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Thursday
August 9, 1984

Selected Subjects

Advisory Committees
Defense Department

Air Pollution Control
Environmental Protection Agency

Armed Forces
Defense Department

Bridges
Coast Guard

Chaplains
Defense Department

Color Additives
Food and Drug Administration

Consumer Protection
Consumer Product Safety Commission

Elementary and Secondary Education
Education Department

Equal Access to Justice
Education Department

Fair Housing
Housing and Urban Development Department

Government Procurement
Agency for International Development

CONTINUED INSIDE

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

Selected Subjects

Housing Standards
Housing and Urban Development Department

Imports
Customs Service

Insulation
Federal Trade Commission

Low and Moderate Income Housing
Housing and Urban Development Department

Manufactured Homes
Housing and Urban Development Department

Marine Safety
Coast Guard

Military Personnel
Defense Department

Mortgage Insurance
Housing and Urban Development Department

Public Housing
Housing and Urban Development Department

Radio Broadcasting
Federal Communications Commission

Securities
Securities and Exchange Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

Technical Assistance
Small Business Administration

Television Broadcasting
Federal Communications Commission

Trade Practices
Federal Trade Commission

Water Pollution Control
Environmental Protection Agency

Contents

Federal Register
Vol. 49, No. 155
Thursday, August 9, 1984

Agency for International Development
RULES
31898 Acquisition regulations; small purchase and other simplified purchase procedures

Agriculture Department
See Forest Service; Rural Electrification Administration; Soil Conservation Service.

Army Department
NOTICES
Senior Executive Service:
31935 Performance Review Board; membership

Civil Aeronautics Board
NOTICES
31981 Meetings; Sunshine Act (3 documents)

Coast Guard
RULES
Drawbridge operations:
31867 Louisiana
Regattas and marine parades:
31866 National Sweepstakes Regatta

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration.

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
31935 New York Mercantile Exchange; crude oil

Consumer Product Safety Commission
PROPOSED RULES
31908 Power lawn mowers; safety standards; withdrawn

Customs Service
RULES
Merchandise; examination, sampling, and testing:
31850 Grape juice concentrate

Defense Department
See also Army Department.
RULES
31865 Committee management program
Personnel:
31862 Armed forces physicians' appointment and residency consideration program; CFR Part removed
31862 Chaplains for the military services; nomination
31864 Military recruiting; directory information on secondary school students

Education Department
RULES
31868 Equal Access to Justice Act; implementation
PROPOSED RULES
Elementary and secondary education:
31914 Disadvantaged children; financial assistance to local educational agencies
31918 General definitions and administrative, fiscal, and due process requirement for Chapter 1 programs

Energy Department
See Federal Energy Regulatory Commission.

Environmental Protection Agency
RULES
Air pollution control; aircraft and aircraft engines:
31873 Smoke emission standard; reconsideration petition denied
Water pollution control; State underground injection control programs:
31875 Washington
PROPOSED RULES
Air programs:
31923 Ambient air quality standards for carbon monoxide
NOTICES
Air programs; fuel and fuel additive waivers:
31947 E.I. du Pont de Nemours & Co., Inc.
Air quality; prevention of significant deterioration (PSD):
31948 Permits rescinded
Pesticides; experimental use permit applications:
31948 American Cyanamid Co. et al.; correction
Pesticides; temporary tolerances:
31948 American Hoechst Corp.; correction
Toxic and hazardous substances control:
31948 Premanufacture notices receipts; correction

Federal Communications Commission
RULES
Radio and television broadcasting:
31877 Multiple ownership of AM, FM and television broadcast stations
PROPOSED RULES
Common carrier services:
31926 North Atlantic facilities; policy development for loading of circuits

Federal Deposit Insurance Corporation
NOTICES
31948 Agency information collection activities under OMB review
31981, 31982 Meetings; Sunshine Act (3 documents)

Federal Election Commission
NOTICES
31983 Meetings; Sunshine Act

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
31936 Columbia Gas Transmission Corp. (2 documents)
31936 Columbia Gas Transmission Corp. et al.
31937 Consolidated Gas Transmission Corp.
31937 Northwest Pipeline Corp.
31938 Panhandle Eastern Pipeline Co.
31938 Sea Robin Pipeline Co. et al.

31940 Hydroelectric applications (Keating, Joseph Martin, et al.)

Federal Maritime Commission
NOTICES
31949 Agreements filed, etc.
31949 Agreements filed, etc.; terminated
31983 Meetings; Sunshine Act

Federal Trade Commission
RULES
Prohibited trade practices:
31845 Brown Shoe Co., Inc.
31845 Genstar Ltd.
PROPOSED RULES
Home insulation, labeling and advertising:
31906 Petition for partial exemption; denied
Prohibited trade practices:
31901 Hospital and Health Services Credit Union
31903 Weller, Charles E.
NOTICES
31949 Premerger notification waiting periods; early terminations

Fish and Wildlife Service
NOTICES
31954 Marine mammal permit applications

Food and Drug Administration
RULES
Color additives:
31852 D&C Orange No. 5; permanent listing; effective dates confirmed
NOTICES
Biological products and human drugs:
31950 Stability studies, submission of supporting documentation; draft guidelines; inquiry; extension of time
Food additive petitions:
31952 Morton Thiokol, Inc.
31952 Food salvage code, model; availability
Laser variance approvals, etc.:
31951 Laser Media, Inc., et al.

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
31929 Delaware
31929 Georgia
31930 Indiana
31931 Michigan
31932 Oklahoma

Forest Service
NOTICES
Meetings:
31927 Inyo National Forest Grazing Advisory Board

Health and Human Services Department
See Food and Drug Administration; Social Security Administration.

Housing and Urban Development Department
RULES
Low income housing:
31858 Housing assistance payments (Section 8); targeting existing housing certificates; interim
Manufactured home construction and safety standards:
31996 Formaldehyde emissions from plywood and particleboard, and fire safety standards
Minimum property standards:
31853 Poly (vinyl chloride) (PVC) window units (Materials Bulletin No. 85)
31857 Technical suitability of products program; user fee schedule
31854 Technical suitability of products program; user fee system
Mortgages and loan insurance program:
32016 Coinsurance for construction or substantial rehabilitation of multifamily housing projects
Public and Indian housing:
31860 Comprehensive improvement assistance program; non-routine maintenance, definition
32042 State and local fair housing laws; recognition of jurisdictions with substantially equivalent laws; procedures
32049 State and local fair housing laws; recognition of substantially equivalent laws
NOTICES
31953 Cost principles of nonprofit organizations (OMB Circular A-122); lobbying revision

Immigration and Naturalization Service
RULES
Organization, functions, and authority delegations:
31845 Eastern Region; field service realignment; correction

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office.

International Development Cooperation Agency
See Agency for International Development.

International Trade Administration
NOTICES
Export privileges, actions affecting:
31933 Computer & Test System et al.
31932 Export trade certificates of review

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
31963 Chicago & North Western Transportation Co.
Railroad services abandonment:
31963 Burlington Northern Railroad Co.

Justice Department
See Immigration and Naturalization Service.

Land Management Bureau
RULES
Public land orders:
31876 Alaska
NOTICES
Alaska native claims selection:
31957 Cook Inlet Region, Inc.
Environmental statements; availability, etc.:
31958 Apache County et al., AZ
Leasing of public lands:
31958 Alaska
Meetings:
31955 Lewistown District Advisory Council

31959 Montrose District Grazing Advisory Board
31959 Rock Springs District Advisory Council
31954 Safford District Advisory Council
31960 Ukiah District Advisory Council
31957 Vernal District Advisory Council
Oil and gas leases:
31957 Alaska (2 documents)
Sale of public lands:
31959 California
31960 Nevada
31955, 31956 Wyoming (2 documents)
Survey plat filings:
31958 Colorado
31957 Idaho

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
31961 ARCO Oil & Gas Co.

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
31974 Grumman Allied Industries, Inc.

National Park Service
NOTICES
Meetings:
31962 Chesapeake and Ohio Canal National Historical Park Commission
31962 Upper Delaware Citizens Advisory Council

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
31965 Georgia Power Co. et al.
31965 Northern States Power Co.
Environmental statements; availability, etc.:
31964 General Public Utilities Nuclear Corp. et al.
31963 Export and import license applications for nuclear facilities or materials (Exxon Nuclear Co., Inc., et al.)

