective of the
participants and beneficiaries of the
Plan.

5. In summary, the applicant
represents that the transaction meets
the statutory criteria for exemption
under section 408(a) of the Act because:
(a) it is a one/time transaction for cash;
(b) the Plan will receive not less than
the fair market value of the Debenture
as determined by Mr. Vernon; (c) the
sale will allow a cash distribution of the
assets of the Plan; and (d) the applicant
represents that the sale of the Debenture
to the Employer is in the best interests
and protective of the participants and
beneficiaries of the Plan.

For Further Information Contact:
David M. Cohen of the Department,
telephone (202) 523-8671. (This is not a
toll-free number.)

Buchanan, Ingersoll, Rodewald, Kyle
and Buerger Pension Plan (the Pension
Plan) and the Buchanan, Ingersoll,
Rodewald, Kyle and Buerger Profit
Sharing Plan (the Profit-Sharing Plan;
collectively, the Plans) Located in
Pittsburgh, Pennsylvania

(Application Nos. D-4823 and D-4624)

Proposed Exemption

The Department is considering
granting an exemption under the
authority of section 408(a) of the Act and
section 4975(c)(2) of Code and in
accordance with the procedures set forth
in ERISA Procedure 75-1 (40 FR
16471, April 28, 1975). If the exemption is
granted the restrictions of section 406(a),
406(b)(1) and (b)(2) of the Act and the
sanctions resulting from the application
of section 4975 of the Code, by reason of
section 4975(c)(1)(A) through (E) of the
Code shall not apply to the purchase,
sale and contribution of certain
securities (the Securities) between the
Plans and participants (the Participants)
maintaining self-directed accounts (the
Accounts) in the Plans. provided all
purchases and sales of the Securities are
conducted at fair market value and all
participant contributions are valued
at their fair market value on the date of
contribution.

Summary of Facts and Representations

1. Buchanan Ingersoll is a law
partnership (the Partnership) engaged in
the practice of law on a regional,
national and international basis. The
Partnership maintains its principal office
at 600 Grant Street, Pittsburgh,
Pennsylvania. In May 1980, the partners of
the Partnership formed a professional
corporation (the Corporation) to
facilitate the management of the firm’s
practice and for financial reasons.
Although, the largest part of the firm’s
legal practice is performed and billed
through the Corporation, the Partnership
continues to provide services to non-
Pennsylvania clients through its offices
in Pittsburgh, Washington, D.C., and
Boca Raton, Florida. The law firm
currently consists of 100 lawyers, with
45 partners in the Partnership and an
equal number of shareholders in the
Corporation. Each individual who is a
partner is also a shareholder and vice
versa. As of July 1, 1983, both the
Partnership and Corporation changed
their name to “Buchanan Ingersoll”. It is
contemplated that the Plans will be
formally reitled in the future.

2. The Plans consist of a profit sharing
plan and a money purchase pension
plan. As of December 31, 1982, each Plan
had the same 130 Participants and
combined assets having a total fair
market value of $4,274,335.
Approximately 31 percent of this
amount ($1,325,043) was held by the
Union National Bank of Pittsburgh (the
Bank) in its “Equity Fund” in which
various common stocks are held.
Another 23 percent of this amount
($963,097) was invested by the Bank in
fixed income securities under its “Fixed
Income Fund”. The remaining 46 percent
($1,966,194) was held in the self-directed
Accounts. All of the assets of the Plans
are collectively held with approximately
80 percent ($1,846,512) attributable to
the Profit Sharing Plan and 20 percent
($461,692) attributable to the Pension
Plan.

3. As noted above, the main
trustee-directed investments of the Plans are
held in two main funds—the “Equity
Fund” and the “Fixed Income Fund”.
Participants are permitted annually to
allocate and reallocate their
contributions and Account balances
between these two funds and are given
information regarding the financial
performances of those funds in order to
make an informed decision. Participants
are also permitted to establish the
Accounts in which they may self-direct
the investments of their Account
balances. The Bank has currently
established a $300 (or 1/2 percent, if
greater) annual fee for setting up a
directed Account in exchange for which
the Participant is entitled to ten
transactions without additional fees
other than normal brokerage
commissions. The $300 fee is designed to
cover the administrative costs of the
Bank in holding such Accounts.

4. The Bank, which serves as the
trustee for the Plans, is a national
banking association and a banking
subsidiary of Union National
Corporation, a bank holding company.
As of December 31, 1981, the Bank had
total assets of over $1.3 billion. The
Bank and the holding company are
independent organizations although the
law Corporation provides a significant amount of legal services to the Bank and holding company on an ad hoc basis. Also, a partner/shareholder of the firm has served on the Board of Directors of the Bank and holding company in the past. Effective September 1, 1983, this partner/shareholder has discontinued his association with the firm, other than to remain “of counsel” in order to take over the position of Chairman of the Board of the Bank and the holding company. In his “of counsel” capacity, this individual will be paid a fixed stipend and retain one or two estate planning clients for administrative purposes. He will no longer continue to hold any shares of stock in the Corporation, and the disposition of these shares will take place shortly. He will also no longer receive any bonus distributions from the profits of the firm, nor receive any distributions as a partner of the Partnership. Except as noted above, the bulk of his client responsibilities has been redistributed to other lawyers in the firm.

5. As stated previously, the Plans provide that a Participant may direct the Bank at any time in writing as to the investment or reinvestment of the assets of his/her Account. The Bank, however, retains discretion to ignore such investment direction if the direction is unclear or if the Bank determines the investment is unauthorized under the terms of the Plans. In such event, the Bank will notify the Participant to reconsider and file any new direction the Participant desires.

6. An exemption is requested to allow the Participants to engage in transactions with their Accounts that involve the purchase, sale, and contribution of certain Securities. The Bank will continue to exercise discretionary judgment for those Securities selected for investment, as described above. The assets of the Accounts in which the Participants may invest are set forth in Article 5.05(c) of the documents for the Plans. These investments include: (a) shares of stock or options which are traded over the counter; (b) investment company shares (including shares in “money market” funds); (c) real estate investment trust shares; (d) bonds or commercial paper; (e) certificates of deposit; (f) savings vehicles insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation; or (g) any other form of investment; (1) which is an intangible whose ownership is evidenced by a certificate, contract, or other written document and (2) whose ownership does not involve physical custody or active management of tangible assets.

Because of a concern for ensuring a ready determination of fair market value of assets being transferred to, from, or contributed to an Account, it is proposed that the Securities be limited to those traded on a national or regional securities exchange or with a brokerage firm acting as a principal. Also covered by the exemption will be the Securities traded on an over-the-counter market, mutual funds, Treasury and governmental agency issues and common or preferred stocks of national or state chartered banks (including stocks of the Bank) where bid and asked prices of the stock are quoted on the NASDAQ system and/or are published in The Wall Street Journal. The term securities may include stocks, bonds, options and other items, the bid and asked prices of which are regularly quoted by NASDAQ and/or published in The Wall Street Journal. Investments involving physical custody or active management of tangible assets as well as private sales and placements of securities or closely held securities, commodities, futures contracts, tax exempt municipal bonds, securities issued by the Corporation or securities purchased on margin or acquired subject to margin restrictions will not be included within the scope of the proposed exemption.

7. The application states that no separate appraisal or independent determination of fair market value will be required to value the Securities since price quotations appearing in The Wall Street Journal or those values listed in a national or regional exchange or NASDAQ quotations will be used. The fair market value price of the Securities sold to or contributed to an Account will be based on the price at the end of the day of actual transfer to the Plan. This day will be the one on which the Securities are physically transferred to the Bank for deposit to the Account. Where separate bid and asked quotes are given for any day, the average of the two figures will be used as the fair market value for purposes of the transfer.

8. With respect to the sales of the Securities from the Accounts to the self-directing Participant, the measure of fair market value will be that as shown in the NASDAQ quotations or in The Wall Street Journal for the end of the day on which the cash is presented by the Participant to the Bank. The amount to be presented by the Participant will be based on the value of the Securities at the end of the day preceding the date of delivery of the cash to the Bank. In the event of an increase in the price by the end of the day of the presentation of cash, the Participant will have the option to consummate the purchase by presenting additional cash to the Bank on the next following day or to withdraw the request for purchase of the Securities. Similarly, if the price should fall on the day of presentation of the cash, the cash will be first transferred to the Account to the extent of the total market value of the Securities involved, with any excess being returned to the Participant.

9. In summary, it is represented that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (a) each transaction will be conducted on the specific instructions of a Participant and only such Participant’s Accounts in the Plans will be affected; (b) the Participants will be afforded greater flexibility and avoidance of brokerage fees and commissions on comparable transactions in the investment of their Accounts; and (c) the Bank will continue to exercise its discretion as a monitor in determining what investments should be held under the Accounts and what Securities may be sold, purchased, or contributed.

For Further Information Contact: Mrs. Jan D. Broady of the Department, telephone (202) 523-6971. (This is not a toll-free number.)

Watson C.S.R. Inc. Employee Profit Sharing Plan (the Profit Sharing Plan) and the Watson C.S.R. Inc. Employee Pension Plan (the Pension Plan; collectively, the Plans) Located in Santa Monica, California [Application Nos. D-4905 and D-4906]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 408(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plans of certain real property (the Real Property) for $114,786 in cash, to Mr. and Mrs. Michael Watson (the Watsons), provided the sale price for the Real Property is not less than its fair market value at the time the sale is consummated.
Summary of Facts and Representations

1. The Plans consist of the Profit Sharing Plan and the Pension Plan. As of August 31, 1983, each Plan had three common participants who are members of the Watson family, Messrs. Harry and Michael Watson are the trustees of the Plans (the Trustees), members of each Plan’s administrative committee which makes investment decisions, and participants in both Plans. Mr. Harry Watson is also a president, treasurer and a director of Watson C.S.R. (the Employer) as well as the owner of 66 2/3 percent of its outstanding stock. Mr. Michael Watson is also a vice president, secretary and a director of the Employer as well as the owner of 33 1/3 percent of the Employer’s outstanding stock. The assets of the Plans are held in a combined trust. The Plans had assets of $212,471 as of August 31, 1983.

2. The Employer is a licensed California certified shorthand reporting service. The Employer maintains its principal place of business at 1523 Sixth Street, Santa Monica, California.

3. In November 1980, the Plans purchased a dwelling located at 1016–1018 South Adams Street, Glendale, California from an unrelated party for $114,500, payable in cash. The Real Property consists of a 50 foot by 150 foot lot improved with a one-story, wood frame duplex that was built in approximately 1924. Both dwelling units in the building contain one bedroom and one bath. Each unit is leased by the Plans to unrelated parties for a monthly rental of $300. The leasing arrangement commenced upon the Plans’ acquisition of the Real Property.

Since the Plans have owned the Real Property, they have incurred real estate taxes, insurance, water, repair and miscellaneous expenses of approximately $4,363. There are presently no deeds of trust, loans or promissory notes encumbering the Real Property. However, the Real Property does adjoin a tract of land owned by Mr. and Mrs. Harry Watson.

4. The Trustees acquired the Real Property on behalf of the Plans for investment purposes. The Trustees believed the gain from this investment could be realized in one of two ways. Firstly, the Watsons thought the Real Property would appreciate in value in a manner typical to other properties in Southern California prior to 1980. Secondly, the Trustees believed a gain could be realized if Mr. and Mrs. Harry Watson and the Plans participated in a joint venture in developing the Real Property and the adjacent lot as condominium or apartment units.

5. The exemption application states that the Real Property has not increased in value as anticipated. In fact, it has declined. In addition, the application states that the joint venture arrangement between Mr. and Mrs. Harry Watson and the Plans may be a prohibited transaction in violation of the Act. Accordingly, the Trustees have decided to sell the Real Property for cash to Mr. and Mrs. Michael Watson for the original purchase price of $114,500 plus $286 representing the original closing costs. The Plans will not be required to pay any real estate commissions or fees in connection with the sale.¹

6. On May 23, 1983, Mr. Jeffrey S. Zumbo (Mr. Zumbo), an independent real estate appraiser from Los Angeles, California placed the fair market value of the Real Property at approximately $132,500. In an addendum to the appraisal dated December 12, 1983, Mr. Zumbo stated that he valued the Real Property at its highest and best use. He also stated that the Real Property has no special value to Mr. and Mrs. Harry Watson by reason of its proximity to the adjacent lot. Therefore, he explained, he placed no premium on the value of the Real Property.

7. In summary, it is represented that the proposed sale of the Real Property will satisfy the criteria of section 408(a) of the Act because: (a) it will be a one-time transaction for cash; (b) the sales price of the Real Property will be based on its original purchase price plus closing costs which are greater than the current appraised value of the Real Property as determined by Mr. Zumbo; and (c) the Plans will not be required to pay any real estate fees or commissions in connection with the sale.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is a toll-free number.)


Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4075(c)[2] of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)[1] and (b)[2] of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale, for $150,000 in cash, of certain real property (the Real Property) by the Plan to Mr. and Mrs. Berton Lowell (the Lowells), provided the sales price of the Real Property is not less than its fair market value at the time the sale is consummated.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with five participants and total assets of $425,605 as of March 31, 1983. The Lowells are the trustees of the Plan as well as the decisionmakers with respect to the Plan’s investments. Dr. Lowell, who is engaged in the practice of dentistry, maintains this office at 3343 Northeast 33 Street, Fort Lauderdale, Florida.

2. On March 22, 1979, the Plan purchased the Real Property consisting of a 2,450 square foot retail store from Lucille A. Bramson and Beatrice Mallinger who were unrelated parties and personal representatives of the Estate of Ray T. Bramson (Mr. Bramson). The Real Property is located at 3433 Galt Ocean Drive, Fort Lauderdale, Florida. The Plan paid $122,500 in cash for the Real Property.

3. At the time of acquisition, the Real Property was leased (the lease) in its entirety to National Bakers Services, Inc. (National), an unrelated entity, which had entered into the Lease with Mr. Bramson on June 20, 1967. National used the premises as a beauty salon. On July 15, 1969 and March 15, 1977, the Lease was modified by the parties. [The 1977 modification to the Lease was subsequently assigned to the Plan.] The Lease provided for a five year term commencing on August 15, 1977 and terminating on August 11, 1982. The monthly rental charged under the Lease was $1,020. National was responsible for maintaining the premises and paying real estate tax increments, insurance premiums and utilities on the Real Property. Upon becoming lessor, the Plan was responsible for repairs encompassed in the normal wear and tear of the Real Property and paying the base amount of real estate taxes. The Plan’s leasing arrangement with National ceased in September 11, 1981, as the lessee was experiencing financial difficulties and hardship and was not prospering on the leased premises.

4. On July 1, 1982, the Plan began leasing the Real Property to Barnett Bank of South Florida (the Bank), an unrelated entity for an annual rental of $23,274 plus sales tax. The lease (the Bank Lease) is to expire July 1, 1987 but
it may be renewed for two successive five year terms.

5. The Lowells, as trustees, have determined that it is in the best interests of the Plan to sell the Real Property in order to provide the Plan with greater liquidity and diversification of investments. Despite efforts by the Lowells to sell the Real Property to unrelated parties, no purchasers have been found. Accordingly, an exemption is requested to allow the Plan to sell the Real Property to the Lowells for its fair market value as determined by an independent appraiser. The Plan will not be required to pay any real estate fees or commissions in connection with the sale.

6. The Real Property was originally appraised on September 11, 1981 by Mr. Robert D. Clobus (Mr. Clobus), an independent real estate broker and appraiser from the Fort Lauderdale area, who placed the fair market value of the Real Property at $160,000. Mr. Clobus also placed the fair rental value of the Real Property at $23,275 per year. On October 29, 1983, Mr. John L. Kirsch, an independent registered real estate broker from Pompano Beach, Florida reappraised the Real Property, placing its fair market value in an "as is condition" at $150,000.

7. In summary, it is represented that the proposed transaction will satisfy the requirements of section 406(a) of the Act because: (a) the sale will be a one-time transaction for cash; (b) the sale price for the Real Property has been determined by an independent appraiser; (c) the Plan will not be required to pay any real estate commissions or fees in connection with the sale; and (d) the sale will allow the Plan to divest itself of an asset in order that it will have the benefit of greater diversification and a higher rate of return.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Dayton Animal Hospital Association, Inc. Profit Sharing Plan (the Plan) Located in Clayton, Ohio [Application No. D-5034]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan to the Lowells for the Real Property, an affiliate of the Plan sponsor, of a parcel of land (the Property) adjacent to the offices of the Plan sponsor, provided the sales price is not less than the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan sponsor is Dayton Animal Hospital Association, Inc. (the Employer), which is owned by the two shareholders who also own the Affiliate. As of September 13, 1983, the Plan covered 10 participants. As of September 30, 1983, the fair market value of the Plan's total assets was $195,450.30. The Plan trustees are Mr. William O. Smith, the President of the Employer, and Mr. Joe Fergus, the Secretary of the Employer.

2. The Property is a six-acre parcel of vacant land located on Brookville-Salem Road, Clayton, Ohio, adjacent to the Employer's offices. The Plan acquired the Property for $18,000 on October 31, 1974 (prior to the effective date of Part 4, Subtitle B, Title I of the Act) from Ms. Anna M. Rosell, who is not related to the Employer, and Mr. Joseph Smith, the President of the Employer, which is owned by the two principals. In his opinion, the Property may be renewed for two successive five year terms.

3. Mr. S. Larry Stein, an independent appraiser, has estimated the fair market value of the Property at $23,100 as of June 3, 1983. Mr. Stein states that land values have remained static in the area of the Property and that land sales are slow due to interest rate levels and general economic conditions in that area. Mr. Stein states that he has engaged in appraisals and consulting assignments for numerous clients during the past 29 years in connection with his real estate business. He explains that although he provided brokerage services for the Employer when it purchased its site, adjacent to the Property, he has no other relationship to the Employer's principals. In his opinion, the Property has no special value to the Employer, whose current site is ample for the Employer's needs for the foreseeable future.

4. The Plan proposes to sell the Property to the Affiliate for $23,100, payable in full in cash on the date of the sale. No commission or other selling expenses will be charged to the Plan.

5. In summary, the applicants represent that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the sale will be a one-time transaction for cash, (b) the sales price will equal the fair market value of the Property as determined by an independent appraiser, (c) no commissions or other selling expenses will be charged to the Plan, and (d) the sale will increase the liquidity of the Plan's assets and will enable the Plan to dispose of a non-income producing asset.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)


Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of a condominium located at Scenic Drive, Highlands, New Jersey (the Property) by the Plan to Marcel A. Thonet, M.D. and Janet Thonet, the trustees of the Plan (the Trustees), for $95,000 provided such amount is not less than the fair market value of the Property at the time of the sale.

Since Marcel Thonet is the only participant in the Plan and the sole shareholder of Marcel A. Thonet, M.D., P.C., the employer maintaining the Plan (the Sponser), there is no jurisdiction under Continental
Summary of Facts and Representations

1. The Plan is a money purchase pension plan with one participant, Marcel A. Thonet, M.D. As of June 30, 1983, the Plan had assets of approximately $410,000. The Trustees are responsible for the investment decisions of the Plan.

2. The Property was purchased in 1974 for $90,950 in cash, from Snyder-Westerveld Corporation, an unrelated party. The Property was purchased with the intent that it provide rental income to the Plan and also provide the potential for future appreciation. Since its purchase, the Property has been used solely as a rental property. Neither the Trustees nor the Sponsor had ever utilized the Property. From September, 1974 through September, 1983 the Property has produced $68,335 in rental income for the Plan and cost the Plan $18,967.70 in maintenance charges and $16,686.16 in taxes.

3. As of September, 1983, the Property was renting for $710 a month, on a month to month basis. The monthly maintenance fee and monthly real estate tax payment amounted to $697.35. The applicant represents that it is becoming increasingly difficult to find tenants who are willing to pay that rent necessary for the Plan just to break even on its costs. The applicant further represents that over the last three years the Property's capital appreciation has not kept pace with the appreciation of the Plan's other assets.

On August 20, 1983 the Trustees entered into an agreement of sale whereby the Plan agreed to sell the Property to the Trustees contingent on the grant of an exemption from the prohibited transaction rules of the Code. A purchase price of $95,000 in cash was established.

4. The applicant requests an exemption to permit the cash sale of the Property by the Plan to the Trustees for $95,000 provided such amount is not less than the fair market value of the Property at the time of sale. On February 13, 1983, Karin K. Green, GRI, a real estate broker in Santa Ana, Huston and Butts, Inc., an independent real estate broker in Santa Ana, California, has represented that as of August 20, 1983, the Property's fair market value was still $90,400, the amount paid by Mr. and Mrs. Jones for the Property. Mr. Hal Butts, of Warner, Huston and Butts, Inc., an independent real estate broker in Santa Ana, California, has represented that as of December 21, 1983, the Property's fair market value was still $90,400, the amount paid by Mr. and Mrs. Jones for the Property.

5. The terms and conditions of the sale were reviewed by Leonard Landsburg, C.P.A. In July, 1983, Mr. Landsburg was appointed as an independent fiduciary to the Plan. Mr. Landsburg has no relationship to the Plan nor to the Sponsor. In a letter dated July 28, 1983, Mr. Landsburg acknowledges his appointment as independent fiduciary to the Plan. Mr. Landsburg represents that he is familiar and experienced with the requirements of ERISA and that he is aware of his rights, duties and liabilities under the terms of ERISA in connection with his appointment as an independent fiduciary. Mr. Landsburg further represents that he has reviewed the proposed sale of the Property and that it is in the interest of the Plan and its participant and beneficiaries.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (1) the sale is to be a one-time transaction for cash with no expenses borne by the Plan; (2) the Plan will receive not less than the fair market value of the Property as determined by an independent appraiser; (3) the independent fiduciary of the Plan has reviewed the proposed sale and has determined that it is in the best interests of the Plan; and (4) the sale will allow the Plan to dispose of a marginal income producing asset.

Notice to Interested Persons

Because Marcel Thonet is the sole shareholder of the Plan sponsor and the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency from the prohibited transaction rules of the Code. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of the proposed exemption.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Jackson, Jones & Price, Inc. Retirement Pension and Profit-Sharing Plan (the Plan) Located in Tustin, California

[Application No. D-5090]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 16471, April 28, 1975). If the exemption is granted the restrictions of section 406(b), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of a parcel of undeveloped property (the Property) located in Riverside County, California, by Mr. and Mrs. Stanley R. Jones, to Mr. Jones' account in the Plan, for $90,400 in cash, provided such amount does not exceed the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan is a corporate retirement pension and profit sharing plan with approximately 6 participants. Mr. Jones has an individually directed account in the Plan (the Account) which had assets of approximately $417,422 as of January 31, 1984.

2. On November 10, 1982, Mr. and Mrs. Jones purchased the Property from Irene Thomas, an unrelated party. The Property consists of approximately 160 unimproved and uninhabited acres in Riverside County, California. The Property is owned free and clear and all taxes due have been paid. Mr. and Mrs. Jones paid $90,400 for the Property.