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
31966 Bloom City, WI

Postal Service
NOTICES
31967 Privacy Act; systems of records

Reclamation Bureau
NOTICES
31962 Lake Tahoe National Forest, CA and NV; administrative jurisdiction transfer to Agriculture Department

Rural Electrification Administration
NOTICES
Loan guarantees, proposed:
31927 ALLTEL Florida, Inc.

Securities and Exchange Commission
RULES
Securities:
31846 Brokers and dealers; net capital and reporting requirements
NOTICES
Hearings, etc.:
31970 Central & South West Corp.
31968 Den Danske Corp.
31969 Park Electrochemical Corp.
31983 Meetings; Sunshine Act
Practice and procedure:
31967 Special delivery packages; handling procedures
Self-regulatory organizations; proposed rule changes:
31971 National Association of Securities Dealers, Inc. (2 documents)
31971 Pacific Stock Exchange, Inc.
Self-regulatory organizations; unlisted trading privileges:
31972 Midwest Stock Exchange, Inc.
31969 Philadelphia Stock Exchange, Inc.

Small Business Administration
PROPOSED RULES
31899 Management assistance
NOTICES
Applications, etc.:
31973 Texas State Capital Corp.
Disaster loan areas:
31972 Colorado
31972 Nebraska

Social Security Administration
NOTICES
31952 Organization, functions, and authority delegations

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
31928 Bantam River Critical Area Treatment RC&D Measure, CT
31927 Crooked-Otter Creeks and Middle Fork Salt River Watersheds, MO
31928 Felton Covered Bridge RC&D Measure, CA
Watershed projects; deauthorization of funds:
31928 Rock Creek Watershed, OR

State Department
NOTICES
31973 Maritime boundaries and fisheries conservation zone between U.S. and Canada; amendment
Meetings:
31973 International Telegraph and Telephone Consultative Committee

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission; various States:
31912 Ohio
31913 Pennsylvania

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
31934 Romania

Textile consultation; review of trade:
31934 Korea

Trade Representative, Office of United States
NOTICES
Import quotas and exclusions, etc.:
31973 Plastic food storage containers

Transportation Department
See Coast Guard; National Highway Traffic Safety Administration.

Treasury Department
See also Customs Service.
NOTICES
Bonds, Treasury:
31978 2009–2014 series
Notes, Treasury:
31976 B–1994 series
31974 P–1987 series

Veterans Administration
NOTICES
31979 Agency information collection activities under OMB review

---

Separate Parts in This Issue

Part II
31996 Department of Housing and Urban Development, Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Part III
32016 Department of Housing and Urban Development, Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Part IV
32042 Department of Housing and Urban Development, Office of the Assistant Secretary for Fair Housing and Equal Opportunity

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of the issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

8 CFR
100 31845

13 CFR
Proposed Rules:
129 31899

16 CFR
13 (2 documents) 31845
Proposed Rules:
13 (2 documents) 31901, 31903
460 31906
1205 31908

17 CFR
240 31846
249 31846

19 CFR
151 31850

21 CFR
74 31852
81 31852
82 31852

24 CFR
105 32042
111 32042
115 (2 documents) 32042, 32049
200 (3 documents) 31853–31857
251 32016
290 31858
882 31858
968 31860
3280 31996

30 CFR
Proposed Rules:
935 31912
938 31913

32 CFR
58 31862
65 31862
83 31864
224 31865

33 CFR
100 31866
117 31867

34 CFR
21 31868
Proposed Rules:
200 31914
204 31918

40 CFR
87 31873
147 31875
Proposed Rules:
50 31923

43 CFR
Public Land Orders:
6559 31876

47 CFR
73 31877
Proposed Rules:
Ch. I 31926

48 CFR
713 31898

Rules and Regulations

Federal Register
Vol. 49, No. 155
Thursday, August 9, 1984

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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

Statement of Organization; Field Service Realignment

Correction

In FR Doc. 84–19736 appearing on page 30057 in the issue of Thursday, July 26, 1984, make the following correction:

§ 100.4 **[Corrected]**

On page 30057, in § 100.4(d), third column, third line, "For Fairfield" should have read "Fort Fairfield".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 7606]

Brown Shoe Company, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: This order grants petition of Brown Group, Inc. (formerly Brown Shoe Company, Inc. and hereafter "Brown") to reopen proceedings in Docket No. 7606 and set aside the order entered against Brown which prohibited the company from entering into agreements that would prevent retailers from deciding to purchase a competitor's line of shoes or the amount of competitor's shoes to stock. Upon considering Brown's petition, the public comments and other relevant information, the Commission found that granting respondent's request would be in the public interest. The Commission noted that given the present characteristics of the shoe industry and Brown's lack of market power to exclude competitors, the 1966 Order now serves no procompetitive purpose and may impede respondent's efforts to achieve efficient distribution of its products through lawful practices available to its competitors. Accordingly, the proceeding in Docket No. 7606 is reopened and the Commission's Order of August 3, 1966, 70 F.T.C. 91, is set aside.

DATES: Modified Order issued August 3, 1966. Order to Set Aside issued July 16, 1984.

FOR FURTHER INFORMATION CONTACT: FTC/L 301–18, Selig Merber, Washington, D.C. 20580, (202) 634–4642.

SUPPLEMENTARY INFORMATION: In the Matter of Brown Shoe Company, Inc., a corporation. Codification appearing at 31 FR 11754 is deleted.

List of Subjects in 16 CFR Part 13

Shoes, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

[Docket No. 7606]

Order Reopening and Setting Aside Order Issued August 3, 1966

In the matter of Brown Shoe Company, Inc., a corporation

Commissioners: James C. Miller III, Chairman, Michael Pertschuk, Patricia P. Bailey, George W. Douglas, Terry Calvani.

By a petition filed on March 19, 1984, respondent Brown Group, Inc. (formerly Brown Shoe Company, Inc. and hereafter "Brown") requests that the Commission reopen the proceeding in Docket No. 7606 and set aside the order against Brown. Upon consideration of Brown's petition, the public comments, and other relevant information, the Commission now finds that the public interest warrants reopening the proceeding and setting aside the order.

The record describes an industry in which any attempt by Brown to impose exclusive dealing on retailers today would have no significant anticompetitive effects. Imports have dramatically penetrated the market, representing about 60 percent of present domestic consumption. Some 300 manufacturers account for U.S. production, with 25 providing about half of domestic output. There is no evidence that within this fragmented market structure any single competitor, whether a domestic manufacturer or supplier of imports, has significant market power to exclude other competitors. To the contrary, significant entry continues to occur, demonstrating a lack of natural or artificial barriers to entry.

Given the present characteristics of the shoe industry and that Brown does not have market power by which it may exclude competitors, the order now serves no procompetitive purpose and may impede Brown's efforts to achieve efficient distribution of its products through lawful practices available to its competitors.

Accordingly, it is ordered that this matter be, and it hereby is reopened, and that the Commission's August 3, 1966 order be and it is hereby set aside.

Issued: July 16, 1984.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 84–21159 Filed 8–8–84; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C–3049]

Genstar Limited; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: The Federal Trade Commission has reopened this proceeding and modified its order issued on Nov. 10, 1980; 96 F.T.C. 795; 45 FR 79753. The modified order permits the company to both ship cement from its Tilbury Island Plant in British Columbia to California, Oregon, Washington and Nevada, and acquire cement distribution terminals in those four states without prior Commission approval.

DATES: Order issued: Nov. 10, 1980. Order Modifying Decision and Order issued July 12, 1984.

FOR FURTHER INFORMATION CONTACT: Sally Maxwell, L–301, FTC, Washington, D.C. 20580, (202) 634–4652.

SUPPLEMENTARY INFORMATION: In the matter of Genstar Limited, a Canadian

Corporation. Codification appearing at 45 FR 28158 remains unchanged.

List of Subjects in 16 CFR Part 13

Portland cement, Clinker, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Before Federal Trade Commission

In the matter of Genstar Limited, a Canadian Corporation.

[Docket No. C-3049]

Order Modifying Decision and Order

Commissioners: James C. Miller III, Chairman, Michael Pertschuk, Patricia P. Bailey, George W. Douglas, Terry Calvani.