3. Mr. Jones now wishes to transfer the Property into the Account so that the Account may hold the Property as a long-term investment. The Account is to pay the fair market value of the Property in cash. Mr. Hal Butts, of Warner, Huston and Butts, Inc., an independent real estate broker in Santa Ana, California, has represented that as of December 21, 1983, the Property's fair market value was still $90,400, the amount paid by Mr. and Mrs. Jones for the Property.

4. In summary, the applicant represents that the proposed transaction meets the criteria contained in section 408(a) of the Act because: (1) the transaction involves only about 21.7% of the Account's assets; (2) the sale is to be for a price established by an independent appraiser; and (3) Mr. Jones is the only Plan participant to be affected by this transaction and he desires that the transaction be consummated.

Notice to Interested Persons

Because Mr. Jones is the only participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days after the date of publication of this notice in the Federal Register.
Wake Pathology Associates, P.A.

Pension Plan and Trust (the Plan)

Located in Raleigh, North Carolina

[Application No. D-5132]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, it will be supplemental to, and in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 26th day of April 1984.

Elliott I. Daniel,

Acting Assistant Administrator, for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

FR Doc. 84-11703 Filed 4-30-84; 8:45 am

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-493), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel [Special Projects Section] to the National Endowment for the Arts will be held on May 11, 1984, from 8:00 a.m. to 2:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

The meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman...
NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting on Thursday and Friday, May 17-18, 1984. The meeting will be held in the Towne and Garden South rooms of the Town & Country Convention Center located at 500 Hotel Circle North, San Diego, CA. The meeting will commence at 9:00 a.m. and end at 5:00 p.m. on May 17 and will commence at 8:30 a.m. and end at 3:30 p.m. on May 18. The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local government, was established by Congress by Pub. L. 95-63, on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit other reports as may from time to time be requested by the President or Congress. The tentative agenda is as follows:

Thursday, May 17, 1984
Town & Country Convention Center, San Diego, CA, Towne Room
9:00 a.m.—12:00 noon—Exclusive Economic Zone
• Exclusive Economic Zone

Speaker: None
12:00 Noon—1:00 p.m.—Lunch
1:00 p.m.—5:00 p.m.—Plenary
• Exclusive Economic Zone

Speakers: None
5:00 p.m.—Recess

Friday, May 18, 1984
Town & Country Convention Center, San Diego, CA, Towne and Garden South Rooms
8:30 a.m.—12:00 Noon—Panel Meetings
• Shipbuilding, Chairman: Don Walsh, Gardern South Room
Topic: Panel Work Session
Speakers: None
Panel Meetings Continued
• Underwater Technology, Chairman: Sylvia Earle, Towne Room
Topic: Panel Work Session
Speakers: None
12:00 Noon—1:00 p.m.—Lunch
1:00 p.m.—3:30—Plenary
• Discussion of Priorities
• Panel Reports
3:30 p.m.—Adjourn

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meetings. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session. Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 330 Whitehaven Street, NW., Washington, DC 20235.

Steven N. Anastasion,
Executive Director.

[FR Doc. 84-11790 Filed 4-30-84; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Notice of Meeting

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Speakers: None
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Steven N. Anastasion,
Executive Director.

[FR Doc. 84-11790 Filed 4-30-84; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Safety, Research Program; Time Change

The ACRS Subcommittee meeting on the Safety Research Program scheduled to begin at 10:00 a.m. on May 9, 1984, Room 1046, at 1717 H Street, NW., Washington, DC has been changed to begin at 8:30 a.m. The Subcommittee will review the proposed NRC Safety Research Program and Budget for FY 1986 and gather information for use by the ACRS in its preparation of the ACRS report to the Commission on the related matter. Notice of this meeting was published April 20, 1984 (49 FR 16899).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Sam Duraiswamy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

John C. Hoeyle,
Advisory Committee Management Officer.

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Activities; Cancelled

The ACRS Subcommittee on Regulatory Activities scheduled for May 9, 1984, Room 1046, at 1717 H Street, NW., Washington, D.C., has been cancelled. Notice of this meeting was published April 20, 1984 (49 FR 16899).

John C. Hoeyle,
Advisory Committee Management Officer.

[FR Doc. 84-11999 Filed 4-30-84; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13897; (812-5708)]

Central of Kansas, Inc.; Application

April 23, 1984.

Notice is hereby given that Central of Kansas, Inc. ("Applicant"), 802 N. Washington, Junction City, Kansas 66441, a Kansas corporation, filed an application on November 15, 1983, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for an order of the Commission exempting five corporations recently formed by Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representation contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicant states that it was organized under the laws of Kansas in 1983, and is a one-bank holding company registered under the Bank Holding Company Act of 1956, as amended. Applicant's principal subsidiary is The Central National Bank
of Junction City ("Bank"), which is engaged in the commercial banking and trust business in Junction City, Kansas. Applicant's stock is held of record by approximately 125 stockholders and is not registered under the Securities Exchange Act of 1934.

It is further stated that under Kansas law a bank holding company may not acquire 25 percent or more of the voting shares of more than one bank. Thus, Applicant represents that until such time as Kansas law is changed to permit multi-bank holding companies, Applicant cannot acquire more than 24.9 percent of the stock of any bank other than Bank. Applicant notes as well that because Kansas law does not restrict the ownership by individual stockholders, singly or collectively, of more than one bank holding company, various means have been employed to create privately-owned chain-bank systems under which each bank in the system is held by a one-bank holding company that is under common control with others in the system.

Applicant believes that in order to compete effectively for deposits with money market funds and other financial institutions, it must, in the long term, have the ability to acquire banks in other communities. With the continuing expansion and growth of privately-owned chain-bank systems and the recent entry into the bank acquisition marketplace of larger competitors, Applicant represents that its need to secure this capability has become immediate. Without an early capability for expansion, Applicant's management believes that many attractive acquisition opportunities could well be lost and that Applicant's stockholders will not be able to take advantage of opportunities to maximize the value of their banking investment. Accordingly, Applicant has developed a plan to provide a vehicle for its acquisition of significant interests in other banks or bank holding companies located in Kansas and give Applicant the right to acquire the remaining interests at such time as multi-bank holding companies are permitted in Kansas. Applicant believes that the proposed plan is superior to the alternative means of acquiring significant interests in other Kansas banks because it will enable all of its stockholders to participate in the benefits of such acquisitions.

Applicant further states that the proposed plan involves the creation of five new subsidiaries—Central of Kansas I, Inc., Central of Kansas II, Inc., Central of Kansas III, Inc., Central of Kansas IV, Inc. and Central of Kansas V, Inc. (individually, a "Corp", and collectively the "Corps"), which have been initially capitalized by the sale of stock to Applicant in exchange for the assignment of time deposits purchased with funds borrowed by Applicant from an unrelated bank. Applicant further states that each Corp will attempt to purchase a bank or bank holding company with the funds provided from its initial capitalization, together with the proceeds of subsequent stock sales to Applicant and loans from Applicant. In order to ensure the availability of consolidated tax returns, Applicant represents that no such acquisition will be effected unless at least 80 percent of the stock of a bank or bank holding company can be acquired.

Applicant proposes to distribute 95.1 percent of the Corps' stock to its stockholders. To effectuate this distribution, each of the Corps has filed a registration statement under the Securities Act of 1933 to register the shares to be spun off. Concomitantly with such distribution of shares of stock of the Corps, Applicant represents that it will enter into an agreement with each of the Corps providing for, (1) an option under which Applicant is granted the right to purchase, and each Corp agrees to sell, a sufficient number of Corp shares so that subsequent to the purchase of a target bank Applicant will own up to 24.9 percent of the stock then outstanding, including the stock which Applicant received and retained in the formation of the Corps; and (2) an option to Applicant to purchase all of the assets of any bank or bank holding company that the Corps will attempt to acquire. Applicant states further that under its option to purchase up to 24.9 percent of the common stock of the Corps, the purchase price of the shares will be based upon the net book value of the Corps stock. Applicant represents that the option agreement will be subject to two conditions precedent. First, a Corp must enter into an agreement in principle or a legally binding agreement for the purchase or not less than 80 percent of the outstanding voting shares of a bank or bank holding company. Applicant states that the reason for this condition is that, as the purpose of the proposed transaction is to create a method through which its stockholders may collectively expand their investments in banking, further investment of funds, exceeding the initial capitalization of the Corps, will be unnecessary until such time as a Corp is to purchase a bank or bank holding company. Second, the purchase of stock pursuant to the option agreement will be subject to the approval of the Board of Governors of the Federal Reserve System.

Applicant further states that under the purchase option granting it the right to acquire all of the assets of the Corps in exchange for Applicant's common stock, the exercise price is to be based upon the respective book values per share. This option will be exercisable only at such time as such purchase is permissible under Kansas law. It is further stated that the purpose of the asset purchase option is to enable Applicant's stockholders to consolidate their investments at such time as and when Kansas law would allow such consolidation. Applicant notes that the exact method of accomplishing the consolidation of interests has not yet been determined, but that a tax-free reorganization is contemplated.

Applicant states that although different terms may be negotiated in the future, it believes that the immediate granting to it of an irrevocable option to purchase the assets is necessary in order to accomplish the overall objective of providing its stockholders a method through which they may collectively expand their investments in banking without violating Kansas banking law.

Applicant represents that the Corps will seek to make bank acquisitions considered attractive by management. Applicant states that if the capitalization of a Corp is not sufficient to finance the purchase of a given bank or bank holding company, Applicant may assist the acquisition through the provision of capital, either through loans from Applicant to the Corp, or the issuance of non-voting preferred stock to Applicant by the Corp. Applicant notes that the purchase of non-voting preferred stock in banks or bank holding companies is not permitted by Kansas banking law. In addition, a Corp may issue preferred stock to the sellers of a target bank or bank holding company.

Applicant states that one of the important components of the proposed plan is to ensure that stockholders of Applicant acquire ownership for Federal income tax purposes of the Corps' stock during Applicant's current fiscal year, ending December 31, 1963. Since Applicant was recently organized and has little or no accumulated earnings and profits for tax purposes, Applicant has sought a ruling from the Internal Revenue Service confirming that the distribution of the Corps' stock would constitute a dividend only to the extent of any current or accumulated earnings and profits, and that, to the extent that the distribution should exceed such earnings and profits, it would constitute either a non-taxable return of capital or
Factor, the distribution of the stock of a particular Corp by Applicant to its stockholders could be timed to coincide with entering into an agreement in principle to acquire the stock of a bank or a bank holding company. Applicant notes that in such case, the period during which such Corp's assets would need to be invested to preserve their value would be eliminated almost completely. Applicant submits that it would be unfair to impose such a tax burden on its stockholders (who, Applicant notes, will also be the Corps stockholders), merely in order to avoid the potential costs and burdens of registration and regulation under the Act.

It is further stated that during the period between the sale of stock of each Corp to Applicant and the use of the proceeds of such sales by each Corp (together with certain additional funds to be provided from the sources described above) to acquire at least 80 percent of the stock of a bank or bank holding company, those proceeds will be held in time deposits in a national bank, the interest on which will be compounded automatically, solely in order to preserve the value of the assets of the Corps. Applicant states that it believes the Corps could resolve any question of registration and regulation under the Act by holding their assets in cash or in non-interest-bearing bank accounts, but that unless such assets are appropriately invested there will be a depletion of those assets by a discount factor equal to the time value of money.

Applicant further represents that it anticipates that the Corps will acquire their respective banks within three years from the date of the order sought herein and, therefore, the Corps will cease to fall within the Act's definition of an investment company at that time. Applicant states that, because of the difficulty of finding suitable acquisition targets in the current competitive environment, it would be unable to represent that such acquisitions are certain to occur within three years.

In conjunction with the foregoing, Applicant asserts that the Corps would qualify for exception from the Act's definition of investment company but for the length of the period during which their assets may be invested in time deposits, which period may, depending upon the availability of suitable acquisition candidates, exceed one year. Applicant is therefore requesting that the Commission issue an order pursuant to Section 6(c) of the Act exempting each of the Corps from all of the provisions of the Act.

Applicant submits that its requested exemptive order should be granted because the Corps will have a bona fide intent to be engaged primarily, as soon as reasonably possible, and in any event in less than three years, in a business other than that of investing, reinvesting, owning, holding, or trading in securities. Applicant states that this intent is evidenced by the purpose in forming the Corps as well as the competitive factors outlined above. Applicant further states that this intent will also be evidenced by the same objective standards set forth in Rule 3a-2 under the Act. Applicant represents in this regard that the predominant activity of the Corps during the period prior to consummation of an acquisition will be identifying suitable acquisition candidates and negotiating the terms of an acceptable acquisition agreement. Applicant further represents that there may be regulatory waiting periods and other factors beyond its control involved in this process. The Corps' investments in time deposits, Applicant represents, will be made solely in order to preserve the value of the capital of the Corps pending the acquisition of a bank or bank holding company, and there will be no speculative activity in such investments. In view of the limited purpose of their investments, their temporary nature, and the lack of speculative activity, Applicant submits that the Corps should not be deemed to be engaged primarily in the business of investing, reinvesting, or trading in securities.

Applicant points out that in accordance with Rule 3a-2 under the Act, the bona fide intent discussed above has been evidenced by the adoption by each Corp's board of directors of a series of resolutions to the effect that, prior to the acquisition of 80 percent or more of the outstanding stock of a bank or bank holding company: (i) The Corp's assets will be held solely as time deposits; (ii) such investments will be made solely in order to preserve the value of the Corp's capital and the Corp shall not engage in any sort of speculative activity in such securities; (iii) the sole purpose and business activity of the Corp during such period (other than the making of investments to preserve the value of their capital) shall be that of finding banks or bank holding companies suitable for acquisition and effectuating such acquisitions; (iv) the Corp's management has been authorized, empowered and directed to use its best efforts to accomplish the foregoing purpose as soon as reasonably possible; (v) the Corp shall not hold itself out as being engaged primarily in the business of investing, reinvesting, owning, holding, or trading in securities. Applicant submits that the limitations placed on the Corp's business activities by such resolutions should also ensure that those activities are consistent with the policies underlying Rule 3a-2 under the Act and the standards for granting exemptive relief under Section 6(c).

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 18, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interests, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.
[PR Doc 84-11668 Filed 4-30-84, 8:45 am]
Applicant, a Delaware corporation, registered under the Act on April 27, 1973, and filed registration statements pursuant to Section 8(b) of the Act on April 27, 1973 (File No. 2-47838, effective June 22, 1973), March 17, 1976 (File No. 2-55724, effective June 24, 1976), September 18, 1980 (File No. 2-69199, effective October 24, 1980) and August 22, 1983 (File No. 2-86019, effective November 18, 1983). Applicant states that on November 30, 1983, its shareholders adopted amendments to Applicant's charter and by-laws, authorizing Applicant to cease being an investment company.

Applicant further states that on December 29, 1983, a wholly-owned subsidiary of Applicant consummated the acquisition of substantially all the assets and liability of Special Metals Corporation ("SMC") through a merger of SMC into Applicant's subsidiary. Applicant states that after this acquisition on December 29, 1983, approximately 11% of its total asset value consisted of investment securities. Applicant represents that consummation of the acquisition of SMC by the subsidiary resulted in Applicant's ceasing to be an investment company as that term is defined in Section 3(a) of the Act. Applicant proposes to continue as an operating company subject to the Securities Exchange Act of 1934 having its common and preferred stock listed on the American Stock Exchange.

According to the application, Applicant, on or about November 22, 1983, sent to each of its common stockholders transferable subscription warrants and a prospectus dated November 22, 1983, describing an offering to the common stockholders of 5,728,817 shares of Applicant's common stock. The offering was subsequently fully subscribed. Applicant states that as of January 6, 1984, it had 40,108,723 shares of common stock outstanding which were held by approximately 16,026 shareholders and 1,136,691 shares of cumulative preferred stock outstanding which were held by 1,731 shareholders.

Applicant states that it has been the stated intention of Applicant's management since 1979 to convert Applicant to an operating company. Applicant's management has pursued this intention by acquiring SMC, Quasitronics, Inc., and Astrotech International, all of which are operating companies. Applicant plans to support and expand. Applicant states that as of the date of application its primary business is the management of its subsidiaries' businesses.

According to the application, as of January 6, 1984, Applicant's assets on an unconsolidated basis were approximately $437,718,000 and its liabilities were approximately $1,574,000. Applicant states that as of that date it had no senior securities constituting indebtedness except its guarantee of $7,000,000 aggregate principal amount of Boward County, Florida, Industrial Development Revenue Bonds Series 1983 (Astrotech International Corporation Project) issued in connection with the financing of a project for Applicant's wholly-owned subsidiary. Applicant states that as of January 5, 1984, Applicant's investment portfolio consisted of investment securities ($4,821,000) and cash and government securities ($3,660,000). Applicant represents that it may liquidate all or a portion of its investment portfolio for use in future acquisitions, meeting its future cash needs (including dividends of approximately $2,000,000 annually paid on its preferred stock) or to increase investments in its existing operating subsidiaries. Applicant represents that it may retain all or a portion of its investment portfolio or re-establish an investment portfolio following the liquidation of its present investment portfolio. However, Applicant does not intend to engage or hold itself out as being engaged in any business described in Section 3(a) (1), (2) or (3) of the Act. Applicant represents that it is not a party to any pending litigation or administrative proceedings.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 21, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reason 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. 84-11866 Filed 4-20-84; 8:45 am]

BILLING CODE 5110-01-M

Southeastern Capital Corp.; Application;

April 23, 1984.

Notice is hereby given that Southeastern Capital Corporation ("Applicant"), Suite 101, 2285 Peachtree Road, N.E., Atlanta, Georgia 30309, registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified management investment company, filed an application on February 17, 1984, and an amendment thereto on April 9, 1984, for an order of the Commission pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company within the meaning of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was incorporated as a Tennessee corporation in 1958 under the name Tennessee Investors, Inc. and was the first federally licensed small business investment company ("SBIC") under the Small Business Investment Company Act of 1958. Applicant states that it also registered as a closed-end, non-diversified management company under the Act. Applicant further states that in June, 1961, the company's name was changed to Southeastern Capital Corporation and 530,394 shares of its common stock were sold pursuant to a public offering.

The application states that in 1965, a reorganization was approved by the stockholders of Applicant, the Commission, and the Small Business Administration ("SBA") whereby Fulton Investment Company, a Georgia corporation, was merged into the company and the Fulton Investment Company stockholders received 395,500 shares of Applicant's stock.

The application states that in 1970, Applicant created a wholly-owned subsidiary named Southeastern Capital Small Business Investment Corporation ("SCSBIC"), and transferred its SBIC license to SCSBIC along with assets having a value of $1,500,000. The application further states that SCSBIC registered under the Act. According to the application, Applicant continued its operations as a registered closed-end non-diversified management investment company. The application states that on December 30, 1970, Applicant's stock was listed for trading on the American Stock Exchange.
According to the application, in 1975, the company was merged into Phoenix, Inc., a Georgia corporation and was renamed Southeastern Capital Corporation which registered as an investment company under the Act and continued the business operations of Applicant. Applicant states that at that time it invested in a highly diversified portfolio of publicly traded stocks, in a portfolio of corporate bonds and in a more limited number of venture capital investments in restricted securities of companies usually classified as small business concerns. Applicant states that it continued its election to qualify under Subchapter M of the Internal Revenue Code and annually distributed all of its net investment company income and substantially all of its realized capital gains to its stockholders. Applicant states that its final distribution of undistributed 1981 net investment company income was paid to stockholders in 1982. Applicant asserts that its investment capital declined as a result of its Subchapter M election and that for this reason and others, in 1982, management recommended a change in the company's investment policies to the stockholders. Applicant states that on January 25, 1983, Applicant's stockholders by a majority vote at a special meeting: (i) authorized the change of the business purpose of Applicant from an investment company to an operating company; (ii) adopted Restated Articles of Incorporation to authorize such change of business purposes; and (iii) authorized the filing of an application with the Commission to deregister the company as an investment company under the Act.

The application states that on February 3, 1983, Applicant filed with the Secretary of State of Georgia Restated Articles of Incorporation effecting the company's change of business purpose. The application states that Applicant and SCSSBIC sold substantially all of their small business type investments, and SCSSBIC was liquidated as a corporation and its SBIC license surrendered. Applicant states that it has recently acquired substantial investments in several operating companies, and plans to control the management of the business of such companies.

The application states that on January 27, 1984, SCC Petroleum Corporation, a North Carolina corporation ("SCC") then wholly-owned by Applicant purchased all of the equity of nine corporations and one partnership then wholly-owned by Applicant from an investment company under the Act. SCC purchased the stock and partnership interests of these businesses for cash and notes, and then merged them into SCC with SCC being the sole surviving entity. Applicant asserts that in connection with the consummation of the purchase of the business, SCC issued stock to certain equity owners of the businesses but Applicant retained ownership of more than 80% of the issued and outstanding stock of SCC. Applicant states that its investment in SCC consists of $1,100,000 in stock and subordinated debentures. Applicant states further that the majority of the board of directors and officers of SCC consist of officers of Applicant. According to the application SCC had total assets of approximately $23,470,000 as of March 1, 1984.

The application states that in November 1983, Applicant entered into a Stock Purchase Agreement ("Agreement") providing for the purchase by Applicant for $10,200,000 of all of the issued and outstanding stock of Scranton Broadcasters, Inc., a Pennsylvania corporation, and the owner and operator of Station WDAU-TV. Applicant states that pursuant to the terms of the Agreement, Applicant deposited a down payment of $1,000,000 in escrow, and is awaiting the approval of the Federal Communications Commission of the transfer of the WDAU-TV license to close the purchase transaction. Applicant asserts that it has assigned its rights under the Agreement to its wholly-owned subsidiary, SB Television, Inc., a Georgia corporation ("Sub") whose officers and directors are also officers and directors of Applicant.

Applicant states that as of March 31, 1984, Applicant had total assets of approximately $8,238,372 including its interests in SCC of which approximately $5,824,377 is in cash, cash equivalents and government securities. Applicant states that its remaining assets are deployed as follows (all in approximate amounts): $1,100,000 in SCC; $459,000 in investment securities; and $1,854,900 in other investments.

Applicant asserts that it is no longer an investment company as defined under the Act. Section 3(a)(1) of the Act defines an investment company as any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. By virtue of its change of business purpose and acquisition of its interest in SCC, Applicant states that it has ceased to be engaged primarily in the business of an investment company. Further, Applicant states that it has no intention of disposing of its interest in SCC or in Sub. Additionally, Applicant asserts that it is no longer within the definition of an investment company contained in Section 3(a)(2) of the Act, since it no longer owns investment securities having a value exceeding 40 percent of the value of its total assets, exclusive of government securities and cash items.

Section 8(f) of the Act provides that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order. The Commission may condition the order if necessary for the protection of investors. Applicant has consented to the requested order of deregistration being conditioned upon the Commission’s retention of such jurisdiction as it may deem necessary for the protection of investors. In that regard Applicant states that immediately upon effectiveness of its deregistration under the Act, the company’s common stock shall be deemed to be registered pursuant to Section 12(g)(1) of the Securities Exchange Act of 1934 pursuant to Rule 12g-2 promulgated thereunder.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 18, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.
Self-Regulatory Organizations; 
Cincinnati Stock Exchange; 
Applications for Unlisted Trading 
Privileges and of Opportunity for 
Hearing 

April 23, 1984.

The above named national securities exchange has filed applications with the 
Securities and Exchange Commission 
pursuant to Section 12(f)(1)(B) of the 
Securities Exchange Act of 1934 and 
Rule 12f-1 thereunder, for unlisted 
trading privileges in the following stocks:
Cooper Laboratories, Inc.
Common Stock, $.10 Par Value (File 7– 
7421)
Michigan Sugar Company 
Common Stock, $1 Par Value (File 7– 
7422)
These securities are listed and 
registered on one or more other national 
securities exchange and are reported in 
the consolidated transaction reporting 
system.

Interested persons are invited to 
submit on or before May 16, 1984 written 
data, views and arguments concerning 
the above-referenced applications.

For the Commission, by the Division of 
Market Regulation, pursuant to delegated 
authority.

George A. Fitzsimmons, 
Secretary.

BILMING CODE 8010-01-M

Self-Regulatory Organizations; 
Midwest Stock Exchange, Inc.; 
Applications for Unlisted Trading 
Privileges and of Opportunity for 
Hearing 

April 25, 1984.

The above named national securities 
exchange has filed applications with the 
Securities and Exchange Commission 
pursuant to Section 12(f)(1)(B) of the 
Securities Exchange Act of 1934 and 
Rule 12f-1 thereunder, for unlisted 
trading privileges in the following stocks:
Home Depot Inc. (The)
Common Stock, $.05 Par Value (File 
No. 7–7423)
Park Electrochemical Corporation 
Common Stock, $.10 Par Value (File 
No. 7–7424)
These securities are listed and 
registered on one or more other national 
securities exchange and are reported in 
the consolidated transaction reporting 
system.

Interested persons are invited to 
submit on or before May 16, 1984 written 
data, views and arguments concerning 
the above-referenced applications.

For the Commission, by the Division of 
Market Regulation, pursuant to delegated 
authority.

George A. Fitzsimmons, 
Secretary.

BILMING CODE 8010-01-M

[Release No. 34–20864; File No. SR–NYSE– 
84–111]

Self-Regulatory Organizations; 
Proposed Rule Changes; New York 
Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the 
Securities Exchange Act of 1934, 15 
U.S.C. 78s(b)(1), notice is hereby given 
that on April 2, 1984, the New York 
Stock Exchange, Inc. filed with the 
Securities and Exchange Commission 
the proposed rule changes as described 
in Items I, II and III below, which Items 
have been prepared by the self–
regulatory organization. The 
Commission is publishing this notice to 
solicit comments on the proposed rule 
changes from interested persons.

I. Self-Regulatory Organization’s 
Statement of the Terms of Substance 
of the Proposed Rule Changes 

The proposed adoption of Rule 150 is 
tended to provide for the preservation of 
rights available in securities loan 
transactions to broker-dealers where 
one party to such transaction becomes 
insolvent.
to liquidate these positions will be better able to monitor its compliance with the net capital provisions of the Act under rule 15c3-1 since the member can remove uncertainty as to its status concerning the contra party to a securities loan transaction. Rescission of Rules 181 through 181 will not affect the ability of the Exchange to enforce compliance by its members, and persons associated therewith, with the provisions of the Act and rules of the Exchange in accordance with Section 6(b)(1) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes do not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule changes, or

B. Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C.

Copies of such filing will be available for inspection and copying at the principal office of the above mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

(For the Commission by the Division of Market Regulation, pursuant to delegated authority)


George A. Fitzsimmons,
Secretary.

BILLING CODE 8010-01-M

[Release No. 34-20885; File No. SR-PHILADEP 84-2]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Depository Trust Co.; Relating to Customer Name Transfer Mailing Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C 78s(b)(1), notice is hereby given that on March 22, 1984, Philadelphia Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadelphia Depository Trust Company (PHILADEP) proposes to make its customer name transfer mailing service a permanent program open to all participants. PHILADEP has been operating this service on a pilot basis since May 1983 (See SR-PHILADEP 83-3). One modification will be introduced into this service in its permanent form; paper instructions will be accepted as well as tape transmission at an additional charge of $5.00 per transfer instruction. Copies of the Procedures for both paper and tape input are attached as Exhibit A.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of the basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements:

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

Because of the success of the customer name transfer mailing service in its pilot form, PHILADEP wishes to make the service available to all its participants. In order to accommodate its smaller participants, PHILADEP will provide for the input of instructions in paper form, in addition to the tape transmission that would be the likely form of input from the larger participants. This modification will make the program more accessible to the full range of PHILADEP's participants.

As stated in the original filing, PHILADEP believes the proposed rule change is consistent with the provisions of Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 (the "Act") in that it will promote the prompt and accurate clearance and settlement of securities transactions. The Commission concurred with this assessment in Release No. 20112 dated August 25, 1983, and stated further that the pilot program promoted the safeguarding of securities in PHILADEP's custody or control, or for which it is responsible, by reducing the physical movement of securities and enhancing the safety of the processing of securities transfers.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not perceive any burden on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change

Comments on the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule changes, or

B. Institute proceedings to determine whether the proposed rule changes should be disapproved.
organization consents, the Commission will:
(A) By order approve such proposed rule change, or
(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments
Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal offices of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons, Secretary.

Title—Procurement Solicitations.
Purpose—Issuance of solicitation documents for all acquisition actions over the small purchase limitation is required by the Federal Procurement Regulations and Federal Acquisition Regulations. This request has been prepared with a cognizance of the FAR and is intended to satisfy all requirements relating thereto.
Respondents—Prospective Federal Government Contractors.
Estimated number of respondents—1,008.
Estimated number of burden hours—97,604.
Section 3504(h) of Pub. L. 96-511 does not apply.

Additional Information and Comments
Copies of the information collection request and supporting documents may be obtained from Gail J. Cook (202) 632-3023. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7231.

Dated: April 9, 1984.
Robert E. Lamb, Assistant Secretary for Administration.

DEPARTMENT OF STATE

[Public Notice CM-8/735]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC), will conduct an open meeting at 9:30 AM on May 31, 1984, in Room 2417 of the U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C.

The purpose of the meeting is to finish preparations for the 52nd Session of the Council of the International Maritime Organization (IMO), scheduled for June 21-15, 1984, in London. In particular, the SHC will discuss the development of the U.S. positions dealing with, among others, the following topics:

Reports of the various IMO committees
World Maritime University; progress report
Relations with the U.N. and the Specialized Agencies
Financial and personnel matters

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. G. P. Yoest, U.S. Coast Guard Headquarters (G-CPI), 2100 Second Street, SW., Washington, D.C. 20593. Telephone: (202) 426-2280.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB March 27-April 11, 1984

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements, transmitted by the Department of Transportation, during the period Mar. 27–Apr. 11, 1984, to the Office of Management and Budget (OMB) for its approval. This notice is published in accordance with the requirements of the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35].


SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to the Office of Management and Budget (OMB) for approval under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. As needed, the Department of Transportation will publish in the Federal Register a list of those forms, reporting and recordkeeping requirements that it has submitted to OMB for review and approval under the Paperwork Reduction Act. The list will include new items imposing paperwork burdens on
the public as well as revisions, renewals and reinstatements of already existing requirements. OMB approval of an information collection requirement must be renewed at least once every three years. The published list also will include the following information for each item submitted to OMB:

(1) A DOT control number.
(2) An OMB approval number if the submittal involves the renewal, reinstatement or revision of a previously approved item.
(3) The name of the DOT Operating Administration or Secretarial Office involved.
(4) The title of the information collection request.
(5) The form numbers used, if any.
(6) The frequency of required responses.
(7) The persons required to respond.
(8) A brief statement of the need for and uses to be made of, the information collection.

Information Availability and Comments
Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the “For Further Information Contact” paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the “For Further Information Contact” paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 5 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB
The following information collection requests were submitted to OMB from Mar. 27—Apr. 11, 1984:

**DOT No: 2408**
OMB No: New
By: Federal Highway Administration
Title: Submission of Alternate Procedures for Processing Utility Adjustments
Forms: None
Frequency: On Occasion
Respondents: State highway agencies
Need/Use: The alternate procedures process allows the State highway agencies to review and approve reimbursements for most typical utility disruptions caused by Federal-aid highway construction projects.

**DOT No: 2409**
OMB No: 2120-0007
By: Federal Aviation Administration
Title: Flight Engineers & Flight Navigation—FAR 63
Forms: Federal Aviation Administration Form 8403-3
Frequency: Occasion
Respondents: Individuals
Need/Use: Federal Aviation Administration Act Sections 602(a) and 607 authorize issuance of airman certificates and provide for examination and rating of flying schools. 14 CFR 63 prescribes requirements for flight engineer and flight navigator certification and training course requirements for these airmen. Information collected is used to determine eligibility for certificates.

**DOT No: 2410**
OMB No: New:
By: National Highway Traffic Safety Administration
Title: Tire Registration Survey
Forms: None
Frequency: Non-recurring
Respondents: Businesses and other for profit organizations
Need/Use: To collect data from independent tire dealer/distributors on tire registration practices, and data from manufacturer shipment/registration before and after passage of new rule.

**DOT No: 2411**
OMB No: 2130-00041
By: Federal Railroad Administration
Title: Hours of Service Exemption and Construction of Employee Sleeping Quarters
Forms: None
Frequency: On Occasion
Respondents: Railroads
Need/Use: This information is needed to monitor the hours of service of railroad employees and the construction of employee sleeping quarters near work sites for the purpose of extending work hours of individual employees by exemptions in certain instances.

**DOT No: 2412**
OMB No: New
By: Federal Highway Administration
Title: Highway Planning and Research—Annual Work Program
Forms: None
Frequency: Annually
Respondents: State Highway Agencies
Need/Use: The Annual Work Program is necessary to determine how Federal Highway Administration highway planning and research funds will be utilized by State highway agencies and if the proposed work is eligible for participation in Federal grant programs.

**DOT No: 2413**
OMB No: New
By: National Highway Traffic Safety Administration
Title: Hydraulic Brake Systems, 49 CFR 571.105
Forms: None
Frequency: On Occasion
Respondents: Motor Vehicle Manufacturers of Master Cylinders
Need/Use: This standard requires manufacturers and suppliers of master cylinders and replacement caps to imprint certain information on the cylinder and replacement caps. The practice assists in identification and recall of defective parts as well as to ensure that the correct replacement is used.

**DOT No: 2414**
OMB No: New
By: National Highway Traffic Safety Administration
Title: Motor Vehicle Brake Fluids, 49 CFR 571.116
Forms: None
Frequency: On Occasion
Respondents: Manufacturers of Brake Fluids
Need/Use: This standard requires manufacturers and packagers of brake fluids to furnish specific information on the containers of brake fluids. This safety measure insures proper usage to avoid brake failure.

**DOT No: 2415**
OMB No: 2125-0510 and 2120-0080 combined
By: Office of Secretary—Policy & International
Title: Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Acquisition for Federal and Federally-Assisted Programs (Airport, Highway, Urban Rail)
Forms: SF 262, SF 263, SF 264, SF 265, SF 266, SF 267
Frequency: Annual
Respondents: States, Local Governments, Airport Operators, Transit Agencies
Need/Use: The Uniform Act requires that actions be documented and contained in the agencies files to assure prudent expenditures of public funds, and assure protection of the rights of property owners and occupants. It further serves to provide a means by which DOT personnel can exercise oversight of a program which is both costly and sensitive.

**DOT No: 2416**
OMB No: New
By: Federal Railroad Administration
Title: Tire Registration Survey
Forms: None
Frequency: Non-recurring
Respondents: Businesses and other for profit organizations
Need/Use: To collect data from independent tire dealer/distributors on tire registration practices, and data from manufacturer shipment/registration before and after passage of new rule.

**DOT No: 2417**
OMB No: New
By: National Highway Traffic Safety Administration
Title: Hydraulic Brake Systems, 49 CFR 571.105
Forms: None
Frequency: On Occasion
Respondents: Motor Vehicle Manufacturers of Master Cylinders
Need/Use: This standard requires manufacturers and suppliers of master cylinders and replacement caps to imprint certain information on the cylinder and replacement caps. The practice assists in identification and recall of defective parts as well as to ensure that the correct replacement is used.

**DOT No: 2418**
OMB No: New
By: National Highway Traffic Safety Administration
Title: Motor Vehicle Brake Fluids, 49 CFR 571.116
Forms: None
Frequency: On Occasion
Respondents: Manufacturers of Brake Fluids
Need/Use: This standard requires manufacturers and packagers of brake fluids to furnish specific information on the containers of brake fluids. This safety measure insures proper usage to avoid brake failure.

**DOT No: 2419**
OMB No: 2125-0510 and 2120-0080 combined
By: Office of Secretary—Policy & International
Title: Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Acquisition for Federal and Federally-Assisted Programs (Airport, Highway, Urban Rail)
Forms: SF 262, SF 263, SF 264, SF 265, SF 266, SF 267
Frequency: Annual
Respondents: States, Local Governments, Airport Operators, Transit Agencies
Need/Use: The Uniform Act requires that actions be documented and contained in the agencies files to assure prudent expenditures of public funds, and assure protection of the rights of property owners and occupants. It further serves to provide a means by which DOT personnel can exercise oversight of a program which is both costly and sensitive.
Title: Rear-End Marking Devices
(Trains)

Frequency: On occasion
Respondents: Railroads.

Need/Use: By the Railroad Safety Act of 1970, FRA is required to issue specifications for marking the rear-end of passenger and freight trains with a device or equipment with high visibility, both night and day, from behind and at specified angles on both sides of center line.

**DOT No:** 2417

**OMB No:** 2127-0004

By: National Highway Traffic Safety Administration (NHTSA)

**Title:** 49 CFR Part 573, Defect and Noncompliance Reports

**Forms:** None specified

**Frequency:** Recordkeeping

**Respondents:** Railroads

Need/Use: Manufacturers of motor vehicles and motor vehicle equipment are required to report to NHTSA when a defect or noncompliance with safety standards may surface in their equipment, so that the agency can monitor the corrective action taken and see that the defect is appropriately publicized to owners, or that a recall is made of defective parts.

**DOT No:** 2418

**OMB No:** New

By: Federal Railroad Administration (FRA)

**Title:** Transmission of Train Order by Radio (Records kept)

**Forms:** None specified

**Frequency:** Recordkeeping

**Respondents:** Railroads

Need/Use: FRA uses this recorded information to assure safe and uniform procedures covering the use of radio telephones in railroad operations. For safety, FRA requires that radio commands or instructions received by train operators and other crew be written down and copies passed to other members of the crew before action is taken so that the crew is well informed on events. The form used to copy radio messages is not specified by FRA.


Jon H. Seymour,

*Deputy Assistant Secretary for Administration*

[FR Doc. 84-11622 Filed 4-30-84; 8:45 am]

**BILLING CODE 4910-63-M**

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**Federal Aviation Administration**

**Certificate of Transport Category**

**Rotorcraft**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Availability of proposed new material to Advisory Circular (AC) 29-2, Certification of Transport Category Rotorcraft, and request for comments.

**SUMMARY:** Advisory Circular 29-2 was issued on May 20, 1983, and at that time many of the paragraphs were shown as “Reserved.” The material to be added will be identified as “Change 1” and will consist of 56 new paragraphs that were formerly reserved and revised material for two existing paragraphs.

**DATE:** Commenters must identify File AC 29-2, Change 1, and comments must be received on or before June 29, 1984.

**ADDRESS:** Send all comments on the AC 29-2, Change 1, draft to: Federal Aviation Administration, ATTN: Helicopter Policy and Procedures Staff, ASW-110, P.O. Box 1689, Fort Worth, Texas 76101.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Swihart, Aerospace Engineer, Helicopter Policy and Procedures Staff, ASW-110, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (617) 877-2585 or FTS 734-2585.

**SUPPLEMENTARY INFORMATION:** Draft copies of AC 29-2, Change 1, are being mailed to all known affected industry and government entities, both domestic and foreign. Previous comments made by other FAA Aircraft Certification Offices were considered in developing the draft in its present form. Any interested person not receiving a copy of this draft and desiring one should contact the person named under “FOR FURTHER INFORMATION CONTACT.”

**Comments Invited**

Interested persons are invited to comment on draft AC 29-2, Change 1. Comments received on the draft may be inspected at the offices of the Helicopter Policy and Procedures Staff, (ASW-110), 2nd Floor, Building 3A, Room 235, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, between 8 a.m. and 4:30 p.m. on weekdays, except Federal holidays.

A public meeting will be held in the FAA Southwest Region Office Training Room, ground floor, Building 3A, 4400 Blue Mound Road, Fort Worth, Texas, on May 31, 1984, at 8:30 a.m. for the purpose of allowing interested persons to verbally emphasize their written comments.

Issued in Fort Worth, Texas, on April 13, 1984.

F. E. Whitfield,

*Acting Director, Southwest Region*

[FR Doc. 84-11622 Filed 4-30-84; 8:45 am]

**BILLING CODE 4910-13-M**

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**Federal Highway Administration**

**Environmental Impact Statement; Jefferson County, Arkansas**

**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 Jefferson County, Arkansas.

**FOR FURTHER INFORMATION CONTACT:** E. C. Lydick, District Engineer, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201, Telephone: (501) 378-5300; or Bill Richardson, Senior Environmental Scientist, Environmental Division, Arkansas State Highway and Transportation Department, P.O. Box 2281, Little Rock, Arkansas 72203, Telephone: (501) 569-2281.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Arkansas State Highway and Transportation Department, will prepare an environmental impact statement (EIS) on a proposal to construct a freeway to serve western, southern, and central Pine Bluff, Jefferson County, Arkansas. The Pine Bluff Study Area is projected to have a population of 95,482 by the year 2000. Most of the growth is expected to occur in White Hall and to the south and west of Pine Bluff. The industrial parks and port to the northwest and northeast of Pine Bluff; the major commercial centers downtown, on U.S. 65B, on S.H. 15 and on U.S. 79; and the existing and projected locations of residential land create a pattern of frequent crosstown trips within Pine Bluff. The existing street system is inadequate to handle expected traffic, and U.S. 65 is the only east-west through route in the area.

Alternates to be considered are: (1) The "Do-Nothing" Alternate where no improvements are made to existing streets and highways, and new routes are constructed as development dictates; (2) the "Reconstruction of Existing Streets" Alternate—bringing the street and highway system up to the
standards presented in the city and county master street plans; (3) the "New Location" Alternate—a future facility that can carry anticipated traffic at a reasonable level of service (more than one alignment on the southern part of the city will be studied); and (4) a mass transit alternate.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, state, and local agencies and to private organizations, including conservation groups and groups and individuals who have voiced opposition to the project in the past and to major Arkansas newspapers. Also, a series of public involvement sessions were held in a mobile trailer situated directly in the areas to be affected. In addition, a public hearing will be held.

To ensure that the full range of issues related to this proposed action 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.

Issued on: April 24, 1984.
Edward C. Lydick,
District Engineer, Little Rock, Arkansas.

National Highway Traffic Safety Administration

[Docket No. IP84-4; Notice 1]

Firestone Tire & Rubber Co.; Receipt of Petition for Determination of Inconsequential Noncompliance

The Firestone Tire & Rubber Co. of Akron, Ohio 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 a noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, New Pneumatic Tires—Passenger Cars. The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition for a determination of inconsequentiality is published in accordance with 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.

Section 54.5(e) of Standard No. 109 requires that the actual number of plies in a tire be indicated on both sidewalls. Firestone has manufactured approximately 900 C78-15 Deluxe Champion 4 ply polyester tires with stamping on both sides indicating the tires have only three plies. Firestone argues that this is an inconsequential noncompliance because the legend "Load Range B" will indicate to prospective purchasers that the tire is one of four plies. Further, Tire & Rim Association load and inflation tables indicate the same load-carrying capacities for all ply ratings. Retreaders will be guided by Load Range B markings and will not be confused by the erroneous stampings. Finally, Firestone does not produce a three-ply tire and the tires are not likely to be sold as anything but what they are.

Interested persons are invited to submit written data, views and arguments on the petition of Firestone Tire & Rubber Co. 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 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 primarily responsible for this notice are A. Y. Casanova and Taylor Vinson, respectively.

Comment closing date: May 31, 1984.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 150 and 49 CFR 213(b))

Issued on April 25, 1984.
Barry Felisco,
Associate Administrator for Rulemaking.

[F] Federal Register / Vol. 49, No. 85 / Tuesday, May 1, 1984 / Notices

RENEWAL AND PARTY TO EXEMPTIONS

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<td>Wampum Hardware Company, New Galilee, PA.</td>
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<td>6626-P</td>
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<td>Bishop's Welding Supply, Tampa, FL.</td>
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<td>To authorize a preferred expanded polyethylene molding, or thermoformed polyvinyl chloride tray, as inner packaging, overpacked in a fiberboard box, for transportation of a certain oxidizing material. (Modes 1, 2, 3.)</td>
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<td>49 CFR 173.193(a)(3), 173.68(g), 173.835(g)(29)</td>
<td>To authorize manufacture, marketing and sale of non-DOT specification portable tanks. (Mode 1.)</td>
</tr>
<tr>
<td>7766-XX</td>
<td>DOT-E 7766</td>
<td>Texas Eastman Company, Longview, TX</td>
<td>49 CFR 173.193(a)(3), 173.68(g), 173.835(g)(29)</td>
<td>To authorize transport of carbon dioxide in portable tanks built, marked and maintained in compliance with the DOT Specification MC-920 cargo tank. (Modes 1, 2.)</td>
</tr>
<tr>
<td>7768-XX</td>
<td>DOT-E 7768</td>
<td>U.S. Department of Defense, Washington, DC</td>
<td>49 CFR 175.702(b), 175.705(a)(3), 175.707</td>
<td>To become a party of Exemption 7768. (Mode 4.)</td>
</tr>
<tr>
<td>7803-XX</td>
<td>DOT-E 7803</td>
<td>Plasticati, Inc., Leominster, MA</td>
<td>49 CFR 173.103(a), 173.66(g), 173.328, 173.332, 173.336, 173.337, 173.358, 173.359(a), 173.364, 173.365, 175.3</td>
<td>To authorize use of a modified DOT specification cargo tank, for transportation of Class B poisonous liquids, flammable liquids, organic peroxides and corrosive liquids. (Modes 1, 2, 3.)</td>
</tr>
<tr>
<td>7835-XX</td>
<td>DOT-E 7835</td>
<td>Scott Specialty Gases, Plumsteadville, PA</td>
<td>49 CFR 177.848, Part 107 Appendix B(1)</td>
<td>To authorize manufacture, marking and sale of non-DOT specification portable tanks. (Mode 1.)</td>
</tr>
</tbody>
</table>

To authorize a glass bottle not exceeding 500 milliliter capacity in a portable tank complying with DOT Specification 125 fiberboard box, for transportation of a flammable liquid. (Mode 1.)

To authorize use of a modified DOT specification cargo tank, for transportation of flammable combustible liquids. (Mode 3.)