Genstar Corporation has requested that the Commission modify its Order in Docket No. C-3049 (1) to relieve Genstar of its obligation under Paragraph II of the Order to obtain, until January 31, 1990, Commission approval to ship cement it produces outside the United States to cement facilities it owns in the four-state area of Washington, Oregon, Nevada, and California ("four-state area"), and (2) to relieve Genstar of its obligation under Paragraph VII(B) to obtain, until January 31, 1985, Commission approval before acquiring active cement terminals in the four-state area. After duly considering Genstar's petition, the Commission has determined that Genstar has demonstrated changed circumstances of fact that warrant reopening of the Order, and that the Order should be modified in the manner that Genstar requests.

Before 1980, when Genstar acquired the Flintkote Company, Genstar had no cement plants in the relevant market and did not sell directly to end-users; Genstar, however, supplied cement to cement producers in the market. Genstar's proposed acquisition to Flintkote, the third largest competitor in the area, presented several alleged anticompetitive possibilities.

The Commission and Genstar agreed to a cease and desist order against Genstar that allowed the proposed acquisition to take place, but that contained provisions designed to eliminate the possible anticompetitive effects of the acquisition. Paragraphs II and III, in conjunction with the cement terminal moratorium provision contained in Paragraph VII(B), were designed to avoid the possibility that Genstar would dominate the market through the combination of its status as a major supplier and its ownership of Flintkote. Paragraph II restricts Genstar's ability to import cement into the relevant area for its own use, and Paragraph III requires Genstar until December 31, 1984, to make available to producers in the market excess cement produced by the Canadian plant from which Genstar supplies cement to the relevant area. The provision in Paragraph VII(B) that restricts Genstar's ability to acquire active cement terminals in the relevant market was an adjunct to Paragraphs II and III.

When the Commission accepted the consent Order, it recognized that the Order's import restrictions would limit Genstar's ability to compete to its fullest in the relevant market; however, the provisions were believed to be necessary during the period of short supply that then prevailed, to eliminate the opportunity for Genstar to effect an anticompetitive supply squeeze. Due to increased capacity in the relevant market, such an event no longer is a realistic possibility. Consequently, there no longer is any reason to restrict Genstar from competing fully in the market. This changed circumstance of fact and the public interest therefore require modification of the Order. Accordingly,

It is ordered that the proceeding be, and it hereby is, reopened.

It is ordered that the Order be, and it hereby is modified by (1) deleting Paragraph II of the Order, and (2) substituting for Paragraph VII(B) of the Order the following:

VII.

It is further ordered that prior to January 31, 1985 Genstar shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of:

B. any Product manufacturing plant located in any Cement Market Area.

By the Commission, Commissioner Calvani dissented.

Issued: July 12, 1984.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 84-21160 Filed 8-8-84; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-21199; File No. S7-29-84]

Net Capital and Reporting Requirements for Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendments.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to the uniform net capital rule and to the "FOCUS" Report, to conform certain paragraphs of the rule and Appendices B and D thereto and the FOCUS Report to the Commodity Futures Trading Commission's ("CFTC") net capital and financial reporting rules. The amendments will particularly affect those broker-dealers who are also registered with the CFTC as futures commission merchants (collectively "FCMs"). The Commission is also deleting a provision in its instructions to the FOCUS Report relating to the Commission's billing for payment of certain transaction fees. Finally, the Commission is adopting certain technical amendments to the FOCUS Report to conform to net capital rule amendments made in 1982.

EFFECTIVE DATE: (September 15, 1984; Broker-dealers that wish to comply with these amendments prior to this date may do so).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli (202) 272-2904, or Steven J. Gray (202) 272-3113, Division of Market Regulation, 450 5th Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to its net capital rule which will in effect conform provisions in its rule to changes previously made by the CFTC to its net capital rule. The CFTC's amendments relate to: (1) The treatment of exchange traded commodity options purchased or sold by FCM customers and of commodity option transactions in proprietary accounts of FCMs; (2) the special prepayment of subordinated loans; (3) certain minor definitional provisions and; (4) the establishments of registration, financial and recordkeeping requirements introducing brokers.

Although the CFTC's amendments apply only to FCMs, a substantial amount of commodity business is conducted by FCMs that are also registered with the Commission as securities broker-dealers. Such FCMs therefore are subject to the Commission's net capital rule. For this reason the CFTC's net capital rule and the Commission's net capital rule are almost identical.[1] Accordingly, the

[1] The CFTC's net capital rule applies to broker-dealers that are also futures commission merchants. The portion of the CFTC's rule dealing with securities transactions was taken from the Commission's net capital rule. The Commission in turn adopted Appendix B to its net capital rule to conform its treatment of commodity transactions to the CFTC's net capital rule.

conforming amendments noted herein are necessary to insure that broker-dealers that are FCMs are not subject to inconsistent financial requirements.

In Securities Exchange Act Release No. 20512, (December 23, 1983) (48 FR 57524, December 30, 1983), the Commission published the subject amendments for public comment. The Commission did not receive any written comments on the proposed amendments. The various amendments adopted by the CFTC and discussed in the Commission's proposing release, are designed to provide uniformity and avoid duplicative requirements as well as additional reporting for futures commission merchants that are also broker-dealers. The Commission believes it is important to achieve uniformity in this area to the maximum extent practicable in the interests of fair and equitable regulation consistent with its regulatory responsibilities.

Form X-17A-5 (the "FOCUS Report")

1. The CFTC has also amended its Schedule of Segregation Requirements and Funds in Segregation to account for customer positions in commodity options. Since the Schedule is part of the FOCUS Report, it is appropriate to amend the FOCUS Report to include the revised Schedule.

2. In addition, the Commission is amending the FOCUS Report to reflect the reduction in the required amount of net capital (from 4% to 2%) for those firms on the alternative method of computing net capital. Corresponding reductions to the early warning provisions (from 7% to 5%) are also being made.

3. Finally, the Commission is deleting the final sentence in item 23 of the General Instructions of Schedule I of the FOCUS Report regarding transaction fees for non-exempted over-the-counter ("OTC") sales of exchange listed securities occurring during the preceding calendar year. That sentence states that the Commission would bill each respondent for such fees on or before March 15 of each year. Such deletion will not relieve broker-dealers of their obligations, pursuant to Section 31 of the Securities Exchange Act, to pay the transaction fees on or before March 15 of each year.

Regulatory Flexibility Act Considerations

The Chairman of the Commission certified in connection with the proposing release that the proposed rule amendments would not have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments on the certification.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Statutory Authority and Text of Amendments

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15(c)(3), 17(a) and 23(a) thereof, 15 U.S.C. 78o(c)(3), 78q(a), and 78w(a), the Commission is adopting amendments to § 240.15c3-1 in Part 240 of Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below.

1. By revising paragraphs (a) introductory text, (e) and (f) (1) and (2) of § 240.15c3-1 as follows:

§ 240.15c3-1 Net capital requirements for brokers and dealers.

(a) No broker or dealer shall permit his aggregate indebtedness to all other persons to exceed 1500 percent of his net capital. No broker or dealer which has elected the provisions of paragraph (f) of this section (in which case he is not subject to the aggregate indebtedness limitation in this paragraph) shall permit his net capital to be less than 2 percent of aggregate debit items as computed in accordance with § 240.15c3-3a of this chapter. No broker or dealer registered as a futures commission merchant shall permit his net capital to be less than 4% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account).

* * * * *

(e) *Limitation on withdrawal of equity capital.* No equity capital of the broker or dealer or a subsidiary or affiliate consolidated pursuant to Appendix C (17 CFR 240.15c3-1c) may be withdrawn by action of a stockholder or partner, or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor or employee if, after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in Appendix D (17 CFR 240.15c 3-1d)) under satisfactory subordination agreements which are scheduled to occur within six months following such withdrawal, advance or loan, either aggregate indebtedness of any of the consolidated entities exceeds 1000 percent of its net capital or its net capital would fail to equal 120 percent of the minimum dollar amount required thereby or would be less than 5 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3-3a, or, if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or in the case of any broker or dealer included within such consolidation if the total outstanding principal amounts of satisfactory subordination agreements of the broker or dealer (other than such agreements which qualify as equity under paragraph (d) of this section) would exceed 70% of the debt-equity total as defined in paragraph (d). The term equity capital includes capital contributions by partners, par or stated vaule of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts. The term equity capital does not include securities in the securities accounts of partners' and balances in limited partners' capital accounts in excess of their stated capital contributions. This provision shall not preclude a broker or dealer from making required tax payments or preclude the payment to partners of reasonable compensation.