To authorize transport of Class B poisonous liquids in a portable tank complying with DOT Specification 60, except the ends are bolted instead of welded. (Mode 1.)

To authorize transport of certain hazardous materials by rail. (Mode 2.)

To authorize transport of certain corrosive materials, oxidizers, and Class B poisonous liquids in a portable tank complying with DOT Specification 60, except the ends are bolted instead of welded. (Mode 1.)

To authorize transport of Class B liquid propellant explosive, in non-DOT specification sealed drums. (Mode 1.)

To authorize use of a glass bottle not exceeding 500 milliliter capacity inside a metal container overpacked in a DOT Specification 125 fiberboard box, for transportation of a flammable liquid. (Mode 1.)

To authorize transport of certain carbon dioxide in portable tanks built, marked and maintained in compliance with the DOT Specification MC-920 cargo tank. (Modes 1, 2.)

To authorize transport of anhydrous hydrogen fluoride or anhydrous methyldichloroethane in certain non-DOT specification portable tanks. (Modes 1, 2.)

To authorize transport of anhydrous hydrogen fluoride or anhydrous methyldichloroethane in certain non-DOT specification portable tanks. (Modes 1, 2.)

To authorize transport of non-liquefied sulfur hexafluoride in certain X-ray machines, overpacked in strong wooden or fiberboard boxes. (Modes 1, 2, 3, 4, 5.)

To become a party to Exemption 7835. (Mode 1.)
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<thead>
<tr>
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<tbody>
<tr>
<td>7887-X</td>
<td>DOT-E 7887</td>
<td>Crown Rocket Technology, Moulton Terrace, WA</td>
<td>49 CFR 172.101, 173.111, 175.3, Part 107 Appendix B</td>
<td>To authorize transport of certain toy propellant devices and igniters, in DOT Specifications 15A, 16B, 16A or 19A wooden boxes, or DOT Specification 128 fiberboard boxes. (Modes 1, 2, 3, 4, 5)</td>
</tr>
<tr>
<td>7915-X</td>
<td>DOT-E 7915</td>
<td>Oliv Corporation, East Alton, IL</td>
<td>49 CFR 173.203(b)</td>
<td>To authorize transport of certain propellant igniters in water in DOT Specification MC-307 or MC-312 cargo tanks. (Mode 1)</td>
</tr>
<tr>
<td>7919-X</td>
<td>DOT-E 7919</td>
<td>U.S. Department of Defense, Washing-</td>
<td>49 CFR 173.303(b)</td>
<td>To renew and to expand on restricted points of transportation. (Mode 1)</td>
</tr>
<tr>
<td>7945-X</td>
<td>DOT-E 7945</td>
<td>HTL Industries, Inc., Duarte, CA</td>
<td>49 CFR 172.101, 173.301(3)(2), 173.302(a)(2), 173.302(a)(2), 172.101 Column 6(b), 173.305(a)(1)</td>
<td>To authorize transport of limited quantities of explosive in a special fiber reinforced plastic full composite cylinders, for transportation of nonflammable compressed gas. (Modes 1, 2, 3)</td>
</tr>
<tr>
<td>7947-X</td>
<td>DOT-E 7947</td>
<td>Wheaton Aerosols Co., Mays Landing, NJ</td>
<td>49 CFR 177.834(a), Part 172, Subparts D, E, F, H, Subparts K, L, M, G</td>
<td>To authorize use of a stainless steel other than that prescribed in the regulations, in the construction of a cylinder patterned after DOT Specification 4DS cylinders, for shipment of a nonflammable compressed gas. (Modes 1, 2, 3, 4, 5)</td>
</tr>
<tr>
<td>8053-P</td>
<td>DOT-E 8053</td>
<td>National Aeronautics and Space Adminis-</td>
<td>49 CFR 177.834(a), Part 172, Subparts D, E, F, H, Subparts K, L, M, G</td>
<td>To authorize transport of a Class B rocket motor having a gross shipping weight not exceeding 3000 lbs, by cargo-only aircraft. (Mode 4)</td>
</tr>
<tr>
<td>8195-X</td>
<td>DOT-E 8195</td>
<td>Lawrence University, Appleton, Wisc.</td>
<td>49 CFR 172.101, 173.206, 173.247</td>
<td>To become a party to Exemption 8009. (Mode 1)</td>
</tr>
<tr>
<td>8196-X</td>
<td>DOT-E 8196</td>
<td>Brownings Firms Industrial Services Chemical Services Inc., Houston, TX</td>
<td>49 CFR 172.101, 173.206, 173.247</td>
<td>To become a party to Exemption 8129. (Mode 1)</td>
</tr>
<tr>
<td>8158-X</td>
<td>DOT-E 8158</td>
<td>Union Carbide Corporation, Danbury, CT</td>
<td>49 CFR 172.199(a), 172.199(m), 173.245(d), 178.340-7, 178.342-5, 178.343-5</td>
<td>To authorize use of a non-DOT specification cargo tank designed and constructed in full compliance with DOT Specification MC-307/312 except for bottom outlet valve variations, for transportation of a corrosive liquid and a flammable liquid. (Mode 1)</td>
</tr>
<tr>
<td>8180-X</td>
<td>DOT-E 8180</td>
<td>Dow Corning Corporation, Midland, MI</td>
<td>49 CFR 173.119(m), 173.196(a)(3), 173.247(a)(7)</td>
<td>To authorize manufacture, marketing and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for transportation of nonflammable compressed gases. (Modes 1, 2, 3, 4, 5)</td>
</tr>
<tr>
<td>8299-X</td>
<td>DOT-E 8299</td>
<td>HTL Industries, Inc., Duarte, CA</td>
<td>49 CFR 173.504(a)(1), 173.3, 173.44</td>
<td>To authorize manufacture, marketing and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for transportation of nonflammable compressed gases. (Modes 1, 2, 3, 4, 5)</td>
</tr>
<tr>
<td>8304-X</td>
<td>DOT-E 8304</td>
<td>Whirlpool Corporation, La Porte, IN</td>
<td>49 CFR 100-177</td>
<td>To authorize transport of certain Thermoclastic elements containing small quantities of sodium potassium alloy, liquid packed in a strong fiberboard box. (Modes 1, 2, 3, 4, 5)</td>
</tr>
<tr>
<td>8445-P</td>
<td>DOT-E 8445</td>
<td>E. I. du Pont de Nemours &amp; Company, Inc., Wilmington, DE</td>
<td>49 CFR 173, Subpart D, E, F, H, &amp; I</td>
<td>To become a party to Exemption 8445. (Mode 1)</td>
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### RENEWAL AND PARTY TO EXEMPTIONS—Continued

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<th>Exemption No.</th>
<th>Applicant</th>
<th>Regulation(s) affected</th>
<th>Nature of exemption thereof</th>
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<tr>
<td>8445-P</td>
<td>DOT-E 8445</td>
<td>University of Minnesota, Minneapolis, MN</td>
<td>49 CFR 1732, Subpart D, E, F, &amp; H</td>
<td>To become a party to Exemption 6854. (Mode 1)</td>
</tr>
<tr>
<td>8445-P</td>
<td>DOT-E 8445</td>
<td>Rolling Environmental Services, Inc., Bridgeport, NJ</td>
<td>49 CFR 1732, Subpart D, E, F, &amp; H</td>
<td>To become a party to Exemption 6854. (Mode 1)</td>
</tr>
<tr>
<td>8453-X</td>
<td>DOT-E 8453</td>
<td>Hedwin Corporation, Baltimore, MD</td>
<td>49 CFR 173.118, 173.125, 173.154, 173.272, 173.278, 173.346</td>
<td>To authorize manufacture, marking and sale of DOT Specification 94 drums of 4, 5 and 6-gallon capacity, for shipment of certain flammable, poison B, corrosive liquids and organic peroxides. (Modes 1, 2, 3, 8)</td>
</tr>
<tr>
<td>8453-X</td>
<td>DOT-E 8453</td>
<td>Sears, Roebuck and Co., Chicago, IL</td>
<td>49 CFR 173.24(a)(1), 173.5, Parts 172 &amp; 177</td>
<td>To become a party to Exemption 8460. (Modes 1, 2, 3)</td>
</tr>
<tr>
<td>8499-X</td>
<td>DOT-E 8499</td>
<td>Hedwin Corporation, Baltimore, MD</td>
<td>49 CFR 173.118, 173.125, 173.154, 173.272, 173.278, 173.346</td>
<td>To authorize manufacture, marking and sale of DOT Specification 94 polyethylene drums, for shipment of certain flammable, poison B, corrosive liquids and oxidizers. (Modes 1, 2, 3, 5)</td>
</tr>
<tr>
<td>8522-X</td>
<td>DOT-E 8522</td>
<td>Taylored Foam Inc., Oshkosh, CA</td>
<td>49 CFR 177.839(a)(b), 178.150, Part 173, Subpart F</td>
<td>To change company name from Foamco to Taylored Foam, Inc. and to authorize an increase in the depth of each cell in the polystyrene shipping case. (Modes 1, 2, 3)</td>
</tr>
<tr>
<td>8554-P</td>
<td>DOT-E 8554</td>
<td>Mining Services International, Salt Lake City, UT</td>
<td>49 CFR 173.114a, 173.154, 173.93</td>
<td>To become a party to Exemption 6554. (Modes 1)</td>
</tr>
<tr>
<td>8577-X</td>
<td>DOT-E 8577</td>
<td>Petroleum Corporation, St. Louis, MO</td>
<td>49 CFR 173.119, 173.245, 173.259</td>
<td>To authorize use of six non-DOT specification portable tanks manufactured together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids. (Mode 1)</td>
</tr>
<tr>
<td>8577-X</td>
<td>DOT-E 8577</td>
<td>Exxon Chemical Company, Houston, TX</td>
<td>49 CFR 173.119, 173.245, 173.259</td>
<td>To authorize use of six non-DOT specification portable tanks manufactured together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids. (Mode 1)</td>
</tr>
<tr>
<td>8577-X</td>
<td>DOT-E 8577</td>
<td>Chemtex Petroleum, Inc., Spring Mills, PA</td>
<td>49 CFR 173.119, 173.245, 173.259</td>
<td>To authorize use of six non-DOT specification portable tanks manufactured together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids. (Mode 1)</td>
</tr>
<tr>
<td>8718-X</td>
<td>DOT-E 8718</td>
<td>Structural Composites Industries, Inc., Pomona, CA</td>
<td>49 CFR 173.302(a), 173.304(a), 173.3</td>
<td>To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic drums, for shipment of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, 5)</td>
</tr>
<tr>
<td>8751-X</td>
<td>DOT-E 8751</td>
<td>Delta Tech Service, Inc., Martinez, CA</td>
<td>49 CFR 173.119(a), 173.199, 173.245(a), 173.259(a), 173.345(a), 173.345(b)</td>
<td>To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-312 with certain exceptions, for shipment of certain hazardous materials. (Mode 1)</td>
</tr>
<tr>
<td>8779-X</td>
<td>DOT-E 8779</td>
<td>Acme Resin Corporation, Forest Park, IL</td>
<td>49 CFR 173.345</td>
<td>To authorize use of DOT Specification 57 portable tanks for shipment of non-DOT specification cargo tanks, to transport blasting agent. (Mode 1)</td>
</tr>
<tr>
<td>8918-P</td>
<td>DOT-E 8918</td>
<td>GOEX, Inc., Cleburne, TX</td>
<td>49 CFR 172.101, 173.110, 173.80</td>
<td>To become a party to Exemption 6988. (Modes 1, 3)</td>
</tr>
<tr>
<td>8918-P</td>
<td>DOT-E 8918</td>
<td>Pongo Industries, Inc., Fort Worth, TX</td>
<td>49 CFR 172.101, 173.110, 173.80</td>
<td>To become a party to Exemption 6988. (Modes 1, 3)</td>
</tr>
<tr>
<td>9064-X</td>
<td>DOT-E 9064</td>
<td>Corning Glass Works, Corning, NY</td>
<td>49 CFR 173.245, 173.271</td>
<td>To authorize manufacture, marking and sale of DOT Specification 34 portable tanks for shipment of certain hazardous materials. (Mode 1)</td>
</tr>
</tbody>
</table>

### NEW EXEMPTIONS

<table>
<thead>
<tr>
<th>Application No.</th>
<th>Exemption No.</th>
<th>Applicant</th>
<th>Regulation(s) affected</th>
<th>Nature of exemption thereof</th>
</tr>
</thead>
<tbody>
<tr>
<td>9077-N</td>
<td>DOT-E 9077</td>
<td>Central Vermont Railway, Inc., St. Albans, VT</td>
<td>49 CFR Part 100-199</td>
<td>To authorize transport of railway track torpedoes and railway fences in flagging kits constructed of 24 gauge galvanized steel. (Mode 1)</td>
</tr>
<tr>
<td>9136-N</td>
<td>DOT-E 9138</td>
<td>Plasti-Drum Corporation, Lockport, IL</td>
<td>49 CFR 173.119, 173.221, 173.245(a)(b)(g)(h), 173.271, 173.357(b), 178.19</td>
<td>To authorize manufacture, marking and sale of DOT Specification 94 drums of up to 30 gallon capacity, for shipment of various poison B liquids, flammable liquids, organic peroxides, oxidizers and corrosive materials. (Modes 1, 2, 3, 4, 5)</td>
</tr>
<tr>
<td>9140-N</td>
<td>DOT-E 9148</td>
<td>Bliis-Felser GmbH, Postfach, West Germany</td>
<td>49 CFR 171.12(c), 178.116-6(a)</td>
<td>To authorize manufacture, marking and sale of non-DOT specification steel drums of one millimeter thickness, to be used in place of 20/18 gauge, 55-gallon capacity, DOT Specification 17E drums. (Modes 1, 2, 3)</td>
</tr>
<tr>
<td>9154-N</td>
<td>DOT-E 9154</td>
<td>Bennett Industries, Pleotone, IL</td>
<td>49 CFR 178.116-6(d)</td>
<td>To authorize manufacture, marking and sale of non-DOT specification steel drums of 19-gauge (one-millimeter) thickness, with corrugated top and bottom heads, and having double earred chrome construction, to be used in place of 20/18 gauge, 55-gallon capacity DOT Specification 17E drums. (Modes 1, 2, 3)</td>
</tr>
<tr>
<td>9164-N</td>
<td>DOT-E 9164</td>
<td>Fabri-Kol Inc., San Leandro, CA</td>
<td>49 CFR 173.11(b)(6)</td>
<td>To authorize manufacture, marking and sale of non-DOT specification steel drums of 19-gauge (one-millimeter) thickness, with corrugated top and bottom heads, and having double earred chrome construction, to be used in place of 20/18 gauge, 55-gallon capacity DOT Specification 17E drums. (Modes 1, 2, 3)</td>
</tr>
<tr>
<td>9208-N</td>
<td>DOT-E 9208</td>
<td>U.S. Department of Defense, Washington, DC</td>
<td>49 CFR 172.101, 173.114a</td>
<td>To authorize transport of an insensitive high explosive and munitions containing explosive classified as a blasting agent. (Modes 1, 2, 3)</td>
</tr>
</tbody>
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### EMERGENCY EXEMPTIONS

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<tr>
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<tr>
<td>EE 9222-X</td>
<td>DOT-E 9222</td>
<td>Caldwell System, Inc., Lenoir, NC</td>
<td>49 CFR 173.119(b), 173.154</td>
<td>To authorize use of non-DOT specification metal tanks, for transportation of a flammable liquid. (Mode 1)</td>
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<tr>
<td>EE 9222-P</td>
<td>DOT-E 9222</td>
<td>Wilms Trucking Company, Inc., Charlotte, NC</td>
<td>49 CFR 173.119(b), 173.154</td>
<td>To become a party to Exemption 9222. (Mode 1)</td>
</tr>
<tr>
<td>EE 9226-N</td>
<td>DOT-E 9226</td>
<td>Korean Airlines, Los Angeles, CA</td>
<td>49 CFR 172.101(b)(6), 176.320(a)</td>
<td>To authorize transport of Class A, B and C explosives aboard aircraft. (Mode 4)</td>
</tr>
</tbody>
</table>
### DEPARTMENT OF THE TREASURY

**Internal Revenue Service**

#### Inventory of Commercial Activities and Schedule of A-76 Reviews

**Correction**

In FR Doc. 84–10645, beginning on page 17113, in the issue of Monday, April 23, 1984, make the following corrections:

1. On page 17114, in the first column, under the heading "Projected fiscal year for review", in the sixth line from the bottom "1997" should read "1987".

2. On page 17115, in the second column, under the heading "Projected fiscal year for review", in the second line from the top "1985" should read "1987".

3. Also further down in the same column, in the entry for "District Office, Omaha, NE" between the fourth and fifth items, insert the line "OTC forms distribution . . . 1987".

4. Also on page 17115, in the second column in the entry "District Office, St. Paul, MN" in the last two items insert "19" in front of the "84".

5. Also in the second column, in the entry for "Service Center, Kansas City, MO", under the heading "Projected fiscal year for review" the fourth, fifth, and sixth date should read "1987, 1986, 1987" respectfully.

6. On page 17115, in the second column, the following text should be inserted before the fourth line from the bottom of the column.

<table>
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<th>Location and type of activity</th>
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<tr>
<td>Service Center, Kansas City, MO (cont'd):</td>
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<tr>
<td>Mail room</td>
<td>1987</td>
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<td>Word processing</td>
<td>1987</td>
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<tr>
<td>Centralized files</td>
<td>1987</td>
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<tr>
<td>Library</td>
<td>1987</td>
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<tr>
<td>Machine services</td>
<td>1987</td>
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<td>Document destruction</td>
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<td>Southwest Regional Office, Dallas TX:</td>
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<tr>
<td>Space layout and drafting</td>
<td>1987</td>
</tr>
<tr>
<td>Bulk storage</td>
<td>1987</td>
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<tr>
<td>Inventory and supply</td>
<td>1987</td>
</tr>
<tr>
<td>Mail room</td>
<td>1987</td>
</tr>
<tr>
<td>Library services</td>
<td>1987</td>
</tr>
<tr>
<td>Financial audit</td>
<td>1987</td>
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<tr>
<td>Counter service</td>
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<td>District Office, Austin, TX:</td>
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<td>ADP services</td>
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<tr>
<td>Bulk storage</td>
<td>1987</td>
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<tr>
<td>Inventory and supply</td>
<td>1987</td>
</tr>
<tr>
<td>OTC forms distribution</td>
<td>1987</td>
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<tr>
<td>Teller unit</td>
<td>1987</td>
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<tr>
<td>Mail room</td>
<td>1987</td>
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<tr>
<td>Valuation/appraisal</td>
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<td>Financial audit</td>
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<td>District Office, Dallas TX:</td>
<td>Projected fiscal year for review</td>
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<td>ADP services</td>
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<td>Space layout and drafting</td>
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<tr>
<td>Inventory and supply</td>
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<td>OTC forms distribution</td>
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<td>Mail room</td>
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<td>Centralized files</td>
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<td>Financial audit</td>
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<td>District Office, Little Rock AR:</td>
<td>Projected fiscal year for review</td>
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<td>Timekeeping</td>
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### Denials


Issued in Washington, DC, on April 23, 1984.

J. R. Grothe,

[FR Doc. 84–11619 Filed 4–30–84; 8:45 am]

BILLING CODE 4910–06–M
Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the “Government in the Sunshine Act” (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Wednesday, May 30, 1984.

PLACE: 2033 K Street, NW, Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION:
Jane K. Stuckey, 254-6314.

[FR Doc. 84-11780 Filed 4-27-84; 11:51 am]
BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 30, 1984.

PLACE: 2033 K Street, NW, Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTER TO BE CONSIDERED:
Briefing on the National Futures Association.

CONTACT PERSON FOR MORE INFORMATION:
Jane Stuckey, 254-6314.

[FR Doc. 84-11780 Filed 4-27-84; 11:51 am]
BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 25, 1984.

PLACE: 2033 K Street, NW, Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION:
Jane K. Stuckey, 254-6314.

[FR Doc. 84-11780 Filed 4-27-84; 11:51 am]
BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Friday, May 25, 1984.

PLACE: 2033 K Street, NW, Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Budget Review.

CONTACT PERSON FOR MORE INFORMATION:
Jane K. Stuckey, 254-6314.

[FR Doc. 84-11783 Filed 4-27-84; 11:51 am]
BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Monday, May 21, 1984.

PLACE: 2033 K Street, NW, Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTER TO BE CONSIDERED:
Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION:
Jane K. Stuckey, 254-6314.

[FR Doc. 84-11784 Filed 4-27-84; 11:51 am]
BILLING CODE 6351-01-M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 18, 1984.

PLACE: 2033 K Street, NW, Washington, D.C. 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION:
Jane Stuckey, 254-6314.

[FR Doc. 84-11784 Filed 4-27-84; 11:51 am]
BILLING CODE 6351-01-M

7

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 11, 1984.

PLACE: 2033 K Street NW, Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION:
Jane Stuckey, 254-6314.

[FR Doc. 84-11785 Filed 4-27-84; 11:51 am]
BILLING CODE 6351-01-M

8

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 4, 1984.

PLACE: 2033 K Street, NW, Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION:
Jane Stuckey, 254-6314.

[FR Doc. 84-11786 Filed 4-27-84; 11:51 am]
BILLING CODE 6351-01-M

9

FEDERAL COMMUNICATIONS COMMISSION

April 20, 1984.

Deletion of Agenda Item From April 26th Open Meeting.

The following Agenda Item has been deleted at the request of the Mass Media Bureau from the list of agenda items scheduled for consideration at the April 26, 1984, Open Meeting and previously listed in the Commission’s Notice of April 19, 1984.
Agenda Item No. and Subject
Mass Media—Title: Applications for License and for Consent to Transfer Control of Station WEVV-TV, Evansville, IN. Summary: The Commission will consider whether to grant these applications.

William J. Tricarico, Secretary, Federal Communications Commission.

[FR Doc. 84-11824 Filed 4-27-84; 3:25 pm]
BILLING CODE 6712-01-M

10

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
April 25, 1984.

TIME AND DATE: 10:00 a.m., Wednesday, May 2, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. U.S. Steel Mining Company, Docket No. PENN 82-323. (Issues include whether the judge properly concluded that, in assessing a penalty, he was not bound by MSHA’s penalty assessment regulation at 30 C.F.R. § 100.4).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

Jean H. Ellen, Agenda Clerk.

[FR Doc. 84-11778 Filed 4-27-84; 10:57 am]
BILLING CODE 6735-01-M

11

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, May 7, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
1. Proposed purchase of computer equipment within the Federal Reserve System.
2. Proposed acquisition of real property by a Federal Reserve Bank.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

James McAfee, Associate Secretary of the Board.

[FR Doc. 84-11835 Filed 4-27-84; 3:47 pm]
BILLING CODE 6210-01-M

12

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 17, 1984.

PLACE: Suite 316, 1825 K Street, NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mr. Earl R. Ohman, Jr., (202) 634-4015.

Earl R. Ohman, Jr., Acting General Counsel.