(f) *Alternative Net Capital Requirement.* (1) A broker or dealer who is not exempt from the provisions of 17 CFR 240.15c3-3 under the Securities Exchange Act of 1934 pursuant to paragraph (k)(1) or (k)(2)(i) may elect not to be subject to the limitations of paragraph (a) of this section respecting aggregate indebtedness as defined in paragraph (c)(1) of this section and certain deductions provided for in paragraph (c)(2) of this section. Such broker or dealer shall at all times maintain net capital equal to the greater of $100,000 ($25,000 in the case of a broker or dealer effecting transactions solely in municipal securities) or 2 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3-3, 17 CFR

240.15c3-3a), or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater. Such broker or dealer shall notify the Examining Authority for such broker or dealer and the Regional Office of the Commission in which the broker or dealer has its principal place of business, in writing, of its election to operate under this paragraph. Once a broker or dealer has determined to operate under this paragraph he shall continue to do so unless a change is approved upon application to the Commission.

(2) A broker or dealer who has consolidated one or more subsidiaries pursuant to Appendix C (17 CFR 240.15c3-1c), shall maintain net capital equal to its net capital requirement and the total of each consolidated broker or dealer subsidiary's minimum net capital requirements.

* * * * *

2. By adding paragraph (a)(3)(x) to § 240.15c3-1b and by revising paragraphs (a)(3)(i)(B), (a)(3)(iii)(C), (a)(3)(ix)(A), (a)(3)(xiv) introductory text, (a)(3)(xiv) (B) and (D), (a)(3)(xv), and (a)(3)(xvi), of § 240.15c3-1b as follows:

§ 240.15c3-1b Adjustments to net worth and aggregate indebtedness for certain commodities transactions (Appendix B to 17 CFR 240.15c3-1).

(a) * * *

(3) * * *

(i) * * *

(B) The value attributed to any commodity option which is not traded on a contract market shall be the difference between the option's strike price and the market value for the physical or futures contract which is the subject of the option. In the case of a long call commodity option, if the market value for the physical or futures contract which is the subject of the option is less than the strike price of the option, it shall be given no value. In the case of a long put commodity option, if the market value for the physical commodity or futures contract which is the subject of the option is more than the striking price of the option, it shall be given no value.

* * * * *

(iii) * * *

(C) Receivables from registered futures commission merchants or brokers, resulting from commodity futures or option transactions, except those specifically excluded under paragraph (3)(ii) of this Appendix B. In the case of an introducing broker or an applicant for registration as an introducing broker, include 50 percent of the value of a guarantee or security deposit with a futures commission merchant which carries or intends to carry accounts for the customers of the introducing broker.

* * * * *

(ix) * * *

(A) Inventory which is currently registered as deliverable on a contract market and covered by an open futures contract or by a commodity option on a physical—No charge.

* * * * *

(x) Deduct 4% of the market value of commodity options granted (sold) by option customers on or subject to the rules of a contract market.

* * * * *

(xiv) In the case of open futures contracts and granted (sold) commodity options held in proprietary accounts carried by the broker or dealer which are not covered by a position held by the broker or dealer or which are not the result of a "changer trade" made in accordance with the rules of a contract market, deduct:

* * * * *

(B) For a broker or dealer which is a member of a self-regulatory organization 150% of the applicable maintenance margin requirement of the applicable board of trade or clearing organization, whichever is greater; or

* * * * *

(D) For open contracts or granted (sold) commodity options for which there are no applicable maintenance margin requirements, 200% of the applicable initial margin requirement;

Provided, the equity in any such proprietary account shall reduce the deduction required by this paragraph (a)(3)(xiv) if such equity is not otherwise includable in net capital.

(xv) In the case of a broker or dealer which is a purchaser of a commodity option which is traded on a contract market the deduction shall be the same safety factor as if the broker or dealer were the grantor of such option in accordance with paragraph (a)(3)(xiv), but in no event shall the safety factor be greater than the market value attributed to such option.

(xvi) In the case of a broker or dealer which is a purchaser of a commodity option not traded on a contract market which has value and such value is used to increase net capital, the deduction is ten percent of the market value of the physical or futures contract which is the subject of such option but in no event more than the value attributed to such option.

* * * * *

3. By revising paragraphs (b)(6)(iii), (b)(7), (b)(8)(i), (b)(10)(ii)(B), (c)(2), (c)(5)(i), and (c)(5)(ii)(A) of § 240.15c3-1d as follows:

§ 240.15c3-1d Satisfactory Subordination Agreements (Appendix D to 17 CFR 240.15c3-1).

* * * * *

(b) * * *

(6) * * *

(iii) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (b)(6)(ii) of this section, the lender with the prior written consent of the broker or dealer and the Examining Authority for the broker or dealer may reduce the unpaid principal amount of the secured demand note. After giving effect to such reduction, the aggregate indebtedness of the broker or dealer may not exceed 1000 percent of its net capital or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, net capital may not be less than 5% of aggregate debit items computed in accordance with 17 CFR 240.15c3-3a, or, if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater. No single secured demand note shall be permitted to be reduced by more than 15% of its original principal amount and after such reduction no excess collateral may be withdrawn. No Examining Authority shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, net capital would be less than 120% of the minimum dollar amount required by 17 CFR 240.15c3-1.

(7) *Permissive Prepayments.* A broker or dealer at its option but not at the option of the lender may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective. This restriction shall

not apply to temporary subordination agreements which comply with the provisions of paragraph (c)(5) of this Appendix D. No Prepayment shall be made, if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 1000 percent of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3–1 or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than 5% of its aggregate debit items computed in accordance with 17 CFR 240.15c3–3a, or if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or its net capital would be less than 120% of the minimum dollar amount required by paragraph (f) of 17 CFR 240.15c3–1. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Examining Authority for such broker or dealer.

(8) *Suspended repayment.* (i) The Payment Obligation of the broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such Payment Obligation) either: (A) the aggregate indebtedness of the broker or dealer would exceed 1200% of its net capital, or in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than 5% of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or, if registered as a futures commission merchant, 6% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account) if greater, or (B) its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3–1 including paragraph (f), if applicable. The subordination agreement may provide that if the Payment Obligation of the broker or dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(8) for a period of not less than six months, the broker or dealer shall thereupon commence the rapid and orderly liquidation of its business but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3–1 and 240.15c3–1d.

* * * * *

(10) * * *

(ii) * * *

(B) The aggregate indebtedness of the broker or dealer exceeding 1500% of its net capital or, in the case of a broker or dealer which has elected to operate under paragraph (f) of 17 CFR 240.15c3–1, its net capital computed in accordance therewith is less than 2% of its aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or, if registered as a futures commission merchant, 4% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Examining Authority for the broker or dealer, or the Examining Authority or the Commission first determines and notifies the broker or dealer of such fact;

* * * * *

(c) * * *

(2) *Notice of Maturity or Accelerated Maturity.* Every broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to all Payments of Payment Obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer, either the aggregate indebtedness of the broker or dealer would exceed 1200% of its net capital or its net capital would be less than 120% of the minimum dollar amount required by 17 CFR 240.15c3–1, or, in the case of a broker or dealer who is operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than 5% of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a, or, if registered as a futures commission merchant, 6% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account) if greater, or less than 120% of the minimum dollar amount required by paragraph (f) of 17 CFR 240.15c3–1.

* * * * *

(5) *Temporary and Revolving Subordination Agreements.* (i) For the purpose of enabling a broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the net capital requirements of 17 CFR 240.15c3–1, a broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. This temporary relief shall not apply to a broker or dealer if, at such time, it is subject to any of the reporting provisions of 17 CFR 240.17a–11 under the Securities Exchange Act of 1934, irrespective of its compliance with such provisions or if immediately prior to entering into such subordination agreement, either (A) the aggregate indebtedness of the broker or dealer exceeds 1000% of its net capital or its net capital is less than 120% of the minimum dollar amount required by 17 CFR 240.15c3–1, or (B) in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital is less than 5% of aggregate debits computed in accordance with 17 CFR 240.15c3–3a or, if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's

account), if greater, or less than 120% of the minimum dollar amount required by paragraph (f) of this section, or (C) the amount of its then outstanding subordination agreements exceeds the limits specified in paragraph (d) of 17 CFR 240.15c3-1. Such temporary subordination agreement shall be subject to all other provisions of this Appendix D.