[FR Doc. 84-11768 Filed 4-27-84; 10:57 am]
BILLING CODE 7600-01-M
Part II

Department of Agriculture

Agricultural Stabilization and Conservation Service

7 CFR Part 725
Flue-Cured Tobacco Acreage Allotment and Marketing Quota Regulations; Proposed Rule
**DEPARTMENT OF AGRICULTURE**

**Agricultural Stabilization and Conservation Service**

**7 CFR Part 725**

**Flue-Cured Tobacco Acreage Allotment and Marketing Quota Regulations**

**AGENCY:** Agricultural Stabilization and Conservation Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule amends the regulations at 7 CFR Part 725 to implement the provisions of the Dairy and Tobacco Adjustment Act of 1983 (Pub. L. 98-180, enacted November 29, 1983) with respect to the flue-cured tobacco acreage allotment and marketing quota program. This proposed rule places restrictions on the lease and transfer of acreage allotments and marketing quotas for the 1985 and 1986 crops of flue-cured tobacco; eliminates lease and transfer of acreage allotments and marketing quotas beginning with the 1987 crop of flue-cured tobacco; makes certain provisions relating to forfeiture of acreage allotments and marketing quotas less restrictive; and adds new provisions which will require the sale or forfeiture of acreage allotments and marketing quotas if, during at least two years of any three-year period, flue-cured tobacco is not planted or considered planted on the farm for which such allotments and quotas are established.

**DATE:** Comments on the proposed rule must be received by May 31, 1984 in order to be assured of consideration.

**ADDRESS:** Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. All written submissions made pursuant to this notice will be made available for public inspection in Room 5750 South Building, USDA.

**FOR FURTHER INFORMATION CONTACT:** Jack S. Forlines, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA--ASCS, P.O. Box 2415, Washington, D.C. 20013 (202) 382-0200.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under USDA procedures established in accordance with Executive Order 12391 and Department Regulation 1512-1 and has been classified as "not major." It has been determined that this rule will not 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 governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.031, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This proposed rule is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This proposed rule is necessary to implement the provisions of the Dairy and Tobacco Adjustment Act of 1983 which amended the Agricultural Adjustment Act of 1933 (hereinafter referred to as the "1938 Act"). The major provisions of this proposed rule are as follows:

1. **Lease and transfer of flue-cured tobacco acreage allotment and marketing quotas.** Section 316(a)(1) of the 1938 Act provides that the lease and transfer of flue-cured tobacco acreage allotments and marketing quotas shall be eliminated beginning with the 1987 crop. Section 316(a)(1) further provides that, with respect to the 1985 and 1986 crops only, the lease and transfer of such allotments and quotas would be permitted if the lessor and lessee each certify that none of the consideration for the lease has been or will be paid to the lessor, either directly or indirectly in any form, before the marketing of tobacco produced under the lease. A false certification by the lessee would make such lease and transfer null and void and could result in the assessment of marketing penalties with respect to flue-cured tobacco marketed by the lessee. A false certification by the lessor would result in a reduction of the flue-cured tobacco acreage allotment and marketing quota established for the lessee's farm for the next marketing year. These provisions may be found in 7 CFR 725.72(a), (g), and (r) of this proposed rule.

2. **Tobacco not planted or considered planted in 1983 and subsequent years.** Section 317(k) of the 1938 Act provides that, beginning with the 1986 crop, the owner of a farm shall forfeit after February 15 of any applicable year any flue-cured tobacco acreage allotment and marketing quota established for the farm if flue-cured tobacco was not planted or considered planted on such farm during at least two of the three preceding years. Any flue-cured tobacco acreage allotment and marketing quota which is established for the farm and which is leased and transferred would be considered planted on such farm. This provision may be found in 7 CFR 725.74(e) of this proposed rule.

3. **Installment payments for purchased flue-cured tobacco acreage allotments and marketing quotas.** Section 316(a)(1) of the 1938 Act requires that the seller of flue-cured tobacco acreage allotment and marketing quota grant to the buyer an option to make payment for such allotment and quota in equal annual installments payable each year for a period not to exceed five years from the year in which the sale is made. This proposed rule would require that the buyer of an allotment and quota certify to the seller that the buyer has afforded such an option to the buyer. This proposed rule would not prevent the seller of flue-cured tobacco acreage allotment and marketing quota purchased under an installment plan from reselling the allotment to any eligible buyer selected by the seller, or (c) selling such allotment and quota for a single payment. Under the proposed rule, the flue-cured tobacco acreage allotment and marketing quota purchased under an installment plan would remain with the farm to which such allotment and quota is transferred should the buyer fail to make full payment to the seller for the allotment and quota. Although the proposed rule also provides that such allotment and quota may not be used as collateral in an installment sale, a seller of an allotment and quota would be able to include other provisions in the agreement of sale to protect the seller's interest if the buyer fails to make full payment. These provisions may be found in 7 CFR 725.72(d)(6)(iv) and (t) of this proposed rule.

4. **Forfeiture of flue-cured tobacco allotments and quotas by persons which are not significantly involved in the management or use of land for agricultural purposes.** Section 316A of the 1938 Act extends from December 1, 1983, to December 31, 1984, for which certain persons owning a farm for which a flue-cured tobacco acreage allotment and marketing quota have been established must sell or forfeit such allotment and quota if such
persons are not significantly involved in the management or use of land for agricultural purposes. In accordance with section 316A of the 1938 Act, this proposed rule excludes the following persons from this forfeiture provision: (a) Any individual; (b) any partnership; (c) any family farm corporation; (d) any trust, estate, or similar fiduciary account with respect to which 50 percent or more of the beneficial interest is in one or more individual; and (e) any educational institution that uses a flue-cured tobacco allotment and quota for instructional or demonstrational purposes. This proposed rule defines a family farm corporation as a corporation for which: (a) Any individual; (b) any partnership; (c) any family farm corporation; (d) any trust, estate, or similar fiduciary account with respect to which 50 percent or more of the beneficial interest is in one or more individual; and (e) any educational institution that uses a flue-cured tobacco allotment and quota for instructional or demonstrational purposes.

This proposed change would aid in the utilization of tobacco allotments and quotas by active tobacco producers.

(3) Community average yield. Section 317(e) of the 1938 Act was amended to remove the phrase “and shall not exceed the community average yield”. In the proposed rule, 7 CFR 725.50(b) is amended to reflect this statutory change.

(4) Witnessing signatures. For several years prior to the 1983 crop, the program regulations required that an ASCS employee witness the signatures of the lessor and lessee if there was a lease and transfer of flue-cured tobacco quotas from the lessor’s farm to the lessee’s farm. This requirement was instituted to prevent third party involvement in leasing arrangements.

The requirement was discontinued for the 1983 crop because section 316(a)(2)(B) and (c) of the 1938 Act provided that the lessor and lessee must certify that no agreements or arrangements in connection with the making of the lease were made except between the lessor and the lessee. Section 316(c) of the 1938 Act has been amended to remove the requirement that a certification be filed by the lessor and lessee with respect to a lease and transfer of the 1984 crop of flue-cured tobacco. Thus, the proposed rule in 7 CFR 725.72(e)(2)(ii) provides for reinstating the previous requirement that an ASCS committeeman or an ASCS employee witness the signatures of the lessor and the lessee.

Since 1984 planting decision must be made immediately by flue-cured tobacco producers, this rule must be implemented as soon as possible. Therefore, all comments must be received by May 31, 1984 in order to be considered.

List of Subjects in 7 CFR Part 725
Acreage allotment, Marketing quota, Report requirements, Tobacco.

Proposed Rule
PART 725—[AMENDED]

Accordingly, 7 CFR Part 725 is amended as follows:

1. The authority citation reads:


2. Section 725.51 is amended by removing paragraph (e-1)(2)(iv), adding new paragraph (l-1), and revising the introductory sentence in paragraph (jj-1) to read as follows:

§ 725.51 Definitions.

(l-1) Family farm corporation. A corporation for which:

(1) Not less than 50 percent of the stock is owned by:

(i) An individual or

(ii) An individual in combination with:

(A) The spouse of such individual; or

(B) The parent, aunt, uncle, child, grandchild, or cousin of such individual; or

(C) A spouse of any individual specified in paragraph (l-1)(1)(ii)(B) of this section and;

(2) One or more of the individuals specified in paragraph (l-1)(1) of this section participates in the direct management of the day to day farming operations of the corporation.

§ 725.59 [Amended]

3. In § 725.59, paragraph (b) is amended by removing the words "and shall not exceed the community average yield."

§ 725.66 [Amended]

4. In § 725.66, paragraph (b) is amended by removing the second sentence.

5. Section 725.69 is amended by: removing the introductory paragraph; redesignating existing paragraphs (a), (b) and (c) as paragraphs (b), (c) and (d); removing the reference to "(b)(1)" in newly redesignated paragraph (c)(1) and inserting the reference "(c)(1)" in its place; adding a new paragraph (a); and revising new paragraph (d)(3) to read as follows:

§ 725.69 Determination of acreage allotments for new farms.

(a) The acreage allotment established for all new farms in any crop year shall not exceed the national acreage reserved for new farms. Within such reserve, the acreage allotment for a new farm shall be that acreage which the county committee, with approval of the State committee, determines is fair and reasonable for the farm taking into consideration the past tobacco.
experience of the farm operator; the land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. 

The acreage allotment so determined shall not exceed the smaller of one acre of 50 percent of the average of the acreage allotments established for not less than two nor more than five old farms which are similar with respect to land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco.

**[3]** Farm includes land formerly having a tobacco acreage allotment. A new farm tobacco acreage allotment may not be established for a farm if, during the current year or the four preceding years, the farm was constituted as any part of a farm for which an acreage allotment had been established and for which the current or a former owner;

(i) Sold all of the tobacco acreage allotment, or

(ii) Did not, as provided in Part 719 of this chapter, retain any of the tobacco acreage allotment for such land through use of the designation by landowner method of division when the allotment of such land was determined as a result of a farm reconstitution.

6. In §725.72, paragraphs (d)(5)(i) and (iv) are amended by removing from the last sentence of each paragraph the words "(c) and (d)"; paragraph (o) is amended by removing the reference "(1)" preceding the first paragraph and by removing paragraph (2) in its entirety; paragraphs (a), (d)(3)(vii), (f), (g), and (l)(1) are revised; current paragraph (r) is redesignated as paragraph (s) and new paragraph (d)(4)(iv), (d)(5)(v), (e)(2)(iii), (f), and (l) are added to read as follows:

§725.72 Transfer of tobacco marketing quotas by lease or by sale.

(a) General. Effective for 1982 through 1986 crop years with respect to a lease, and for the 1983 and subsequent crop years with respect to a sale, a flue-cured tobacco marketing quota, including a quota which has been pooled in accordance with the provisions of Part 719 of this chapter, may be transferred between farms within a county by sale or by lease. For the 1983 through 1986 crop years, a flue-cured tobacco marketing quota also may be transferred by lease to a farm in an adjoining county within the same State when the State committee authorizes the county committee to approve the transfer of such quota after June 15 if the lessor has suffered a loss of flue-cured tobacco as a result of a flood, hail, wind, tornado, or other natural disaster. Only the lessor and lessee (or any attorney, trustee, bank, or other agent or representative, who regularly represents either the lessor or lessee in business transactions unrelated to the production or marketing to tobacco) may be parties to, or involved in the arrangements for, a transfer of flue-cured tobacco marketing quota by lease.

(b) * * *

(3) * * *

(xi) Certification. Unless, for any transfer which is to be effective for either the 1985 or 1986 crop year, the farm owner files the certification provided in paragraph (g) of this section.

(4) * * *

(iv) Certification. Unless, for any transfer which is to be effective for either the 1985 or 1986 crop year, the lessee has filed the certification provided in paragraph (g) of this section.

(6) * * *

(iv) Installment payment option. Unless the buyer of the flue-cured tobacco acreage allotment and marketing quota has been afforded an option to pay for such allotment and quota in two to five equal annual installments payable each fall beginning with the fall of the crop year in which the transfer becomes effective and such buyer certifies on a form prescribed by the Deputy Administrator that such option has been made available to the buyer.

(e) * * *

(2) * * *

(iii) Witness. An authorized witness who shall be a member of a State or county committee or an ASCS employee. Each person whose signature is required by either paragraph (e)(2)(f) or (ii) of this section must sign in the presence of an authorized witness, except that when any such person whose signature is required is ill, infirm, resides in a distant area, or is in a similar hardship situation, the requirement of a witness may be waived provided the county executive director mails Form ASCS-375 to such person for the required signature.

* * *

(f) Period of lease. A transfer by lease may be for a multiple-year period: Provided. That such lease shall not be for any of the 1987 and subsequent crop years and shall be limited to the current crop year if the transfer agreement is filed after June 15 of any year in accordance with paragraph (1) of this section.

(g) Compliance statement for lease. In order for a transfer of an acreage allotment and marketing quota by lease to be valid for the 1985 or 1986 crop year, none of the considerations for the lease may be part of the lease prior to the first marketing of tobacco produced on the lessee farm in the current year, either directly or indirectly in any form, including a loan by the lessee to the lessor, the endorsement of a note by the lessee for the lessor, or any other similar arrangement which represents the anticipated income for the lease: Provided, That the consideration for the lease may be paid on or after July 1 of the current year if no tobacco has been or will be harvested from the lessee farm in the current year. Before the county committee may approve the transfer agreement, the parties to the lease shall certify on a form prescribed by the Deputy Administrator that they are in compliance with the provisions of this section.

* * *

(i) Natural disaster—(l) State committee authorization.

Provided, That notwithstanding any other provision of this section, the State committee may, for the 1983 through 1986 crops, authorize the county committee to approve a transfer of quota by lease which is filed after June 15 if:

* * *

(1) Violation of lease provisions. If, after a lease agreement is approved, information is brought to the attention of the county committee which indicates that either the lessor or the lessee, or both, knowingly filed a false certification with respect to a transfer of quota by lease, the county committee shall notify the person of the time and place of the hearing, and afford such person an opportunity to be present and present evidence at the hearing with respect to the allegation of a false certification. If, as a result of the evidence presented, the county committee determines that such person knowingly made a false certification, the county committee shall notify the person of the determination and afford such person 15 days after mailing of the notice to request a review of the determination by a review committee as provided for by Part 711 of this chapter.

(2) Lessor. If it is determined that the lessor knowingly made a false certification, the next flue-cured tobacco
acreage allotment and marketing quota established for the lessor's farm shall be reduced by that percentage which the leased quota was of the total flue-cured tobacco farm marketing quota established for the farm in the year of the lease.

(2) Lessee. If it is determined that the lessee knowingly made a false certification, the lease agreement for purposes of the flue-cured tobacco marketing quota program with respect to the lessee's farm shall be considered to be null and void as of the date approved by the county committee.

* * * * *

(a) Sale of quota with installment payment option. Notwithstanding any other provisions of this section:

(1) The owner of a farm who sells any flue-cured tobacco acreage allotment and marketing quota may:

(i) Negotiate with more than one prospective buyer before selling such allotment and quota; or

(ii) Sell such allotment and quota to any eligible buyer whom such owner may select; or

(iii) Sell such allotment and quota for a single payment; or

(iv) Include provisions in the agreement of sale to protect the seller's interest if the buyer fails to make full payment: Provided, That such provisions may not include the use of such allotment and quota as collateral for purposes of protecting the seller's interest in the allotment and quota.

(2) Flue-cured tobacco acreage allotment and marketing quota: purchased in accordance with paragraph (f)(1) of this section shall not revert to the seller's farm but shall remain with the farm to which assigned at the time of purchase even though the buyer fails to make full payment to the seller for such allotment and quota: Provided, however, That this paragraph shall not apply if the buyer is required to forfeit such allotment and quota in accordance with §725.74(d).

7. In §725.74, paragraph (b)(2)(ii) is removed; paragraph (e) is redesignated as paragraph (f) and revised; paragraphs (f) through (i) are redesignated as paragraphs (g) through (k) respectively; new paragraphs (c)(5) and (e) are added; and paragraphs (a)(2) and (3), the introductory paragraph in paragraph (b), and paragraph (b)(1) are revised to read as follows:

§725.74 Forfeiture of allotment and quota.

(a) * * *

(2) For purposes of paragraphs (b) and (c) of this section, the county committee shall, in accordance with the provisions of Part 719 of this chapter, apportion the flue-cured tobacco acreage allotment and marketing quota assigned to a farm between:

(i) All land which is owned by any person which is not significantly involved in the management or use of land for agricultural purposes, as described in paragraph (b) of this section; and

(ii) Each common ownership tract of land in the farm other than that described in paragraph (a)(2)(i) of this section.

(3) With respect to the provisions of paragraph (c) of this section, an acreage allotment and marketing quota shall be determined for a tract in accordance with paragraph (a)(2)(ii) of this section only to the extent that records are available to show the contribution which the tract made to the flue-cured tobacco acreage allotment of the parent farm.

* * * * *

(b) Person not significantly involved in management of use of land for agricultural purposes. For purposes of this paragraph, the term "person" means a person as defined in Part 719 of this chapter, including any: governmental entity; public utility; educational institution; or religious institution, but not including any: individual; partnership; joint venture; family farm corporation; trust, estate, or similar fiduciary account with respect to which 50 percent or more of the beneficial interest is in one or more individuals; or educational institution that uses a flue-cured tobacco acreage allotment and marketing quota for instructional or demonstration purposes.

(1) Required forfeiture. If at any time the county ASC committee determines that any person which owns a farm for which a flue-cured tobacco acreage allotment and marketing quota are established is not significantly involved in the management or use of land for agricultural purposes, such person shall forfeit such allotment and quota which is not sold on or before:

(i) Farm owned or acquired before January 1, 1983: December 1, 1984;

(ii) Farm acquired on or after January 1, 1983: December 1 of the year after the year in which the farm is acquired; or

(iii) Owner ceases to be significantly involved: December 1 of the year after any year for which the county ASC committee determines that such person which was previously determined to be significantly involved in the management or use of land for agricultural purposes is no longer significantly involved in the management or use of land for agricultural purposes.

* * * * *

(c) * * *

(5) Owner disposes of or changes status of tillable cropland. July 1 of the year after any year in which the farm owner disposes of an acreage of tillable cropland or changes the status of land in the farm so as to cause such land to lose its tillable cropland status.

* * * * *

(e) Tobacco not planted or considered planted in 1983 and subsequent years. Nowwithstanding any other provision of this Part, any person which, on or after January 1, 1983, owns a farm for which a flue-cured tobacco acreage allotment and marketing quota are established shall forfeit such allotment and quota after February 15 of any year immediately following the last year of the three-year period immediately preceding the year for which the county committee determines that flue-cured tobacco was not planted or considered planted on such farm during at least two years of such three-year period.

(f) * * *

(3) Make a determination, on the basis of the evidence presented at the hearing by or on behalf of the affected person and by or on behalf of the county committee, as to whether:

(i) Any of the conditions requiring forfeiture as specified in this section exist; and

(ii) The affected person knowingly failed to prevent forfeiture of a flue-cured tobacco acreage allotment and marketing quota.

* * * * *

8. In §725.95, paragraph (b) is revised to read as follows:

§725.95 Producers penalties; false identifications; failure to account; canceled allotments; overmarketing proportionate shares.

* * * * *

(b) Penalties for false identification or failure to account. (1) If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, a penalty at the full rate shall be assessed based on the larger of:

(i) The actual marketings above 110 percent of the effective farm marketing quota; or

(ii) The sum of pounds equal to 25 percent of the effective farm marketing quota plus the pounds determined by multiplying the farm yield times the acres harvested in excess of the effective farm acreage allotment: Provided, However, That if such amount exceeds the amount determined in accordance with paragraph (b)(1)(i) of this section,
the penalty assessed may be based on the amount determined in accordance with paragraph (b)(1)(i) of this section if the county committee determines, with concurrence of the State committee, that the penalty assessed on the amount determined in accordance with paragraph (b)(1)(ii) of this section would be unduly harsh in relation to the quantity of tobacco which is falsely identified or which is not accounted for and the tobacco program would not be adversely affected.

§ 725.98 [Amended]
9. In § 725.98, paragraph (a) is corrected by removing the reference "(h)" in the last sentence and inserting in its place the reference "(g)".


Everett Rank,
Administrator, Agricultural Stabilization and Conservation Service.
Part III

Department of Agriculture

Agricultural Stabilization and Conservation Service

7 CFR Part 726
Burley Tobacco Marketing Quota Regulations; Proposed Rule
It has been determined that the 
Regulatory Flexibility Act is not 
applicable to this proposed rule since 
the Agricultural Stabilization and 
Conservation Service (ASCs) is not 
required by any other provision of law to 
publish a notice of 
proposed rulemaking with respect to the 
subject matter of this rule.

This action is not expected to have 
any significant impact on the quality of 
the human environment, health, and 
safety. Therefore, neither an 
Environmental Assessment nor an 
Environmental Impact Statement is 
needed.

Information collection requirements 
contained in this regulation (7 CFR Part 
726) have been approved by the Office of 
Management and Budget (OMB) in 
accordance with the provisions of 44 
U.S.C. Chapter 35 and have been 
assigned OMB numbers 0560-0058 and 
0560-117.

The major provisions of this proposed 
rule are as follows:

1. Farmers must forfeit their 
burley tobacco marketing quota if they 
do not use the land on the farm for which 
a burley tobacco marketing quota is 
established for agricultural purposes or 
do not use such quota for 
educational, instructional or 
demonstration purposes. This proposed 
rule would implement the provision of 
the Dairy and Tobacco Adjustment Act of 
1983 (hereinafter referred to as the 
"1983 Act") relating to required sale or 
forfeiture of burley tobacco marketing quotas by persons other than 
individuals. The 1983 Act amended 
section 316B of the Agricultural 
Adjustment Act of 1938 (hereinafter 
referred to as the "1938 Act") to 
eliminate the requirement that persons, 
other than individuals, which own a 
farm for which a burley tobacco 
marketing quota is established must be 
significantly involved in the 
management or use of land for 
agricultural purposes in order to retain 
such quota. Section 316B of the 1938 Act 
has been amended to require that any 
person, other than an individual, which 
owns a farm and does not use the land 
on the farm for agricultural purposes or 
does not use its burley tobacco 
marketing quota for educational, 
instructional or demonstrational 
purposes must sell or forfeit such quota 
which is established for the farm.

Section 316B has also been amended 
to provide that such persons must sell the 
burley tobacco marketing quota 
established for the farm by December 1, 
1984, or December 1 of the year after the 
year in which the farm is acquired or 
forfeit such quota to the county ASC 
committee. Accordingly, 7 CFR 726.69 is 
amended to implement these changes.

2. Elimination of planted acreage credit for conservation programs. This 
proposed rule would also eliminate 
planted acreage credit for conservation 
programs and conservation practices with 
respect to burley tobacco.

Presently, planted acreage credit is 
assigned in the current year for a farm 
with an established burley tobacco 
marketing quota if: (1) Burley tobacco is 
planted on the farm; (2) the burley 
tobacco marketing quota is: (i) leased 
and transferred from the farm, (ii) 
pooled in accordance with eminent 
domain provisions, or (iii) preserved 
under conservation programs or 
practices; (3) a restrictive lease on 
Federal, State or local governments, or 
(4) the effective burley tobacco 
marketing quota is zero because of overmarketings or violations of the tobacco program 
regulations. Currently, many farm 
owners are eligible to receive planted 
acreage credit as a result of the 
installation of conservation practices or 
participation in conservation programs 
even though they may have no regrant 
history of actual tobacco production.

Section 602(g) of the Food and 
Agriculture Act of 1965, as amended, 
hereinafter referred to as the "1965 Act") 
provides that the Secretary may 
provide for preservation of cropland, 
crop acreage, and allotment history 
applicable to acreage diverted from the 
production of crops in order to establish 
or maintain vegetative cover or other 
approved practices for the purpose of 
any Federal program under which such 
history is used as a basis for an 
allotment or other limitation or for 
participation in such program. 
Specifically, producers could enter into 
conservation contracts with 
Commodity Credit Corporation (CCC) 
under a program known as the 
Cropland Adjustment Program (CAP). 
These contracts, which ranged in length from 
five years to ten years, required that 
farm owners devote a farm's cropland to 
certain conservation practices in order 
to be eligible to receive planted and 
considered planted credit for the history 
purposes in order that the owner could 
retain the farm's acreage allotment. In 
addition to a cash payment, the farm 
owner continued to receive planted and 
considered planted credit for history 
purposes for the duration of the 
conservation contract. Certain farm 
owners could also continue to receive 
planted and considered planted credit 
after the CAP contract expired if the 
farm's entire cropland was enrolled in 
CAP and planted in trees. This extended 

SUPPLEMENTARY INFORMATION:
This proposed rule has been reviewed by 
USDA procedures established in 
accordance with Executive Order 12291 
and Departmental Regulation 1512-1 
and has been classified as "not major." 
It has been determined that this rule will 
not 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 governments, or 
geographic regions; or (3) significant 
advances in competition, 
employment, investment, productivity, 
innovation, or the ability of United 
States-based enterprises to compete 
with foreign-based enterprises in 
domestic or export markets.

The title and number of the Federal 
Assistance Program to which this rule 
applies are: Commodity Loan and 
Purchases: 10.051, as found in the 
Catalog of Federal Domestic Assistance.
the CAP contract. After a review of ASCS records in major tobacco producing States, it has been determined that practically no planted and considered planted credit has been given to producers in accordance with the provisions of Section 602(g) of the 1965 Act in recent years. Also, after a farm's CAP contract has expired, it is to the disadvantage of producers to receive planted and considered planted credit in this manner because such producers derive no direct financial benefit from the farm's burley tobacco marketing quota since they neither grow such tobacco nor lease such quota. Noting recent prices for leased burley tobacco marketing quota, it is apparent that any landowners who continue to receive planted and considered planted credit in accordance with this program and who have never filed a request to lease and transfer the farm's burley tobacco marketing quota have little or no interest in utilizing the burley tobacco program for their financial benefit. Further, any farm owner still receiving planted and considered planted credit based on a CAP contract, or any other conservation program, would have 5 years in which to produce burley tobacco on the farm or lease the burley tobacco marketing quota from the farm to an active burley tobacco grower before such quota would be forfeited in accordance with 7 CFR 726.58.

In addition, the 1965 Act provides that planted and considered planted credit may also be made available to farm owners who participate in other conservation programs. Currently, 7 CFR 726.51 provides that such credit is available to participants in certain conservation programs for which Federal cost share assistance is made available, such as the Agricultural Conservation Program (ACP), and to farm owners who install comparable conservation practices on their land without Federal cost share assistance. Since recent legislation with respect to burley tobacco has emphasized that burley tobacco marketing quotas should be utilized by those persons actively engaged in the production of such tobacco, it is proposed that 7 CFR 726.51 be amended to eliminate planted and considered planted credit for farms for which the burley tobacco marketing quota has been preserved in accordance with CAP and other conservation programs or practices. If there are any outstanding long-term conservation contracts which have been entered into by the Department under which planted and considered planted credit has been guaranteed for the length of the contract, the Department will honor such contractual provisions to the extent they are in accordance with existing law. 7 CFR 719.10(e). Preservation of cropland and allotment acreage, would be amended to conform to the proposed change. Since 1984 planting decisions must be made immediately by burley tobacco producers, this rule must be implemented as soon as possible. Therefore, all comments must be received by May 31, 1984 in order to be considered.

List of Subjects in 7 CFR Part 726
Marketing quota, Penalties, Report requirements, Tobacco.

Proposed Rule

PART 726—[AMENDED]

Accordingly, it is proposed that 7 CFR Part 726 be amended as follows:

1. The authority citation is revised to read as follows:


2. In § 726.51, paragraph (aa)(2) is revised to read as follows:

§ 726.51 Definitions.

(aa) * * *

(2) Quota is: (i) Leased and transferred from the farm, or (ii) in the eminent domain pool. * * *

§ 726.58 [Removed]

3. Part 726 is amended by removing and reserving § 726.58.

§ 726.62 [Amended]

4. In § 726.62, paragraph (c) is removed and reserved.

5. In § 726.69, paragraphs (e) through (i) are redesignated as paragraph (f) through (j), respectively; a new paragraph (e) is added; and paragraphs (a)(2)(i) and (ii), paragraph (b) and paragraph (d)(3) are revised to read as follows:

§ 726.69 Forfeiture of quota.

(a) * * *

(2) * * *

(i) A person which does not use, as described in paragraph (b) of this section, the land on the farm for which a burley tobacco marketing quota is established for agricultural purposes or for educational, instructional or demonstrational purposes.

(b) Person which does not use the land on the farm for which the burley tobacco marketing quota is established for agricultural purposes or does not use such burley tobacco marketing quota for educational, instructional or demonstrational purposes. For purposes of this paragraph, the term “person” means a person as defined in Part 719 of this chapter, including any government entity, public utility, educational institution, religious institution or joint venture (but not including any farming operation involving only a husband and wife), but excluding any individual.

(1) Required forfeiture. Any person which owns a farm for which a burley tobacco marketing quota is established and does not use the land on such farm for agricultural purposes, or does not use such burley tobacco marketing quota for educational, instructional or demonstrational purposes, shall forfeit such quota which is not sold on or before:

(i) Farm owned or acquired before January 1, 1983. December 1, 1984.

(ii) Farm acquired on or after January 1, 1983. December 1 of the year after the year in which the farm is acquired.

(iii) Owner ceases to use the land on the farm for which a burley tobacco marketing quota is established for agricultural purposes or does not use such burley tobacco marketing quota for educational, instructional or demonstrational purposes. December 1 of the year after any year for which the county ASC committee determines that any person which formerly used the land on such farm for agricultural purposes or formerly used the burley tobacco marketing quota for educational, instructional, or demonstrational purposes no longer uses the land or the quota for such purposes.

(2) Agricultural Purposes. Land on the farm for which a burley tobacco marketing quota is established shall be considered to be used for agricultural purposes if the county ASC committee determines that (i) in the current year or either of the 2 preceding years such land is used for the production of: (A) Row crops of any type; (B) livestock or
poultry (including pasture and forage for livestock; (C) trees (including orchards and vineyards); or (D) hay or native grasses on open land; or (ii) in the current year such farm is owned by an educational institution which uses such burley tobacco marketing quota solely for educational, instructional or demonstrational purposes.

(3) Documentation. Within 30 days, after a written request is made by the county ASC committee, or within such extended time as may be granted by the county ASC committee, a person must submit such documentation as may be requested to support a determination that the provisions of paragraph (b)(2) of this section have been met with respect to such person. Upon failure of such person to timely respond to this request, the county ASC committee shall determine that the person does not use the land on the farm for agricultural purposes, or does not use the burley tobacco marketing quota for educational, instructional, or demonstrational purposes.

(d) * * *

(3) Make a determination, on the basis of the evidence presented at the hearing by or on behalf of the affected person and by or on behalf of the county committee as to whether or not:

(i) Any of the conditions for forfeiture specified in this section exist; and

(ii) The affected person knowingly failed to take steps to prevent forfeiture of allotment and quota when such forfeiture conditions have been determined to exist with respect to the provisions of paragraph (b) of this section.

* * * * *


Everett Rank,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-11655 Filed 4-30-84; 8:45 am]

BILLING CODE 3410-15-M
Part IV

Department of Education

Office of Special Education and Rehabilitative Services

Transmittal of New Applications for Fiscal Year 1984; Notices
### DEPARTMENT OF EDUCATION

**Office of Special Education and Rehabilitative Services**

**Auxiliary Activities; Innovative Programs for Severely Handicapped Children**

**AGENCY:** Department of Education.

**ACTION:** Application Notice for Transmittal of New Applications for Fiscal Year 1984.

Applications are invited for new demonstration projects under the Auxiliary Activities—Innovative Programs for Severely Handicapped Children program.

Authority for this program is contained in Section 624 of Part C of the Education of the Handicapped Act, (20 U.S.C. 1424).

Applications may be submitted by public or private, profit or non-profit, organizations and institutions.

The Auxiliary Activities program supports research, development or demonstration, training, and dissemination activities consistent with Part C of the Act which meet the unique educational needs of handicapped children and youth, including those who are severely handicapped. This application notice however, addresses only those priorities under Section 624 of the Act proposed by the Secretary for FY 1984 awards under the Auxiliary Activities—Innovative Programs for Severely Handicapped Children and Youth program.

**Closing date for transmittal of applications:** An application for new projects must be mailed or hand delivered on or before July 2, 1984.

**Applications delivered by mail:** An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.086P, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Applications delivered by hand: An application is hand-delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

**Available funds:** It is estimated that approximately $2,937,000 will be available for support of 26 new projects under this program in FY 1984. This estimate does not bind the Department of Education to a specific number of grants/cooperative agreements unless that amount is otherwise specified by statute or regulations. Grant/cooperative agreement approval is for a three-year period subject to an annual review of progress and availability of funds.

**Priorities for funding:** The notice of proposed rulemaking (NPRM) (to be codified in 34 CFR Part 315) for this program was published on April 30, 1984 as Part VI of the Federal Register.

Prospective applicants are advised that the proposed regulations and projected annual funding priorities are subject to modification in response to public comments submitted within 30 days of publication.

**Selection of priorities based upon:** (1) A comprehensive review of the program’s history, including the number of responses to various requests for proposals (RFPs) and responses to the 1982 and 1983 grant competitions; and (2) an analysis of comments from professionals serving severely handicapped and deaf-blind children as to perceived needs in the field. The priority areas are listed in the table following. For further elaboration of the intent of each selected area, please consult the proposed regulations and proposed annual funding priorities.

### PRIORITY AREAS—INNOVATIVE PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN FISCAL YEAR 1984

<table>
<thead>
<tr>
<th>Priority No.</th>
<th>Priority area</th>
</tr>
</thead>
<tbody>
<tr>
<td>84.086A</td>
<td>Independent living skills training for severely handicapped youth.</td>
</tr>
<tr>
<td>84.086B</td>
<td>Parent involvement in provision of educational services and life-long planning for severely handicapped children and youth.</td>
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<tr>
<td>84.086C</td>
<td>Non-directed demonstration projects for severely handicapped children and youth.</td>
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<tr>
<td>84.086D</td>
<td>Approaches to total life planning for deaf-blind children and youth.</td>
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<td>84.086E</td>
<td>Vocational and prevocational training for deaf-blind children and youth.</td>
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<td>Identification of at-risk deaf-blind children and youth.</td>
</tr>
<tr>
<td>84.086G</td>
<td>Non-directed demonstration projects for deaf-blind children and youth.</td>
</tr>
</tbody>
</table>

**Application forms:** Application forms and program information packages are expected to be available on May 4, 1984 and may be obtained by writing to the Special Needs Section, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 4615), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information is intended to impose any paperwork, application content, reporting, or grantees.
performance beyond those imposed under the statute and regulations. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants not submit information that is not requested.

[Approved by the Office of Management and Budget under control number 1820-0029—Expires 2/26/87]

**Applications delivered by mail:** An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.025, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service postmark.
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
3. A dated shipping label, invoice, or receipt from a commercial carrier.
4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

**Applications delivered by hand:** An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C. The application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

**Program information:** This program supports projects that: (a) Provide (1) special education and related services to deaf-blind children and youth to whom States are not obligated to make available a free appropriate public education under Part B of the Education of the Handicapped Act (EHA-B) and to whom States are not providing those services under some other authority, (2) technical assistance to State educational agencies to ensure the provision of special education and related services to deaf-blind children and youth to whom States are obligated to make available a free appropriate public education, and (3) special education and related services to deaf-blind children and youth to whom States are obligated to make available a free appropriate public education under EHA-B and to whom States are providing those services under some other authority; (b) establish and support programs of technical assistance to grantees under activity (a); (c) provide assistance to State educational agencies in making available to deaf-blind youth, upon attaining the age of 22, programs and services to facilitate the transition of these youth from education to employment and other services; (d) examine the date reported annually by grantees in the provision of services under the Act; and (e) disseminate materials and information concerning effective practices in working with deaf-blind children and youth.

**Intergovernmental Review**


This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

- The Executive Order—
  - Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants submit only the information that is requested.

Applicable regulations: Regulations applicable to this program include the following:
(a) Regulations governing the Services for Deaf-Blind Children and Youth program (proposed for codification in 34 CFR Part 307). A notice of proposed rulemaking for Part 307 was published on April 30, 1984 as Part VII of the Federal Register. Applicants should prepare their applications based on the proposed regulations. If there are any substantive changes made when the regulations are published in final form, applicants will be given the opportunity to amend or resubmit their applications.
(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 76, and 79).

FOR FURTHER INFORMATION CONTACT:
Charles W. Freeman, Special Needs Section, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4067), Washington, D.C. 20202. Telephone: (202) 722-1165.

Madeleine Will, Assistant Secretary, Office of Special Education and Rehabilitation Services.

Application forms: Application forms and program information packages are expected to be ready for mailing by May 4, 1984. These materials may be obtained by writing to the Special Needs Section, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4015), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the application package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those imposed under the statute and regulations.

* The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants submit only the information that is requested.

Applicable regulations: Regulations applicable to this program include the following:
(a) Regulations governing the Services for Deaf-Blind Children and Youth program (proposed for codification in 34 CFR Part 307). A notice of proposed rulemaking for Part 307 was published on April 30, 1984 as Part VII of the Federal Register. Applicants should prepare their applications based on the proposed regulations. If there are any substantive changes made when the regulations are published in final form, applicants will be given the opportunity to amend or resubmit their applications.
(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 76, and 79).

FOR FURTHER INFORMATION CONTACT:
Charles W. Freeman, Special Needs Section, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4067), Washington, D.C. 20202. Telephone: (202) 722-1165.

Madeleine Will, Assistant Secretary, Office of Special Education and Rehabilitation Services.

Applications may be submitted by State educational agencies, institutions of higher education including junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies.

The purpose of this program is to develop, operate, and disseminate specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for handicapped individuals.

Closing date for transmittal of applications: Applications for new awards must be mailed or hand delivered on or before July 6, 1984.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.078, 400 Maryland Avenue, SW., Washington, D.C. 20202. An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.
(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
(3) A dated shipping label invoice, or receipt from a commercial carrier.
(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program information: (a) In a notice of proposed rulemaking (NPRM) published on April 30, 1984 as Part IV of the Federal Register, the Secretary proposed revised regulations, including priority areas, for this program. In accordance with proposed § 338.30 (b) and (c), the Secretary will award fiscal year 1984 grants under the combined priorities relating to the development, evaluation, and outreach of innovative demonstrations, as described in proposed § 338.10 (a)(2)(i), (a)(2)(ii), and (a)(3). An application that does not address a priority area will not be considered. If an application addresses both a priority and non-priority area, the Secretary will consider only that portion which addresses a priority.

(b) The Secretary especially urges the submission of applications for projects to serve handicapped individuals leaving special education, including the learning disabled and the mildly mentally retarded. However, applications that meet the invitation priorities described in this paragraph will not receive a competitive preference over other applications that meet the absolute priorities described in paragraph (a).

Intergovernmental Review


This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

• Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance.
• Increase Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
• Revokes OMB Circular A-93.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects which do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is a current list of States which have established a process, designated a single point of contact, and have selected this program for review:

- Arizona
- Arkansas
- California
- Colorado
- Delaware
- Florida
- Indiana
- Kentucky
- Louisiana
- Michigan
- Minnesota
- Mississippi
- Missouri
- Montana
- Nebraska
- Nevada
- New Jersey
- New Mexico
- New York
- Northern Mariana Islands
- Ohio
- Oregon
- Pennsylvania
- Puerto Rico
- Rhode Island
- South Carolina
- Utah
- Vermont
- Virginia
- Washington
- Wisconsin
- Wyoming

Immediately upon receipt of this notice, applicants which are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State’s process under the Executive Order. Applicants proposing to perform activities in more than one State should, immediately upon receipt of this notice, contact the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, area-wide, regional, and local entities may submit comment directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, area-wide, regional, and local entities must be mailed or hand delivered by August 1, 1984 to the following address:

The Secretary, U.S. Department of Education, Room 4161, CFDA Number 84.078, 400 Maryland Avenue, SW., Washington, D.C. 20202. [Proof of mailing will be determined on the same basis as applications].

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Available funds: Approximately $2,200,000 is expected to be available for support of new model demonstration projects in fiscal year 1984. An
estimated 15 new grants will be awarded for fiscal year 1984, with an average award of approximately $150,000. An applicant may propose a project period of one, two, or three years.

These estimates do not bind the Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

**Application forms:** Application forms and program information packages are expected to be ready for mailing on May 11, 1984. Application forms may be obtained by writing to the Postsecondary Education Programs, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4084), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the application packages. However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under control number 1839-0028—Expires 2/28/87)

**Applicable regulations:** Regulations applicable to this program include the following:

(a) Regulations governing the Postsecondary Education Programs for Handicapped Persons (proposed for codification in 34 CFR Part 338). A notice of proposed rulemaking for Part 338 was published on April 30, 1984 as Part IV of the Federal Register.

Applicants should prepare their applications based on the proposed regulations. If there are any substantive changes made in the regulations when published in final form, applicants will be given the opportunity to amend or resubmit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

**FOR FURTHER INFORMATION CONTACT:** Dr. Joseph Rosenstein, Postsecondary Education Programs, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4084), Washington, D.C. 20202. Telephone (202) 732-1178.

(20 U.S.C. 1424a)

(Catalog of Federal Domestic Assistance No. 84.078, Postsecondary Education Programs for Handicapped Persons)


Madeleine Will,
Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 84-11685 Filed 4-30-84; 8:45 am]

BILLING CODE 4000-01-M

**Secondary Education and Transitional Services for Handicapped Youth**

**AGENCY:** Department of Education.

**ACTION:** Application Notice for Transmittal of New Applications for Fiscal Year 1984.

Applications are invited for new projects under the Secondary Education and Transitional Services for Handicapped Youth Program.

Authority for this program is contained in section 626 of Part C of the Education of the Handicapped Act (20 U.S.C. 1425). This program supports research, development, demonstration, evaluation, and other types of projects that improve secondary special education and other services for handicapped youth in order to assist them in the transition from secondary school to postsecondary environments such as competitive or supported employment.

Applications may be submitted by institutions of higher education, State educational agencies, local educational agencies, or other appropriate public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (29 U.S.C. 1501 et seq.)).

Closing date for transmittal of applications: An application for a new project must be mailed or hand delivered on or before July 6, 1984.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: CFDA Number 84.158, 400 Maryland Avenue, NW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service postmark.
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
3. A dated shipping label, invoice, or receipt from a commercial carrier.
4. Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

**Program information:** In a notice of proposed rulemaking (NPRM) published on April 30, 1984 as Part III of the Federal Register, the Secretary proposed revised regulations, including priority areas, for this program. In accordance with proposed §§ 326.30 and 326.31, the Secretary will award fiscal year 1983 grants under the priorities for Transition Strategies and Techniques, Service Demonstration Models, and Cooperative Models for Planning and Developing Transitional Services set out at § 326.30 (a), (b), and (c), respectively. A description of those priorities follows:

1. Transition Strategies and Techniques—New Projects

This priority (proposed § 326.30(a)) supports research projects designed to develop strategies and techniques for transition to competitive or supported
Department of Education to a specific number of awards or to the amount of any award, unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages are expected to be available on May 11, 1984 and may be obtained by writing to the Research Projects Branch, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantees performance requirement beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program announcement include the following:

(a) Regulations governing the Secondary Education and Transitional Services for Handicapped Youth program (proposed to be codified in 34 CFR Part 326). A notice of proposed rulemaking for Part 326 was published on April 30, 1984 as Part III of the Federal Register. Applicants should prepare their applications based on the proposed rules. If there are any substantive changes made when the final regulations or priorities are published, applicants will be given the opportunity to amend or resubmit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 75, 77, 78, and 79).

FOR FURTHER INFORMATION CONTACT:
Dr. William Halloran, Research Projects Branch, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3521), Washington, D.C. 20202. Telephone: (202) 732-1064.


Madeleine Will, Assistant Secretary, Office of Special Education and Rehabilitation Services.

[FR Doc. 84-11848 Final 4-30-84; 8:05 am] BILLING CODE 4000-01-M

Training Personnel for the Education of the Handicapped Program

AGENCY: Department of Education.

ACTION: Application Notice Establishing the Closing Date for Transmittal of Fiscal Year 1984 New Grant Applications.

Applications are invited for new projects under the authority of the combined Special Projects and Transition of Handicapped Youth to Adult and Working Life priorities of the Training Personnel for the Education of the Handicapped program.


The purpose of the over-all program is to increase the quantity and improve the quality of personnel to educate handicapped children and youth. The purpose of the Special Projects priority is to support the development, demonstration, evaluation, and distribution of imaginative or innovative approaches to the preparation of personnel to educate handicapped children and youth. The purpose of the priority on Transition of Handicapped Youth to Adult and Working Life is to prepare personnel for employment in programs designed to help handicapped youth for community placement and adjustment to the community setting. Applicants must meet both priorities in order for their applications to be considered.

Awards under the Training Personnel for the Education of the Handicapped program may be made to institutions of higher education, other nonprofit institutions, and State educational agencies.

Closing date for transmittal of applications: Applications for new awards must be mailed or hand delivered on or before July 2, 1984.

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employment through improvements in independent living skills, secondary and postsecondary education, vocational preparation, and availability of work opportunities.

2. Service Demonstration Models—New Projects

This priority (proposed § 326.30(h)) supports projects that develop and establish exemplary models for services and programs, including specific vocational training and job placement, that result directly in paid employment in regular work settings for handicapped youth leaving school; or that enhance the effectiveness of secondary and postsecondary services which lead to employment.

3. Cooperative Models for Planning and Developing Transitional Services—New Projects

This priority (proposed § 326.30(e)) supports projects designed to plan and develop cooperative models for activities among State or local educational agencies and adult service agencies, including vocational rehabilitation, mental health, mental retardation, public employment, and private employers, which will facilitate effective planning to meet the service and employment needs of handicapped youth as they leave school.

Intergovernmental Review


This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. This is a new program which results from the provisions of the Education of the Handicapped Act Amendments of 1983. No States have elected to review this program under the Executive Order.