(ii) * * *

(A) After giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 900 percent of its net capital or its net capital would be less than 200 percent of the minimum dollar amount required by 17 CFR 240.15c3-1 or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital would be less than 6% of the aggregate debit items computed in accordance with 17 CFR 240.15c3-3a or, if registered as a futures commission merchant, 10% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or its net capital would be less then 200% of the minimum dollar amount required by paragraph (f) of 17 CFR 240.15c3-1 or

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. By revising Form X-17A-5 described in 17 CFR 249.617 by: (A) deleting the last sentence from item 23 of the General Instructions on page 4 of Schedule 1 relating to the Commission's billing for payment of transaction fees for over-the-counter sales of exchange listed securities; (B) amending Part II to include the amended CFTC Segregation Schedule and; (C) amending Part II to reflect prior amendments to the net capital rule which provided for the reduction in the required amount of net capital for firms on the alternative method of computing net capital and to reflect the corresponding reduction in the early warning levels (Form X-17A-5 does not appear in the Code of Federal Regulations).

By the Commission.

George A. Fitzsimmons,

Secretary.

August 3, 1984.

[FR Doc. 84-21190. Filed 8-8-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 151

[T.D. 84-173]

Customs Regulations Amendment Relating To the Classification of Imported Grape Juice Concentrate

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by increasing the average Brix value (amount of sugar in solution) assigned to natural unconcentrated *vitis vinifera* grape juice in the trade and commerce of the United States. Average Brix values of various unconcentrated fruit juices are used in determining the dutiable quantity of the corresponding imported juice concentrates under the Tariff Schedules of the United States. The amendment is being made to more accurately reflect the currently recognized Brix value of such grape juice in the trade and commerce of the United States and will effectively lower the duty on *vitis vinifera* grape juice concentrate.

EFFECTIVE DATE: September 10, 1984.

FOR FURTHER INFORMATION CONTACT: Lee C. Seligman, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

Customs published a notice in the **Federal Register** on November 14, 1983 (48 FR 51784), informing the public of the receipt of a petition from an importer of certain grape juice concentrate. The petitioner contended that the average Brix value (amount of sugar in solution) of natural unconcentrated *vitis vinifera* grape juice in the trade and commerce of the United States, which is set forth as 18.0 degrees in section 151.91, Customs Regulations (19 CFR 151.91), is no longer reflective of the quality of such juice and should be changed.

The petitioner claimed that: (1) In order for a determination to be made in this matter the Secretary of the Treasury must consider only the grapes grown in California, which is the sole source of *vitis vinifera* grapes grown in the United States; (2) table grapes and raisin grapes should be eliminated from consideration because they vary significantly from such grapes used for the production of juice; and (3) *vitis vinifera* grapes should be divided into two Brix categories, black (red) and white, since those categories are clearly distinct. Based upon the "Final Grape Crush Reports" of the California Department of Food and Agriculture for crops from 1976 through 1981, the petitioner requests that the Secretary make determinations that: (1) The average Brix level is 20.1 degrees for juice from white *vitis vinifera* grapes; and (2) the average Brix level is 22.4 degrees from juice from black (red) *vitis vinifera* grapes. Such determinations, as requested by the petitioner, would result in a lowering of the duty on imported grape juice concentrates.

The average Brix value is important because it is the measure by which the quantity of a dutiable importation and, thereby, the amount of duty owed, is determined. The duty is assessed under item 165.40, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), which provides for the collection by Customs of a column 1 rate of duty of 25 cents per gallon on imported grape juice concentrate. Headnote 3(a) of Subpart A, Part 12, Schedule 1, TSUS, states that "the term 'gallon' * * * means gallon of natural unconcentrated juice or *gallon of reconstituted juice* (emphasis provided)." Headnote 3(b) specifies that "the term 'reconstituted juice' means the product which can be obtained by mixing the imported concentrate with water in such proportion that the product will have a Brix value equal to that found by the Secretary of the Treasury from time to time to be the average Brix value of like natural unconcentrated juice in the trade and commerce of the United States." Brix value is defined in Headnote 3(c) to be "the refractometric sucrose value of the juice, adjusted to compensate for the effect of any added sweetening materials, and thereafter corrected for acid." Section 151.91, Customs Regulations, sets forth the average Brix values of natural unconcentrated fruit juices in the trade and commerce of the United States for purposes of the provisions of Schedule 1, Part 12A, TSUS, and is used by Customs in

determining the dutiable quantity of imports of concentrated fruit juices.

In the November 14, 1983, notice Customs sought the comments of the public on the following:

1. Is the production of *vitis vinifera* grape juice exclusive or so effectively restricted to California as to provide the sole source for determination of the average Brix value of such natural unconcentrated juice for purposes of section 151.91, Customs Regulations?

2. If the response to the first question is in the affirmative, does the average Brix value reported in the "Final Grape Crush Reports" of the California Department of Food and Agriculture for such crops (from which the juice involved is processed) for the period 1976 through 1981 constitute a valid basis for the requested determination? Customs noted that the Brix values stated in those reports are determined in the laboratory from *grape* samples selected from the hoppers just prior to crushing, and therefore represent the average Brix value of fresh grapes. Brix values of juice can be affected by numerous factors, such as delays in transit and length of storage.

3. Does the term "* * * in the trade and commerce of the United States * * *", as used in headnote 3(b) of Subpart A, Part 12, Schedule 1, TSUS, encompass only such single strength juice (natural unconcentrated juice) produced domestically, or does it also encompass foreign-produced single strength juice (natual unconcentrated juice) imported into the United States, if any?

4. Is there a separate and distinct trade understanding of *vitis vinifera* grape juice or grapes for concentrating (*e.g.*, wine grapes as opposed to table or raisin grapes) which separates the genre into two specific categories (*i.e.*, white and black (red)) of is the single description currently used reflective of such understanding (*i.e.*, does the color of the grapes from which such juice is produced—white and black (red)—control the use to which each is put or, apart from color and possibly Brix value, are the two used interchangeably, compensating, where necessary, for differing Brix values)?

Discussion of Comments

Only three comments were received in response to the notice, all of which supported the petitioner's position.

The replies to the first question were in the affirmative. The commenters noted that, since the unconcentrated juice does not move in international commerce because of shipping considerations due to excesive water weight, the California product is the only measue available to properly set an average Brix value. The response to the second question was that the California reports contained an accurate measure by which to establish an average Brix level. It was stated that while slight evaporation might tend to affect the particular Brix level in a given batch, this would likely be a negligible change.

Regarding the third question, the commenters responded that the *only* significant commercial source of natural unconcentrated *vitis vinifera* grape juce in the United States is from California producers. None (or at least not any commercially significant amount) is imported from foreign sources.

In response to the last question, the commenters indicated that white and black (red) grape have different uses, are distinct, and are not interchangeable. The implication is that the commenters would support the establishment of separate Brix levels for natural unconcentrated white and black (red) grape juice, as urged by the petitioner.

After analysis of the comments received, together with independent research, and after consideration of the points raised in the petition, we believe that the petitioner has established, with adequate support by the trade, that the average Brix value for natural unconcentrated *vitis vinifera* grape juice set forth in § 151.91, Customs Regulations, is incorrect and must be raised to properly reflect the current Brix value of such juice in the trade and commerce of the United States. We believe that the "Final Grape Crush Report(s)," issued by the California Department of Food and Agriculture and representing the crop years 1976 through 1981, are the best presently available measure for properly estabishing an accurate average Brix value for this juice.

In regard to a determination concerning the term "* * * in the trade and commerce of the United States", sources queried by Customs indicate that importations of natural unconcentrated juice or of single-strength juice are exceedingly rare. We have been unable to locate any meaningful precedent regarding the scope of the term. Accordingly, the term is to be construed on the basis of the common and commercial meanings thereof, which are presumed to be identical, absent a showing of contrary legislative intent or commercial understanding, neither of which are ascribable to the language under consideration. In order to arrive at a proper definition of the scope of the term, we believe that we have an obligation to consider all commercially significant sources whether of foreign or domestic origin, so long as those sources' products move in and are part of the commerce of the United States. In this instance, there being no significant commercial trade or commerce in the United States involving either foreign-produced natural unconcentrated *vitis vinifera* grape juice or any such juice produced in meaningful commercial quantities outside of California, the average Brix level of such California-produced juice defines the basis of the determination.

Regarding the question of the establishment of separate average Brix values for white and black (red) natural unconcentrated grape juice, there does not appear to be any practical means available to Customs to determine either the source of imported concentrate (*i. e.*, whether produced from white or black (red) *vitis vinifera* grapes) or, more importantly, whether any particular importation may consist of a mixture of the two. The establishment of separate and distinct Brix values would, we believe, invite fraud. Therefore, although we agree that the petitioner has made a showing that a significant difference exists between the two varieties, in light of the technical problems involved in making the required differentiation and our belief that the tolerance provided for in headnote 4, Subpart A, Part 12, Schedule 1, TSUS, adequately protects the importer, we do not deem it advisable to subdivide the average Brix values. The Brix values sought are not so far different that significant financial detriment or any other inequity would result from applying one Brix value to both. Accordingly, § 151.91, is being amended by changing the average Brix value of natural unconcentrated *vitis vinifera* grape juice in the trade and commerce of the United States from 18.0 degrees to 21.5 degrees.

Executive Order 12291

It has been determined that the 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

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et. seq.), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 151

Customs duties and inspection, Imports, Fruit juices.

Amendment of the Regulations

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

The list of Brix values in § 151.91, Customs Regulations (19 CFR 151.91), is amended by removing the numeral "18.0" under the column headed "Average Brix value (degrees)" and opposite the words "Grape (Vitis Vinifera)" and inserting, in its place, the numeral "21.5."

(R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14, (19 U.S.C. 66, 1202, 1624))

William von Raab,

Commissioner of Customs.

Approved: July 23, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-21142 Filed 8-8-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 82N-0268]

D&C Orange No. 5; Permanent Listing as a Color Additive; Confirmation of Effective Dates

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of December 3, 1982, for a final rule published in the **Federal Register** of November 2, 1982, that amended the color additive regulations by permanently listing D&C Orange No. 5 for use in lipsticks or other lip cosmetics and in drug and cosmetic mouthwashes and dentifrices. FDA is also confirming the effective date of May 7, 1984, for a final rule published in the **Federal Register** of April 4, 1984, that further amended the color additive regulations by permanently listing D&C Orange No. 5 for use in externally applied drugs and cosmetics.

DATES: Effective dates confirmed: December 3, 1982, for use in lipsticks or other lip cosmetics and in drug and cosmetic mouthwashes and dentifrices; May 7, 1984, for use in externally applied drugs and cosmetics.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: On October 28, 1982, FDA signed and placed on immediate display in the Dockets Management Branch a final rule that amended the color additive regulations by permanently listing D&C Orange No. 5 for use in coloring mouthwashes and dentifrices that are ingested drugs or cosmetics and for use in coloring lipsticks and other cosmetics intended to be applied to the lips. This final rule was published in the **Federal Register** of November 2, 1982 (47 FR 49632). This action was a partial response to a color additive petition for D&C Orange No. 5. The final rule added new §§ 74.1255 and 74.2255 (21 CFR 74.1255 and 74.2255), conforming the identity and the specifications paragraphs of § 74.2255 to the requirements of § 74.1255 (a)(1) and (b). The final rule also amended § 81.1(b) (21 CFR 81.1(b)) by removing D&C Orange No. 5 from the provisional list for color additives; § 81.25 (a)(1) and (b)(1)(i) (21 CFR 81.25 (a)(1) and (b)(1)(i) by removing D&C Orange No. 5 from the list of color additives for which temporary tolerances had been established; § 81.27(d) (21 CFR 81.27(d)) by removing D&C Orange No. 5 from the list of color additives that are provisionally listed while chronic toxicity feeding studies involving them are conducted and evaluated; and § 81.30 (21 CFR 81.30) by adding a new paragraph (q) cancelling the certificates for the use of D&C Orange No. 5 in externally applied drugs and cosmetics. Additionally, the final rule amended § 82.1255 (21 CFR 82.1255) to conform the identity and specifications for D&C Orange No. 5 to the requirements of § 74.1255 (a)(1) and (b).

In the final rule, FDA gave interested persons until November 29, 1982—30 days from date the final rule was signed and put on public display—to file objections. However, to provide interested persons with an opportunity to file objections during the 30 days from the date of publication of the final rule, FDA published a correction in the **Federal Register** of November 23, 1982 (47 FR 52694), that revised the date for submission of objections to December 2, 1982, and the date for the final rule to become effective to December 3, 1982.

The agency has not received any objections or requests for a hearing on any aspect of the November 2, 1982 final rule. Therefore, FDA concludes that the effective date of the final rule published on November 2, 1982, for D&C Orange No. 5 should be confirmed.

Recently, based on information that resolved the remaining questions that the agency had about the safety of the use of D&C Orange No. 5 in externally applied drugs and cosmetics, FDA amended its color additive regulations by permanently listing D&C Orange No. 5 under § 74.1255 for use in externally applied drugs in amounts not exceeding 5 milligrams per daily dose of the drug product and under § 74.2255 for general use in externally applied cosmetics (49 FR 13339; April 4, 1984). The final rule also amended § 81.10 by removing and reserving paragraph (p) and § 81.30 by removing paragraph (q). The agency also amended § 82.1255 by adding a new paragraph (b) that specifies the uses of the color additive. This action completed FDA's response to the color additive petition on D&C Orange No. 5.

FDA gave interested persons until May 4, 1984, to file objections in response to the final rule published on April 4, 1984. The agency has not received any objections or requests for a hearing on any aspect of this final rule. Therefore, FDA concludes that the effective date of the final rule published in the **Federal Register** of April 4, 1984, for the permanent listing of D&C Orange No. 5 for use in externally applied drugs and cosmetics should be confirmed.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Color additives lakes, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d))) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for

hearing were filed in response to the final rules of November 2, 1982, and April 4, 1984. Accordingly, the amendments to Part 74 promulgated thereby became effective on December 3, 1982, and May 7, 1984, respectively.

Dated: July 26, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-21081 Filed 8-8-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-84-1142; FR 1926]

Use of Materials Bulletin No. 85; HUD Building Product Standards and Certification Program for Poly (Vinyl Chloride) (PVC) Window Units

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This Rule adopts as a part of HUD's Minimum Property Standards (MPS), a Use of Materials Bulletin (UM) that references a standard issued by the American Society for Testing and Materials (ASTM) for the manufacture of poly (vinyl chloride) PVC window units. The UM also contains requirements for a replaceable weather strip, and specifies PVC resin characteristics required for outdoor exposure.

The Final Rule supplements HUD's Building Product Standards and Certification Program by requiring that certain additional information be included on a label which each manufacturer would affix to the certified product, and would specify the frequency with which PVC window units would be tested in order to be acceptable to HUD.

EFFECTIVE DATE: October 4, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie H. Breden, of Manufactured Housing and Construction Standards Division, Room 9156, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 755-5929. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In response to industry requests, HUD has evaluated the technical standard prepared by the American Society for Testing Materials (ASTM) for PVC window units. As a result of its evaluation, HUD will accept this standard with a modificaton regarding weather stripping and is proposing to adopt it through issuance of Use of Materials Bulletin No. 85 (UM 85). In doing so, the Department follows provisions of 24 CFR 200.935 regarding Administrator Qualifications and Procedures under the HUD Building Products Certification Program, and the Technical Suitability of Products Program, HUD Handbook 4950.1, REV-1. In addition, UM 85 augments labeling requirements of § 200.935(d)(6) to include manufacturer's name and code identifying the manufacturing plant location. Finally, UM 85 specifies that the frequency of testing under § 200.935 (d)(8) would be every four years. Because these added requirements relate only to this particular certification program, they are set out in a new § 200.941, not as amendments to existing § 200.935, which governs all certifications. Thus, § 200.941 would augment § 200.935; it would not supplant it.

The text of UM 85 is not being reproduced in this rule because its substance is embodied in a new § 200.941, which HUD is adopting as set forth below. However, a copy of UM 85 is available for public inspection during regular business hours in the Manufactured Housing and Construction Standards Division, Room 9156, and in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, Washington, DC 20410.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, at the above address.