Available funds: It is estimated that approximately $3,000,000 will be available for grants to carry out new projects under this program for fiscal year 1984. Of this $3,000,000, approximately $1,000,000 will be available to support 10 research projects for Transition Strategies and Techniques; approximately $1,000,000 will be available to support 10 projects for Service Demonstration Models; and approximately $1,000,000 will be available to support 13 Cooperative Models for Planning and Developing Transitional Services. This estimate of funding level does not bind the U.S.
Applications delivered by mail:
Applications must be addressed to the Department of Education, Application Control Center, Attention: 84.029T, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:
1. A legibly dated U.S. Postal Service postmark.
2. A legibly printed receipt with the date of mailing stamped by the U.S. Postal Service.
3. A dated shipping label, invoice, or receipt from a commercial carrier.
4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail.

Applications delivered by hand:
Hand-delivered applications must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Program information: In accordance with the proposed 34 CFR 318.10(b) and 318.11, the Secretary proposes to award grants under the combined priorities on Special Projects (proposed § 318.11(b)(5)) and Transition of Handicapped Youth to Adult and Working Life (proposed § 318.11(b)(8)) of the Training Personnel for the Education of the Handicapped program in fiscal year 1984. An application that does not address both priority areas will not be considered. If an application addresses both the combined priority areas and a non-priority area, the Secretary will consider only that portion that addresses the combined priority areas.

The Secretary especially urges the submission of applications to prepare leadership personnel who will train direct service personnel to assist handicapped students in the transition from school to employment and community living. Applications that meet this invitational priority, however, will not receive a competitive or absolute preference over other applications that describe projects in accordance with the combined priority.

Available funds: An applicant for a grant may propose a project period of up to 36 months. It is anticipated that approximately $500,000 will be available for this competition. The average award is expected to be about $90,000. This estimate of funding level does not bind the Department to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages for new applications are scheduled to be available for mailing on May 4, 1984. These materials may be obtained by writing to the Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Room 4628, Switzer Building), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the proposed regulations, instructions, and forms included in the application package. However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information packages is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges applicants to submit only the information that is requested.

OMB 1820-0028—Expires 2/28/87

Applicable regulations: Regulations applicable to this program announcement include the following:
(a) Regulations governing the Training Personnel for the Education of the Handicapped program (proposed for the codification in 34 CFR Part 318) was published on April 30, 1984 as Part V of the Federal Register. Applicants should prepare their applications based on the proposed rules. If there are any substantive changes made when the final regulations are published, applicants will be given the opportunity to amend or resubmit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: Dr. Max Mueller, Director, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Room 4628, Switzer Building), Washington, D.C. 20202. Telephone: (202) 723-1065.

(20 U.S.C. 1431, 1434)
(Catalog of Federal Domestic Assistance No. 84.029, Training Personnel for the Education of the Handicapped)


Madeleine Will,
Assistant Secretary, Office of Special Education and Rehabilitative Services.
Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200
Revision of Minimum Property Standards (MPS) for Multifamily Housing; Final Rule
The Department is revising the MPS for Multifamily Housing in order to simplify them. Generally, HUD will rely upon State or local codes or nationally recognized model codes to provide the health and safety criteria for its multifamily MPS. The Department will rely upon a State or local code only after it has been accepted by the Department as being comparable to one of the nationally recognized model building codes or its equivalent. In some areas, the Department may partially accept a State or local code. In such areas, the Department will rely upon the State or local code, plus those provisions of one of the nationally recognized model codes identified in § 200.235(a)(5). In areas where a State or local code has not been accepted or partially accepted by the Department, the Department will require compliance with one of the nationally recognized model codes identified in 24 CFR 200.235(a)(1).

In those instances where the Department requires compliance with a model code, the developer or other interested party must comply not only with a model code, but also with the codes or standards incorporated by reference therein. In one instance, a model code incorporates all necessary standards. In two other instances, however, the Department has found it necessary to supplement the model codes by requiring compliance with certain additional codes and standards. Therefore, where compliance with a model code is required, not only is compliance with the standards incorporated by reference therein necessary, but compliance with the other codes or standards identified in § 200.235(c)(3) is necessary as well.

In all instances, the Department will require compliance with the standards retained in HUD Handbook 4910.1, entitled "MPS for Multifamily Housing." In this handbook, the Department has retained standards relating to durability, energy and certain other matters.

The final rule also consolidates various requirements applicable to housing for the elderly in a single section of the MPS Handbook (Section 100–1.2). Further, it consolidates requirements necessary to accord accessibility to physically handicapped persons in Section 100–1.3, which generally references American National Standards Institute Standard No. A117.1. The final rule does not establish the extent of accessibility or the number of accessible units required. Rather, such requirements are established on a program-by-program basis. See, e.g., U.S. Department of Housing and Urban Development, Revised Submission Requirements, Standard Ranking Criteria and Selection Procedures for the Fiscal Year 1983 Section 202 Program—Application for Fund Reservation 3 (1983).

B. Standard for Determining Comparability of State or Local Codes

The Department will determine whether a State or local code is comparable to one of the nationally recognized model codes by conducting an analysis of the comprehensiveness of the State or local code. For use in performing this analysis, the Department has prepared a list of construction
related areas. See 24 CFR 200.925b. This list is based upon the provisions of the nationally recognized model building codes and is made up of major areas and subareas. Each for area has been made a separate paragraph of 200.925b. For example, Fire Safety is paragraph (a) and Light and Ventilation is paragraph (b). With one exception, each major area has been further divided into subareas. For example, the Light and Ventilation paragraph has been divided into two subareas: (1) Habitable rooms and (2) Bath and Toilet rooms. A state or local code will be found comparable, and therefore acceptable, if it regulates every area set forth in 200.925b. A State or local code will be found partially acceptable if it fails to regulate up to eight subareas; however, no code will be found partially acceptable if it fails to regulate subareas in more than one of the major areas.

If a local code is not found to be partially acceptable in the particular multifamily residential structures must comply, for HUD purposes, with one of the model codes identified in 200.925c(c), as well as with the Minimum Property Standards for Multifamily Housing. Consequently, every State or local code which is partially accepted will be found deficient in one major area. The local HUD Field Office will remedy the deficiency by designating those provisions of a model code which regulate the entire major area found deficient. Such designation shall be made in accordance with the table set forth in Appendix J of the Handbook identified in § 200.929(b)(2). The Field Office will choose the model code from which the provisions are selected.

For example, a jurisdiction’s code may be deficient in the Electrical major area because it fails to regulate the Equipment for General Use and Communication Systems subareas. In such a case, the code would be found to be partially acceptable. The Field Office would remedy the deficiency in the Electrical major area by designating the National Electrical Code. Then, in that jurisdiction, properties would have to comply with the indicated provisions from the code designated by the HUD Field Office plus the entire local code.

To determine whether this method of evaluating comparability would protect the Department’s interests and satisfy all statutory requirements, the Department conducted a study of representative local codes. Codes from nine jurisdictions were evaluated. Three of the jurisdictions were large cities, three were medium sized cities, and three were small cities. One city of each size was selected from geographically diverse areas of the nation. As a result of this evaluation, it was found that seven of the codes regulated the areas identified in § 200.925b.

These codes were then subjected to a more detailed evaluation. This detailed analysis was performed to determine whether such local codes were in fact comparable to one of the nationally recognized model codes. In each case where the Department subjected a code to detailed analysis, it was determined that it was comparable to one of the model codes.

C. Review Process

Before a local code can be relied upon to provide the health and safety requirements of the MPS, it must be accepted or partially accepted by the Department. The Department will review a State or local code when it receives a request from a developer or other interested party. The person requesting review must submit to the HUD Field Office a copy of the building code and a copy of the statute, ordinance, order or regulation establishing the code, if any. The submitting party would not be required to submit copies of any part of a code already in the possession of the particular HUD Field Office. If the Department declines to accept a local code, the submitting party will be notified, and will be given an opportunity to present its views as to why the local code should be accepted.

By the time of application for mortgage insurance or other benefits, the developer or other interested party must submit the material described in the preceding paragraph if the local code has not been previously accepted or partially accepted and if that developer wishes to have it accepted. If a local code has been previously accepted or partially accepted, then the developer need only submit either a certificate stating that the local code has not been changed since its acceptance or partial acceptance by the Secretary, or a copy of all changes that have been made since the date of the Secretary’s acceptance or partial acceptance.

Each Regional Office will maintain a current list of jurisdictions with accepted or partially accepted codes.

D. Selection of Model Code

In those jurisdictions without acceptable local codes, multifamily residential structures must comply, for HUD purposes, with one of the model codes identified in 24 CFR 200.925c(c), as well as with the Minimum Property Standards for Multifamily Housing. The developer or other interested party must notify the HUD Field Office of which model code will be used. See § 200.925a(b)(1)(i)(A).

In those jurisdictions with a partially acceptable local code, multifamily properties must comply, for HUD purposes, with certain portions of the model codes identified in 24 CFR 200.925c(c). The HUD Field Office shall designate the model code from which these portions will be selected. In addition, the HUD Field Office shall identify, in the written notice of partial acceptance, those portions of the code with which the property must comply. These portions shall be chosen in accordance with the table set forth in Appendix J of the Handbook identified in § 200.929(b)(2).

The requirement to comply with all or any part of a model code applies only to the HUD project in question and has no applicability to other buildings in the community.

II. Public Comments

The Department received 37 comments. Many of these indicated support for the policies underlying the proposed rule. Other comments suggested changes to specific provisions of the MPS. Several comments expressed opposition to the proposed rule.

A. Energy

The largest number of the public comments concerned the thermal insulation requirements of the multifamily MPS. The commenters suggested a variety of revisions to those requirements, such as replacing the thermal standards with performance criteria; abolishing the differences between the thermal requirements for masonry construction and those for wood frame construction; permitting different standards for different building designs; and tightening the thermal requirements in general. In February, 1983 the Department published a proposed version of the Minimum Property Standards for Multifamily
Housing Handbook. This handbook contains the thermal insulation requirements which were identical to those in effect under the then existing rule. In response to the comments, the Department has revised these requirements under its statutory mandate to increase the energy efficiency of newly constructed residential housing insured under the National Housing Act.

Section 526 of the National Housing Act, 12 U.S.C. 1715f-4, as amended by Section 405(a) of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. No. 98-181, 97 Stat. 1153 (1983), states that the Secretary of Housing and Urban Development shall establish energy performance requirements for housing subject to mortgages insured under the Act. These requirements are to achieve a "significant increase" in the energy efficiency of these structures. After conducting an analysis of the various means of implementing Section 526, the Department has decided to adopt the 1983 edition of the Model Energy Code (MEC).


The MPS have regulated building envelope performance in the past. With the incorporation of the MEC, the Department will regulate building envelope performance and the energy efficiency of mechanical systems and equipment.

Several commenters suggested that the Department retain the distinction in the energy efficiency requirements between masonry and frame construction. A larger number of commenters suggested the elimination of the distinction. Some difference in requirements may be appropriate, based upon the greater mass of masonry structures. However, the Department has been unable to determine what differences, if any, are appropriate for various types of construction in different parts of the country. As a result, the Department will permit the consideration of mass as a means of reducing thermal requirements on a case by case basis only.

The rule permits the HUD Field Office to take into account the thermal mass of building components to the extent that the developer or other interested party can provide the HUD Field Office with empirical evidence that quantifies the effect of thermal mass with respect to both the specific geographical location and the specific type of construction in question. Ultimately, each building must provide a level of energy efficiency that is equivalent to that otherwise required by the MPS.

The Department has concluded that this approach fairly resolves the matter. The Department has complied with its statutory mandate to increase energy efficiency. At the same time, this approach permits the consideration of all methods of energy conservation to the extent that they actually reduce energy consumption.


The energy performance requirements developed and established by the Secretary under this subsection for newly constructed residential housing, other than manufactured homes, shall be at least as effective in performance as the energy performance requirements incorporated in the minimum property standards that were in effect under this subsection on September 30, 1982.

The energy requirements established by this rule satisfy this requirement.

B. Livability and Marketability Criteria

A few commenters opposed the elimination of certain livability and marketability criteria, contending that the proposed rule would encourage the development of substandard structures that would fail to provide its residents with decent, safe and sanitary housing. The Department, however, has concluded that the deleted requirements were duplicative or unnecessary and needlessly increased the cost of providing housing for low income families. The Department believes that the remaining livability and marketability criteria require MPS satisfy HUD's interests in providing decent, safe and sanitary housing and in protecting its insurance funds. The Department believes that structures built to the MPS will provide decent, safe and sanitary housing.

The standards set forth in the revised MPS Handbook are mandatory for all multifamily dwellings subject to the MPS. Retained in the handbook are many criteria that enhance both the livability and marketability of multifamily dwellings insured by the Department. For example, standards regulating noise control (section 302-2) and parking facilities (section 304) have not been deleted from the MPS.

In addition to the requirements of the MPS Handbook, multifamily dwellings will have to comply with either an acceptable or partially acceptable local code and/or with all or part of one of the nationally recognized model codes. These codes generally contain criteria that enhance livability. For example, such codes often contain requirements governing such things as lighting and room size.

Other factors will both encourage the construction of decent, safe and sanitary housing and protect the Department's insurance fund. At the local level, HUD staff will continue to provide project architects with guidance regarding local norms for marketability and livability. Such guidance will be of value because, in the valuation analysis employed by HUD as part of its underwriting process, the Department will continue to weigh marketability and livability criteria. As a result, the Department's insurance fund will be protected because the Department's risk will be directly related to the value of the structure.

C. Health and Safety Criteria

One commenter opposed the Department's proposed reliance upon state and local codes on the grounds that local building codes are generally inferior to the MPS. The commenter argued that reliance on local codes for health and safety will cause an overall reduction in the safety and healthfulness of multifamily housing nationwide. The Department, however, has concluded that these changes will not compromise the healthfulness and safety of multifamily housing and that the changes are consistent with 12 U.S.C. 1735f-4[b]. The Department has concluded that the comprehensiveness method of determining the comparability of local codes to the nationally recognized model codes does in fact establish an acceptable level of health and safety production.

Another commenter opposed the proposed shift of health and safety criteria from the MPS to local codes on the grounds that local codes are of uneven quality and of widely varying content. The commenter contended that wide variations in the healthfulness and safety of multifamily housing in different localities would result. The Department is aware of the fact that local codes vary, but it believes that its acceptance process will permit HUD to filter out inadequate local codes. Variations among acceptable codes will allow
construction to be attuned more closely to local needs and to reflect more accurately the particularities of a specific area.

One comment submitted in opposition to the proposed change in the MPS health and safety criteria argued that HUD, by referencing the three model codes, was in fact increasing its intrusion into local affairs, rather than reducing it. The commenter argued that the only kind of code that HUD would find acceptable would be a performance code, which no known locality has adopted. The commenter further contended that local governments would feel pressured to discard their codes in favor of one of the model codes. The commenter recommended either that HUD not implement this proposal, or, at least, that HUD conduct a Regulatory Impact Analysis under Executive Order 12291 to determine the rule's impact on local jurisdiction.

The Department has concluded that referencing the national model codes will not cause heightened Federal intrusion into local affairs. HUD is not requiring any jurisdiction to modify its code or to adopt one of the model codes. Rather, the Department is requiring that those HUD projects located in jurisdictions without acceptable or partially acceptable codes conform to one of the model codes. The selected model code will apply for HUD purposes only. In addition, the MPS do not preempt local codes. Builders and developers of multifamily properties subject to the MPS will always have to comply with such codes.

As for conducting a Regulatory Impact Analysis (RIA), HUD does not believe that this rule meets any of the prerequisites for conducting such an analysis. An RIA need only be performed for those rules that constitute "major rules" under Executive Order 12291. Major rules are defined as regulations that are likely to cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have a significant adverse effect 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; or have an annual effect on the economy of $100 million or more. HUD believes that this rule will not increase costs or prices for any of the indicated parties or have the adverse effect indicated above. HUD's information also indicates that this rule will not have an effect on the economy of $100 million or more. The removal of the health and safety criteria from the MPS Handbook and reliance upon other codes will have only a limited direct monetary effect. HUD has thoroughly decided that it is not necessary to conduct a RIA for this rule.

One commenter argued that the proposed rule would inconvenience project builders by requiring them to consult various referenced standards, instead of one all-inclusive handbook. The Department believes that this rule will reduce the burden on builders and developers and, in fact, will often reduce the number of referenced standards which must be consulted. The commenter further argued that local authorities might fail to establish health and safety standards to replace those eliminated from the MPS. The Department has concluded that the removal of health and safety criteria from the MPS Handbook will reduce the burden on builders and, in fact, will often reduce the number of referenced standards which must be consulted. The commenter further argued that local authorities might fail to establish health and safety standards to replace those eliminated from the MPS. The Department believes that the proposed rule will reduce the burden on builders and, in fact, will often reduce the number of referenced standards which must be consulted.

In sum, the Department believes that the elimination of health and safety criteria from the MPS in favor of local or model codes will not result in a decline in the quality of housing insured by HUD. The Department also believes that this rule will maintain the healthfulness and safety of the nation's housing while reducing unnecessary regulations.

D. Durability

Several commenters opposed the proposed rule because they believed that it would eliminate all durability criteria from the MPS. The commenters emphasized the importance of retaining standards that would ensure that federally assisted housing remain structurally viable, with a minimum of maintenance costs.

Most of the criteria retained in the Multifamily MPS, however, in fact concern the durability of the structures. These criteria have been retained because the Department believes that the model or local codes alone would not be sufficient to safeguard the Department's interest in the durability of housing. The retention of these criteria relating to durability, coupled with the other applicable requirements, should ensure the continuing viability and marketability of multifamily structures.

E. Technical Provisions

The Department also received a number of comments regarding specific provisions of the MPS. In general, these comments urged the Department to retain or amend various provisions thereof. These comments have been carefully considered, and the Department has modified the MPS where appropriate.

Several commenters expressed concern that the fire protection requirements contained in the model building codes are not as stringent as those in the prior MPS. These commenters recommended that HUD retain its MPS fire standards, until the model code requirements are upgraded. The Department believes that its interests in the safety of the housing residents and in the protection of its insurance fund will be protected by the standards set forth in model codes and acceptable local codes. For example, a local code must have a provision concerning building alarm systems before the Department will approve the codes. See § 200.925i(a)(7).

One commenter noted that under the proposed standards, it was possible to install an elevator which would meet the handicapped requirements of the MPS, but which would not permit a standard-sized ambulance stretcher to be carried on the elevator. The commenter suggested that HUD continue to use the current MPS standards for elevators. The Department finds this comment persuasive. As a result, sections 100-1.2(f)(2), 402-3.2 and 614-1.0 of the MPS have been modified accordingly.

Another commenter requested that HUD retain sections 300-3.2 and 502-2 of the former MPS, which require that projects store garbage containers in racks complying with Federal Specification RR-H-1070. The commenter contended that these requirements were essential to ensuring sanitary and cost-effective garbage disposal. The Department has considered this proposal, but has rejected it as unnecessary. The Department is relying on the model codes or acceptable local codes for most health and safety requirements, and this case offers no compelling reason for departing from that policy.

Another commenter urged HUD to retain Section 404 of the former MPS, entitled "Acoustic Control." This commenter argued that neither local codes nor the model codes adequately address this area. The Department has determined that the retention of Section 404 of the former MPS is unnecessary to protect its interests in providing decent, safe and sanitary housing and in preserving its insurance fund.

A few commenters questioned when the Department intended to publish new criteria for those sections in the proposed MPS Handbook marked "Reserved," or urged the Department to remove those sections. The section numbers of deleted MPS requirements,
identifying the word "Reserved," were included in the proposed rule for the convenience of the reviewers in crossreferencing the existing MPS. In the final rule, these section numbers have been deleted.

One commenter suggested that the Department change the wording of Section 102-1.2(b) of the proposed MPS Handbook to permit the referencing of specialty codes. As far as the Department is concerned, local jurisdictions may adopt specialty codes as part of their local building codes. The provisions of the handbook have been reworded to reflect the comprehensiveness approach. Local codes, including adopted specialty codes, will be found acceptable if they meet the comprehensiveness requirements.

Another commenter recommended that the Department reference industry standards for masonry. The final rule contemplates reliance upon local and model codes for health and safety considerations such as regulation of masonry. See Residential Building Code Comparison items listed in § 200.925b.

One commenter suggested that the Department consider establishment of new codes that would be included in the revised Multifamily MPS. Section 200.925c specifically identifies the particular appendices of the model codes which are incorporated by reference.

One commenter suggested that the Department impose a requirement that at least some units in HUD-supported multifamily housing be of barrier free design. Section 100-1.3 of the MPS Handbook provides that the HUD Field Offices will advise the project architect, on a project-by-project basis, of the extent to which handicapped accessibility will be required. Requirements concerning accessibility are established on a program-by-program basis.

Another commenter contended that HUD should retain Table 6-3.1 of the former MPS, which governs the minimum allowable compressive strengths of concrete. The Department, however, believes that the model and acceptable or partially acceptable local codes establish appropriate standards to protect its interests in that area. Accordingly, it has declined to retain Table 6-3.1.

Some commenters suggested the updating or amendment of certain standards in the appendices. Accordingly, HUD has updated and made various minor changes in the appendices.

One commenter suggested that the model code organizations' reports on alternate materials be recognized by the Department. 12 U.S.C. 1735e requires that the Department establish a procedure for the acceptance of materials and products for use in structures insured under the National Housing Act. The Department cannot delegate this responsibility to the model code organizations.

Finally, HUD received one comment suggesting that the Department conduct a survey designed to determine the actual level of use of the nationally recognized model codes. Such a survey, it was argued, would guarantee that HUD's actions are based upon adequate information. The Department has conducted a study to determine the level of protection generally offered by both local and model codes, and whether these codes in fact would protect the Department's interests. The Department has concluded that these codes are sufficient for that purpose. Moreover, HUD based its decision to rely upon the model building codes on, among other things, Section 528 of the National Housing Act, 12 U.S.C. 1715f-4, as amended by Section 406(a) of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, 97 Stat. 1153 (1983), The Report of the President's Commission on Housing (1982), and the recommendations of the National Institute of Building Sciences (National Institute of Building Sciences, Federal Regulations Impacting Housing and Land Development: Recommendations for Change 8-12 (1981)).

III. Miscellaneous Information

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under Section 3506(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(b)). Please send any comments regarding the collection of information requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget.
The catalog of Federal Domestic Assistance does not apply to this Rule.

List of Subjects in 24 CFR Part 200
Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs—Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum Property Standards, Incorporation by reference.

Accordingly, HUD amends 24 CFR Part 200 as follows:

PART 200—INTRODUCTION

Subpart S—Minimum Property Standards

1. Section 200.929 is amended by revising paragraph (b)(2) as follows:

§ 200.929 [Amended]

(b) * * *

(2) MPS for Multifamily Housing

1981, 1984 edition. This material applies to buildings and sites designed and used for normal multifamily occupancy, including both unsubsidized and subsidized insured housing. * * *

2. 24 CFR Part 200 is amended by adding §§ 200.925a, 200.925b, 200.925c and Appendix A to Part 200 as follows:

§ 200.925a Multifamily Minimum Property Standards.