This Rule does not constitute a "Major Rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations, issued by the President on February 17, 1981. Analysis of the Rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) 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.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this Rule would not have a significant economic impact on a substantial number of small entities. UM 85 adopts a product standard that is nationally recognized throughout the affected industry and will not create a burden on manufacturers currently meeting the standard.

This Rule was listed as item 22 in the Department's Semiannual Agenda of Regulations published on April 19, 1984, 49 FR 15902, 15914, in accordance with Executive Order 12291 and the Regulatory Flexibility Act. A Proposed Rule was published in the **Federal Register** (49 FR 22106, May 25, 1984). One editorial comment was received which indicated a necessary updating of the reference standard for PVC from ASTM D-1784-78 to ASTM D-4216-83. The newer standard supersedes the older one and has been incorporated in the rule. This is not a substantive change.

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, and Incorporation by reference.

PART 200—[AMENDED]

Accordingly, 24 CFR Part 200 is amended by adding a new § 200.941, to read as follows:

§ 200.941 Supplementary specific Procedural requirements under HUD Building Product Standards and Certification Program for PVC Window Units.

(a) *Applicable Standards.* (1) PVC window units shall be designed, assembled and tested in accordance with the following standard:

ASTM D 4099-82 Standard Specification for Poly(Vinyl Chloride) (PVC) Prime Windows

In addition, the following are required:

(i) Weatherstrip shall be replaceable;

(ii) PVC resin compound shall comply with requirements of ASTM D 4216-83, Class 1-154-33-00, 1-231-13-00, and 1-431-13-00. The manufacturer shall

certify that it has been tested for five or more years of outdoor exposure with no chipping, cracking peeling or other evidence of poor performance.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference, and is available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19013. The standard is also available for inspection at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

(b) *Labeling.* (1) Under the procedures set forth in § 200.935(d)(6), concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard is required to be on the certification label issued by the administrator to the manufacturer. In the case of PVC window units, the following additional information shall be included on the certification label:

(i) Manufacturer's statement of conformance to the ASTM standard.

(ii) Manufacturer's name and code identifying the plant location.

(2) The certification label shall be affixed to each PVC window unit and located so that it is available for future identification. A visible location is not required.

(c) *Periodic tests and quality control inspections.* Under the procedures set forth in § 200.935(d)(8) concerning periodic tests and quality control inspections, the frequency of testing for a product shall be described in the specific Building Product Standards and Certification Program. In the case of PVC window units, testing and inspection shall be conducted as follows:

(1) At least every four years, a production unit of the maximum size commercially available, which has been submitted for certification shall be selected by the administrator for testing by an approved laboratory, in accordance with the applicable standard.

(2) The administrator shall visit the manufacturer's facility at least once every six months to assure that the initially accepted quality control procedures continue to be followed.

Authority: Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); sec. 211 of the National Housing Act, 12 U.S.C. 1715b.

Dated: August 3, 1984.

Shirley Wiseman,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-21073 Filed 8-8-84; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 200

[Docket No. R-84-1139; FR-1827]

A User Fee System for the Technical Suitability of Products Program (Section 521 of the National Housing Act)

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule establishes a new system of fees to be charged manufacturers of products and materials who seek HUD acceptance thereof under the Technical Suitability of Products Program. The Department will also charge a fee for reviewing applications for program administrators under 24 CFR 200.935. As a result, some of the costs associated with reviewing applications and determining the acceptability of a product or a building system will be borne by the party requesting the review or determination. The rule will also supplement existing processing procedures by establishing procedures necessary for administration of the fee system.

EFFECTIVE DATE: October 4, 1984.

FOR FURTHER INFORMATION CONTACT: Donald R. Fairman, Office of Manufactured Housing and Construction Standards, Department of Housing and Urban Development, Room 9156, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 755-5718. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

HUD's Technical Suitability of Products Program

Section 521 of the National Housing Act (12 U.S.C. 1735e), which was added by section 216 of the Housing and Urban Development Act of 1965 (Pub. L. 89-117), requires the Department of Housing and Urban Development (HUD) to adopt a uniform procedure for the acceptance of materials and products to be used in structures approved for mortgages or loans insured under the National Housing Act. To carry out this mandate, HUD instituted the Technical Suitability of Products Program. Under this program, manufacturers of housing-related materials, products, or structural housing systems submit to HUD designs that they propose for use in these structures. If the Department determines that the proposed product or system is acceptable, it issues a document of technical suitability. These documents are considered additions to the Minimum Property Standards applicable to these structures.

Issuance of these documents enables HUD to recognize new building technology, to encourage innovative advances in housing, to confirm the acceptability to both modular housing and components that cannot be inspected fully after delivery to the building site, and to promulgate or adopt certification programs for specific products or systems. The Department does not currently charge a fee for the issuance of these documents. This rule does not alter the responsibility of the producer or manufacturer for assuming all expenses related to the development and testing of its product.

There are several types of documents of technical suitability. Engineering Bulletins provide for HUD acceptance of structural systems or subsystems that are determined to be technically suitable for use in HUD housing programs. These bulletins describe the system or product and set forth the design performance requirements, quality control procedures, and factory inspections required by the Department. There are three types of Engineering Bulletins: Mechanical Engineering Bulletins (MEBs); Structural Engineering Bulletins (SEBs); and Truss Connector Bulletins (TCBs).

Similarly, Material Releases (MRs) provide for HUD acceptance of building materials or products determined to be technically suitable for use in HUD housing programs, but which are not specifically covered by the Minimum Property Standards.

The Department also issues Use of Materials Bulletins (UMs). These bulletins are issued for two purposes. First, they serve as an interim standard for a particular class of like products. Second, they are used as a means of promulgating or adopting a certification program for a specific class of materials, products, or systems.

The program also permits field offices to issue Area Letters of Acceptance (ALA's). These ALA's provide for HUD acceptance of industrialized housing that has a limited distribution and that uses materials and systems covered by the Minimum Property Standards. The ALA's are effective only within the HUD region of the issuing field office.

In addition to the documents of technical suitability, the program provides a mechanism whereby

"organizations acceptable to HUD validate manufacturers' certifications that certain building products or materials; meet acceptable standards." 24 CFR 200.935(a). Under this section, applicants wishing to administer a certification program may qualify for HUD acceptance by meeting specified requirements.

Statutory Authority

Section 7(j) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(j), authorizes the Secretary of HUD "to establish fees and charges, chargeable against program beneficiaries and project participants, which shall be adequate to cover over the long run, costs of inspection, project review and financing service, audit by Federal or federally authorized auditors, and other beneficial rights, privileges, licenses, and services." On March 1, 1984, the Department published a proposed rule, at 49 FR 7587, that would have instituted a system of fees to cover the costs of the beneficial services provided by the Technical Suitability of Products Program. The fee system would partially shift the costs associated with the program to the recipients of the program's benefits.

The Final Rule

Under the final rule, most fees for services under the Technical Suitability of Products Program will be payable in part at the time the manufacturer or proponent applies for HUD acceptance. The manufacturer or proponent will then remit the remainder of the fee when it concurs in the accuracy of the physical description of and the representations about the product identified in the proposed issuance. The fees for renewal and for Departmental review of applications for program administrators under 24 CFR 200.935 will be payable in full at the time of application. The rule sets forth specific processing procedures that will facilitate administration of the fee system. These procedures will govern such things as renewal and cancellation of applications, revisions of issuances, refund of fees, and identification of issuances.

The Department is publishing a notice that sets forth a fee schedule for specific processing procedures simultaneously with the publication of this final rule. Thereafter, the Department may amend the schedule at any time by notice published in the **Federal Register**.

The Department will not charge fees for the issuance of Use of Materials Bulletins where they are issued as the standard for a particular class of like products. In such a case, the UMs are not for the proprietary use of a specific manufacturer. Rather, they are for use by the entire industry as the general standard for the class of products affected.

The Department received 12 comments. The largest number of comments addressed the basic system by which the Department accepts products and materials. The commenters argued that HUD's Technical Suitability of Products Program unnecessarily duplicates private sector programs that evaluate and recognize products and materials, and should therefore be eliminated. The commenters suggested that HUD should instead accept the findings and reports of these organizations, many of whom are model code agencies. The commenters further argued that because these programs charge fees for their services, HUD's proposed fee schedule would force a proponent to pay twice to have its product or material approved.