(a) Construction Standards. Multifamily properties shall comply with the minimum property standards contained in the handbook identified in § 200.929(b)(2). In addition, each such property shall, for the Department's purposes, comply with:

(1) The applicable State of local building code, if the property is located within a jurisdiction which has a building code accepted by the Secretary under § 200.925a(d); or

(2) The applicable State or local building code, and

(ii) Those portions of the codes identified in § 200.925c which are designated by the HUD Field Office serving the jurisdiction in which the property is to be located, if the property is located in a jurisdiction which has a building code partially accepted by the Secretary, or

(iii) The applicable codes, as identified in § 200.925c(c), if the property is not located within a jurisdiction which has a building code accepted by the Secretary.

(b) Conflicting Standards. The minimum property standards contained in the handbook identified in § 200.929(b)(2) do not preempt state or local standards, nor do they alter or affect a builder's obligation to comply with any state or local requirements. However, a property shall be eligible for benefits only if it complies with all applicable minimum property standards, including referenced standards.

(c) Standard for Evaluating Local Building Codes. The Secretary shall compare a state or local building code submitted under § 200.925a(d) to the list of construction related areas contained in § 200.925b.

(1) A State or local code will be accepted if it regulates each area on the list.

(2) A State or local building code will be partially accepted if it regulates most of the areas on the list. Provided, however, that no code may be partially accepted if it fails to regulate subareas in more than one of the major areas: fire safety, light and ventilation, structural loads, foundation systems, materials standards, construction components, plumbing, electrical and elevators. See § 200.925b.

(3) For purposes of this paragraph, a state or local code regulates an area if it establishes a standard concerning that area.

(d) Review Process and Acceptance—

(1) Jurisdictions without previously accepted building codes. The following submission requirements apply to developers and other interested parties in jurisdictions without building codes which have never been submitted for acceptance, and jurisdictions with building codes which have been submitted for acceptance and neither accepted nor partially accepted by the Secretary.

(i) Developers or other interested parties must comply with one of the following by the time of application for insurance or other benefits:

(A) The developer or other interested party may choose to comply with the appropriate codes as identified in § 200.925c. If the developer or other interested party so chooses, then the multifamily property shall be constructed in accordance with one of the model codes designated in paragraphs (o)(1), (2) or (3) of § 200.925c and with any other code or codes identified in the same paragraph. In such instances, the developer or other interested party shall notify the Department of the code or group of codes with which it intends to comply by the time of application for insurance or other benefits; or

(B) The developer or other interested party may choose to comply with the State or local building code, if such code is acceptable to the Secretary. To obtain the Secretary's acceptance, the developer or other interested party shall submit the material specified in § 200.925a(d)(1)(i) to the HUD Field Office serving the jurisdiction in which the property is to be constructed. Such material may be submitted at any time; provided, however, that it must be submitted no later than the time of application for mortgage insurance or other benefits.

(ii) If, under § 200.925a(d)(1)(i)(B), the developer or other interested party chooses to comply with the State or local building code as prescribed in § 200.925a(a)(1), it shall submit the following material to the HUD Field Office serving the jurisdiction in which the property is to be constructed:

(A) A copy of the jurisdiction's building code, including all applicable service codes, appendices and referenced standards; and

(B) A copy of the statute, ordinance, regulation, or order establishing the code, if such statute, ordinance, regulation or order is not contained in the building code itself.

However, the developer or other interested party need not submit any document already on file in the Field Office.

(2) Jurisdictions with previously accepted or partially accepted building codes. The following submission requirements apply to developers and other interested parties in any jurisdiction with a building code which has been accepted or partially accepted by the Secretary:

(i) At the time of application for mortgage insurance or other benefits, the developer or other interested party shall submit to the HUD Field Office serving the jurisdiction in which the property is to be constructed:

(A) A certificate stating that, since its acceptance by the Secretary, the jurisdiction's building code has not been changed; or

(B) A copy of all changes to the jurisdiction's building code, including all applicable service codes and appendices, which have been made since the date of the code's acceptance by the Secretary. However, the developer or other interested party need not submit any part already in the possession of the Field Office; and

(2) A copy of the statute, ordinance regulation, or order making such changes in the code.

(3) Notification of Decision. The Secretary shall review the material
previously accepted code which hasn't been changed to the submitting party or the Secretary's previous acceptance or partial acceptance has been continued; the basis for the Secretary's decision; and a notification of the submitting party's right to present its views concerning the denial of acceptance if the code is neither accepted nor partially accepted. The Secretary may, in his discretion, permit either an oral or written presentation of views.

(i) If a developer or other interested party is notified that a State or local building code has not been accepted, then the multifamily properties eligible for HUD benefits in that jurisdiction shall be constructed in accordance with the appropriate codes indicated in § 200.925c(c). In such instances, the developer or other interested party shall notify the HUD Field Office of the code or codes with which it chooses to comply, in accordance with § 200.925a(d)(1)(i)(A).

(ii) If a developer or other interested party is notified that a State or local building code has been partially accepted, then the multifamily properties eligible for HUD benefits in that jurisdiction shall be constructed in accordance with the applicable State or local building code, plus those additional requirements identified in the written notice issued by the Secretary under § 200.925a(d)(3). The written notice shall identify, in accordance with Appendix J of the Handbook identified in § 200.929(b)(2), those portions of the codes listed at § 200.925c(a) with which the property must comply.

(iii) Each Regional Office will maintain a current list of jurisdictions with accepted building codes and a current list of jurisdictions with partially accepted building codes. The lists will state the most recent date of each code's acceptance or partial acceptance and will be available to any interested party upon request. In addition, the list of jurisdictions whose codes have been partially accepted shall identify those portions of the codes listed at § 200.925c(a) with which the property must comply.

§ 200.925b Residential Building Code Comparison Items.

HUD will review each local code submitted under this Chapter to determine whether it regulates all of the following areas and subareas:

(a) Fire safety; (1) Construction types permitted; (2) Allowable height and area; (3) Fire separations; (4) Fire resistance requirements; (5) Means of egress (number and distance);

(b) Individual unit smoke detectors; (7) Building alarm systems; (8) Highrise criteria; (9) Light and ventilation.

(c) Habitable rooms; (10) Bath and toilet rooms.

(d) Structural loads.

(e) Design live loads; (11) Snow loads;

(f) Design dead loads; (12) Wind loads.

(g) Earthquake loads (in localities identified by ANSI Standard A 58.1-1982 as being in seismic zones 1, 2, 3 or 4, and Guam.)

(h) Special loads, i.e., soil pressure, railings, interior walls etc.

(i) Foundation systems.

(1) Soil tests;

(2) Foundation depths;

(3) Footings;

(4) Foundation materials criteria;

(5) Piles, i.e., materials, allowable stresses, design;

(6) Excavation;

(e) Materials standards.

(f) Construction components.

(1) Steel;

(2) Masonry;

(3) Concrete;

(4) Gypsum;

(5) Lumber;

(6) Roof construction and covering;

(7) Chimneys and fireplaces.

(g) Glass.

(1) Thickness/area requirements;

(2) Safety glazing.

(h) Mechanical.

(1) Heating, cooling and ventilation systems;

(2) Rollers and pressure vessels;

(3) Gas, liquid and solid fuel piping and equipment;

(4) Chimneys and vents;

(5) Ventilation (air changes).

(i) Plumbing.

(1) Materials standards;

(2) Sizing and installing drainage systems;

(3) Vents and venting;

(4) Traps;

(5) Cleanouts;

(6) Plumbing fixtures;

(7) Water supply and distribution;

(8) Storm drain systems.

(j) Electrical.

(1) Wiring design and protection;

(2) Wiring methods and materials;

(3) Equipment for general use;

(4) Special equipment;

(5) Special conditions;

(6) Communication systems.

(k) Elevators.

(1) Reference ANSI A17.1;

(2) Acceptance tests and periodic tests.

§ 200.925c Model codes.

(a) Incorporation by reference. The following publications are incorporated by reference under 5 U.S.C. 552(a) and 1 CFR Part 51. The incorporation by reference of these publications has been approved by the Director of the Federal Register. The locations where copies of these publications are available are set forth below.


(b) Model Code Compliance Requirements. (1) When a multifamily property is to comply with one of the model building codes set forth in § 200.925c(a)(1), the following requirements of those model codes shall not apply to those properties:

(i) Those provisions of the model codes that do not pertain to residential buildings;

(ii) Those provisions of the model codes that establish energy requirements for multifamily structures; and

(iii) Those provisions of the model codes that require or allow the issuance of permits of any sort.

(2) Where the model codes set forth in § 200.925c(a)(1) designate a building.
fire, mechanical, plumbing or other
official, the Secretary’s designee in the
HUD Field Office serving the
jurisdiction in which the property is to
be constructed shall act as such official.
(c) **Designation of Model Codes.** When a multifamily property is to
comply with a model code, it shall comply with one of the model codes
designated in paragraphs (c) (1), (2) or
(3) of this section and with any other
code or codes identified in the same
paragraph. In addition, such property shall comply with all of the standards
which are incorporated into such code
or codes by reference. The developer or
other interested party shall notify the
Department of the code or group of
codes with which it intends to comply
by the time of application for insurance
or other benefits.

(1) **The BOCA Basic/National
Building Code/1984.**

(2) **Standard Building Code/1982** and
the **National Electrical Code/1984.**

(3) **Uniform Building, Plumbing and
Mechanical Codes/1982** and the
**National Electrical Code/1984.**

Appendix A to Part 200—Standards
Incorporated by Reference in the
Minimum Property Standards for
Multifamily Housing (HUD 4910.1)

The following publications are
incorporated by reference in the HUD
Minimum Property Standards (MPS). The
MPS are in turn incorporated by reference in
24 CFR Part 200, Subpart S. The MPS may be
purchased from the U.S. Government Printing
Office, Washington, DC 20402. It is also
available for public inspection at the HUD
Program Information Center, Room 1104, 451
Seventh Street, SW, Washington, DC, at each
HUD Regional, Area, and Service Office, and
at the Office of the Federal Register, 1100 L
Street, NW, Washington, DC. The individual
standards referenced in the MPS are
available at the addresses contained in the
following table. They are also available for
public inspection at HUD, Manufactured
Housing and Construction Standards
Division, Room 3232, 451 Seventh Street, SW,
Washington, DC and the Office of the Federal
Register.

American Association, 818 Connecticut
Avenue, NW, Washington, DC 20006.
AA-ASM 35-80 Specifications for
Aluminum Sheet Metal Work in Building
Construction
American Concrete Institute, P.O. Box 19150,
Redford Station, Detroit, MI 48219.
ACI 211.1-81 Standard Practice for
Selecting Proportions for Normal,
Heavyweight, and Mass Concrete
ACI 211.2-81 Standard Practice for
Selecting Proportions for Structural
Lightweight Concrete
ACI 219 R-79 Guide for Structural
Lightweight Concrete
ACI 214-77 Recommended Practice for
Evaluation of Compressive Test Results of
Field Concrete
ACI 301-72 (R81) Specifications for
Structural Concrete for Buildings
ACI 302.1R-80 Guide for Concrete Floor
and Slab Construction
ACI 304-73 (R78) Recommended Practice for
Measuring, Mixing, Transporting and
Placing Concrete
ACI 305 R-77 Hot Weather Concreting
ACI 306 R-78 Cold Weather Concreting
ACI 311.4R-80 Guide for Concrete
Inspection
ACI 315 R-80 Guide for Detailing of
Concrete Reinforcement
ACI 318-77 Building Code Requirements for
Reinforced Concrete, with 1980
Supplement
ACI 329.2 Structural Plain Concrete
ACI 347-78 Recommended Practice for
Concrete Formwork
ACI 504 R-77 Guide to Joint Sealants for
Domestic Structures
ACI 506-66 (R78) Recommended Practice
for Shotcreting
ACI 515 R-79 Recommended Practice for the
Application of Paint to Concrete Surfaces
ACI 523.9-69 Quality Standards and
Tests for Prestressed Concrete Elements
ACI 533.2R-69 Selection and Use of
Materials for Precast Concrete Wall Panels
ACI 533.3R-70 Fabrication, Handling and
Erection of Precast Concrete Wall Panels
American National Standards Institute, 1450
Broadway, New York, New York 10018.
ANSI A106.1-76 Installation of Glazed
Wall Tile, Ceramic Mosaic Tile, Quarry
Tile and Paver Tile with Portland
Cement Mortar
ANSI A117.1-80 Specifications for
Making Buildings and Facilities
Accessible to and Usable by Physically
Handicapped People
ANSI/AHA A135.4-82 Basic Hardboard
ANSI A137.1-80 Ceramic Tile
ANSI A150.2-76 Locks and Lock Trim
ANSI A161.1-80 Construction and
Performance Standards for Kitchen and
Vanity Cabinets
ANSI A208.1-79 Mat Formed Wood
Particleboard
ANSI A234.1-82 American National
Standard for Certification—Third—Party
Certification Program
American Society for Testing and Materials,
1916 Race Street, Philadelphia,
Pennsylvania 19103.
ASTM C 12-81 Installing Vitrified Clay
Pipe Lines
ASTM C 208-74 (1982) Insulating Board
(Cellulosic Fiber), Structural and
Decorative
ASTM C 209-73 Insulating Board
(Cellulosic Fiber), Structural and
Decorative
ASTM C 220-79 Flat Asbestos-Cement
Shingles
ASTM C 221-80 Corrugated Asbestos-
Cement Sheets
ASTM C 223-78 Asbestos-Cement Siding
ASTM C 509-78 Cellular Elastomeric
Preformed Gasket and Sealing Material
ASTM C 549-78 Vermiculite Loose Fill
Thermal Insulation
ASTM C 549-81 Perlite Loose Fill
Insulation
ASTM C 729-81 Mineral Fiber and
Mineral Fiber Rigid Cellular
Polyurethane Composite Roof Insulation
Board
ASTM C 754-82 Installation of Steel
Framing Members to Receive, Screw
Attached Gypsum Wallboard, Backing
Board or Water Resistant Backing Board
ASTM C 834-76 (1981) Latex Sealing
Compounds
ASTM C 841-81 Installation of Interior
Lathing and Furring
ASTM C 842-79 Application of Interior
Gypsum Plaster
ASTM C 843-78 Application of Gypsum
Veneer Plaster
ASTM C 844-79 Application of Gypsum
Base to Receive Gypsum Veneer Plaster
ASTM C 846-78 Application of Structural
Insulating Board (Fiberboard) Sheathing
ASTM C 929-81 Application of Portland
Cement Base Plaster
ASTM D 1037-78 Wood-Base Fiber and
Particle Panel Materials
ASTM D 1559-78 Moisture-Unit Weight
Relations of Soils, and Soil-Aggregate
Mixtures Using 70 lb (3.5 kg) Rammer
and 18-in. (457-mm) Drop
ASTM D 2316-75 (1980) Installing
Bituminized Fiber Drain and Sewer Pipe
Installation of Flexible Thermoplastic
Sewer Pipe
ASTM D 3959-76 Insect Screening and
Louver Cloth Woven From Vinyl Coated
Glass Fiber Yarn
ASTM D 3979-81a Rigid Polyvinyl
Chloride (PVC) Siding
ASTM E 72-80 Standard Methods of
Conducting Strength Tests of Panels for
Building Construction
ASTM E 283-73 Rate of Air Leakage
Through Exterior Windows, Curtain
Walls, and Doors
ASTM E 339-79 Structural Performance of
Exterior Windows, Curtain Walls, and
Doors by Uniform Static Air Pressure
Difference
ASTM E 331-70 Water Penetration of
Exterior Windows, Curtain Walls, and
Doors by Uniform Static Air Pressure
Difference
ASTM E 380-82 Metric Practice
American Society of Heating, Refrigerating
and Air Conditioning Engineers, 345 East
47th Street, New York, New York 10017.
ASHRAE Handbook of Fundamentals—
1981.
ASHRAE Handbook of Applications—1978
ASHRAE Handbook of Equipment—1979
ASHRAE Handbook of Systems—1980
ASHRAE GRP 158-1979 Cooling and
Heating Load Calculations Manual
American Welding Society, 530 NW Le Jeune
Road, Miami, Florida 33126.
ANSI/AWS D1.1-82 Structural Welding
Code
ANSI/AWS D1.4-79 Structural Welding
Code—Reinforcing Steel
Architectural Aluminum Manufacturers
Association, 35 East Wacker Drive,
Chicago, Illinois 60601.
AAMA 302.9-77 Aluminum Prime
Windows (ANSI A134.1)
The Federal Register is a daily publication by the United States National Archives and Records Administration, containing federal notices and proposed rules. It contains the text of federal regulations as well as papers and opinions from federal agencies and organizations. The document you provided is from Volume 49, No. 85, Tuesday, May 1, 1984.

This page contains a listing of various standards and specifications, including:

- **Department of Agriculture**
- **Department of Commerce**
- **Council of American Building Officials**
- **Department of Defense**
- **Home and Garden Bulletin**
- **National Bureau of Standards**
- **Naval Publication**
- **Product Standards**
- **Uniform Code**
- **Federal Specifications**
- **National Bureau of Standards**
- **Technical Suitability of Products Program**
- **Transportation Industry**
- **United States Consumer Product Safety Commission**
- **American Society of Mechanical Engineers**
- **American Society for Testing and Materials**
- **Asphalt Institute**
- **Institute of Electrical and Electronics Engineers**
- **National Bureau of Standards**

These standards cover a wide range of topics, including building materials, construction practices, and consumer product safety.
Tuesday
May 1, 1984

Part VI

Department of Energy

Federal Energy Regulatory Commission

NGPA Notices of Determination by Jurisdictional Agencies
The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC FORM 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

- Section 102-1: New OCS lease
- Section 102-2: New well (2.5 mile rule)
- Section 102-3: New well (1000 ft rule)
- Section 102-4: New onshore reservoir
- Section 102-5: New res. on old OCS lease
- Section 103: New onshore production well
- Section 107-DEP: 15,000 ft or deeper
- Section 107-G: Geopressed brine
- Section 107-DV: Devonian shale
- Section 107-CS: Coal seam gas
- Section 107-PE: Production enhancement
- Section 107-TF: New tight formation
- Section 107-RT: Recompletion tight formation
- Section 108: Stripper well
- Section 108-SA: Seasonally affected
- Section 108-ER: Enhanced recovery
- Section 108-PE: Production enhancement
- Section 109: Coal bed gas
- Section 110: Federal/State wells

Kenneth F. Plumb,
Secretary.
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**Note:** The document contains a table listing various products and their purchasers, along with other relevant information. The text is a mixture of natural language and tabulated data.
NGPA Notices of Determination by Jurisdictional Agencies


Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83-5(W)00, 49 FR 7109-13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, will not be published in the Federal Register. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of NGPA Notices of Determination by Applicants listed on FERC Form 121 will be issued by the Commission after May 27, 1984, to Milton Chichester, 825 North Capitol Street, Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the National Technical Information Service, 5235 Port Royal Road, Springfield, Virginia 22161. Categories within each NGPA section are indicated by the following codes:

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<td>New OCS lease</td>
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<td>102-2</td>
<td>New well (2.5 mile rule)</td>
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<tr>
<td>102-3</td>
<td>New well (1000 ft rule)</td>
</tr>
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<td>102-4</td>
<td>New onshore reservoir</td>
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<td>102-5</td>
<td>New on OCS lease</td>
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Section 103: New onshore production well

Section 107-DA: 15,000 ft or deeper

Section 107-B: Recompletion tight formation

Section 107-TF: New tight formation

Section 107-PE: Production enhancement

Section 107-CS: Coal seam gas

Section 107-SA: Seasonally affected

Section 107-ER: Enhanced recovery

Section 107-RV: Temporary pressure buildup

Kathleen F. Plumb, Secretary.
### NGPA Notices of Determination by Jurisdictional Agencies


Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83-50-000, 49 FR 7109-13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, will not be published in the Federal Register. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of material which is confidential under 18 CFR 275.204. Negative determinations are indicated by a “D” before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contract Stuart Kennedy, Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

- Section 102: New OCS lease
- Section 102-2: New well (2.5 mile rule)
- Section 102-3: New well (1,000 ft rule)
- Section 104: New onshore reservoir
- Section 105: New res. on old OCS lease
- Section 107-DR: Geopressed brine
- Section 107-DEV: Devonian shale
- Section 107-CS: Coal seam gas
- Section 107-PE: Production enhancement
- Section 107-TF: New tight formation
- Section 107-RT: Recompletion tight formation
- Section 108: Stripper well
- Section 108-SA: Seasonally affected
- Section 108-ER: Enhanced recovery
- Section 108-PB: Temporary pressure buildup

Kenneth F. Plumb, Secretary.

#### NOTICE OF DETERMINATIONS

**Issued April 25, 1984**

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Federal Register / Vol. 49, No. 85 / Tuesday, May 1, 1984 / Notices 18711
NGPA Notices of Determination by Jurisdictional Agencies


Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83-50-000, 49 FR 7109-13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, will not be published in the Federal Register. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a “D” before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:
- Section 102: New OCS lease
- 102-1: New OCS lease
- 102-2: New well (2.5 mile rule)
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- 103-CS: Coal seam gas
- 103-PE: Production enhancement
- 103-TF: New tight formation
- 103-RT: Recompletion tight formation
- Section 108: Stripper well
- 108-SA: Seasonally affected
- 108-ER: Enhanced recovery
- 108-PB: Temporary pressure buildup

Kenneth F. Plumb,
Secretary.
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(BILLING CODE 6717-01-C)
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NOTICE OF DETERMINATIONS
ISSUED APRIL 25, 1984

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Port Royal Road, Springfield, Virginia 22161.

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Kenneth F. Plumb, Secretary.
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[FR Doc. 84-11748 Filed 4-30-84; 8:45 am]
BILLING CODE 6717-01-C
Reader Aids

Federal Register
Vol. 49, No. 8
Tuesday, May 1, 1984

**INFORMATION AND ASSISTANCE**

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**PUBLICATIONS AND SERVICES**

Daily Federal Register
- General information, index, and finding aids: 523-5227
- Public inspection desk: 523-5215
- Corrections: 523-5237
- Document drafting information: 523-5237
- Legal staff: 523-4534
- Machine readable documents, specifications: 523-3408

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- Weekly Compilation of Presidential Documents: 523-5230

Other Services
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- TDD for the deaf: 523-5229

**FEDERAL REGISTER PAGES AND DATES, MAY**

18453-18720

1
**TABLE OF EFFECTIVE DATES AND TIME PERIODS—MAY 1984**

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings. Agencies using this table in planning publication of their documents must allow sufficient time for printing production. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17.)

A new table will be published in the first issue of each month.

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**List of Public Laws**

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List April 25, 1984
For those of you who must keep informed about Presidential proclamations and Executive orders, there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the Codification contains proclamations and Executive orders that were issued or amended during the period January 20, 1961, through January 20, 1981, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the Codification to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1961-1981 period, along with any amendments, an indication of its current status, and, where applicable, its location in this volume.

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