For several reasons, the Department has decided not to make any changes in the present system for evaluating new products and materials at this time. The Department is required by statute to maintain such a system. Section 521 of the National Housing Act, 12 U.S.C. 1735e, states, in part, that "[t]he Secretary shall adopt a uniform procedure for the acceptance of materials and products to be used in structures approved for mortgages or loans insured under this Act. Under such procedure any material or product which the Secretary finds is technically suitable for the use proposed shall be accepted." The Department has complied with the statute by instituting the Technical Suitability of Products Program, and the system cannot, in accordance with the statute, be eliminated in its entirety.

Morever, when the Department published the proposed rule on user fees, it did not intend, as part of this rulemaking, to modify the nature of the Technical Suitability of Products program, except with respect to the charging of fees. The Department did not raise additional issues in the proposed rule. Interested parties have not been given notice of any intention the Department might have to modify the program except with respect to the charging of fees. Therefore, it would be inappropriate to proceed to a final rule at this time with respect to additional issues. The Department, however, is studying ways in which it might coordinate private organizations' product reports with the Technical Suitability of Products Program.

Several commenters opposed the proposed fee amounts set forth in the schedule of the proposed rule. A few commenters argued that the fees were too high; another commenter contended that the fees were insufficient to cover the costs of the Technical Suitability of Products Program. After studying the Department's costs of issuing a document of technical suitability, the Department has concluded that the fees to be charged are appropriate. Section 7(j) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(j), authorizes the Secretary to establish fees which shall be "adequate to cover over the long run, costs of * * * beneficial service rights, privileges, licenses and services." In accordance with this provision, the Secretary is imposing fees that will defray the cost of the Technical Suitability of Products Program without exceeding that cost.

Other commenters stated that they would support the fee system if the processing time for the Department's review is reasonable. Section 200.934(d)(1) of the final rule requires the Department to promptly process all applications for technical suitability documents. Accordingly, the Department will make every effort to evaluate applications in a timely and efficient manner.

One commenter contended that it would be inappropriate to charge a fee for the issuance and renewal of a document of technical suitability because that commenter believed that HUD field offices have the discretion to accept or reject these documents. In fact, Field Offices do not have such discretion. Materials Releases, Engineering Bulletins, and Use of Materials Bulletins, however, are issued by Headquarters and are considered addenda to the Minimum Property Standards. As such, they are binding on all HUD Field Offices. Area Letters of Acceptance, on the other hand, are issued by HUD Field Offices. They are binding upon all HUD Field Offices within the same Region as the issuing office.

Another commenter suggested that the Department freeze the fee schedule for three years. The Department, however, does not believe that any useful purpose would be served in imposing a three year freeze on the fee schedule. Accordingly, the final rule retains § 200.934(c), which enables the Department to establish and amend the fee schedule by publication of a Notice in the **Federal Register** as may be necessary.

One commenter suggested that the Department charge a fee for the issuance of Truss Connector Bulletins until such time as they are phased out. The Department finds this comment

persuasive. Consequently, the Department is including in the final rule a charge for the issuance of Truss Connector Bulletins (TCBs). Because of the standardization of truss connectors, the Department believes that it may no longer be necessary to issue bulletins for the approval of new truss connectors and is considering phasing out the issuance of TCBs. Until this occurs, however, the Department will include in the schedule a fee for issuance of TCBs.

Another commenter claimed that to require applicants for program administrators under § 200.935 to pay the entire fee at the time of application would be unfair, because applicants for documents of technical suitability would be required to pay only one half the required fee at that time. However, the Department believes this difference is appropriate because the process for approving a program administrator is different than that for reviewing and issuing a document of technical suitability. When the Department receives a request for a document, it reviews the application to determine both whether the product is technically suitable and whether issuance of a document is appropriate. The Department then prepares a draft issuance and forwards it to the applicant for concurrence. Final processing of the document occurs only after it is returned by the applicant with payment of the second half of the fee. However, when the Department receives an application for acceptance as a program administrator, it reviews and processes the application all at one time. The applicant is notified of the Department's decision, but the applicant does not participate in the review process. *See* § 200.935(c)(3).

Environmental Impact

Pursuant to HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, the Department has prepared a Finding of No Significant Impact with respect to the environment. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, at the above address.

Regulatory Analysis

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) 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.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The fees are nominal and negligible, especially in relation to other expenditures such as research and development as well as manufacture of a product. Further, as with other development costs, these fees will be amortizable over the terms of production of the product or system.

This rule is listed as Item #29, RIN 2502–AB78 (H–56–83; FR 1827) in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15916) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

This information collection requirements contained in this rule were submitted to the Office of Management and Budget, for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2502–0313.

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.

PART 200—INTRODUCTION

In Part 200, add a new § 200.934 to read as follows:

§ 200.934 User Fee System for the Technical Suitability of Products Program.

(a) *General.* This section establishes fee requirements for the issuance of Structural Engineering Bulletins (SEBs), Mechanical Engineering Bulletins (MEBs), Truss Connector Bulletins (TCBs), Area Letters of Acceptance (ALAs), Materials Releases (MRs), and review of program administrator applications submitted pursuant to § 200.935 of this title.

(b) *Filing Address*—(1) *Applications Containing Payment.* When applications for or correspondence concerning SEBs, MEBs, TCBs, MRs, or program administrator approval contain payment, such applications or correspondence shall be sent to the following address:

Office of Finance and Accounting, Insurance Accounting Division, Cash and Securities Section—MIA Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC. 20410

(2) *Other Correspondence.* All other correspondence concerning SEBs, MEBs, TCBs, MRs, and program administrator acceptance shall be sent to the following address:

Manufactured Housing and Construction, Standards Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410

(3) *Application for ALAs.* Applications for or correspondence concerning ALAs shall be submitted to the Housing Division of the field office having jurisdiction over the area in which the production facility of the system is located, except that applications containing payment shall be addressed to the attention of the Collection Officer for deposit to Account No. 86–09–0300.

(Approved by the Office of Management and Budget under control number 2502–0313)

(c) *Fees.* Applicants for renewal and applicants for acceptance as program administrators under § 200.935 of this title shall include the entire processing fee with the application. All other applicants shall submit one half of the required processing fee with each application. The applicant shall pay the balance when the draft issuance is returned to HUD with the applicant's concurrence signature. The Department will not prepare a final document for printing and distribution until it has received the full processing fee. From time to time, as may be necessary, the Department will establish and amend the fee schedule by publication of a Notice in the **Federal Register.**

(Approved by the Office of Management and Budget under control number 2502–0313)

(d) *Initial Application and Review*—(1) *Content of Applications.* Each application shall include only one item. All applications will be promptly processed on receipt by the Department.

(Approved by the Office of Management and Budget under control number 2502–0313)

(i) With respect to Mechanical Engineering Bulletins (MEBs), Structural Engineering Bulletins (SEBs), Truss Connector Bulletins (TCBs), and Area

Letters of Acceptance (ALAs), each structural design shall constitute a different item.

(ii) With respect to Materials Releases (MRs), each product or system shall constitute a different item.

(2) *Revisions.* A recipient of a technical suitability document issued by the Department may apply for revision of that document at any time. The revision may be in the form of an amendment of or supplement to the document, for which the recipient will be charged the applicable revision fee. However, where the Department determines that a proposed revision constitutes a different item, the schedule of fees for initial applications shall apply.

(Approved by the Office of Management and Budget under control number 2502–0313)

(3) *Renewals.* Each issuance shall be valid for a period of three years from the date of initial issuance or most recent renewal, whichever is later. An applicant shall submit an application for renewal with the entire required fee three months before the expiration of the three-year period. Failure to submit a timely renewal application along with the required fee shall constitute a basis for cancellation of the issuance.

(Approved by the Office of Management and Budget under control number 2502–0313)

(4) *Initial and Revision Applications Requiring Further Study or Additional Data.* In its discretion, the Department may request an applicant to submit additional data or to conduct further study to supplement or clarify an initial application or an application for revision of a previously issued technical suitability document. If the applicant fails to comply with the Department's request within ninety days of the date of that request or within such longer time as may be specified by the Secretary, the Department will return the application to the applicant. The Department will not refund any fees paid toward an application returned under this paragraph. The application will be considered further only if it is resubmitted along with payment of the full fee as required by these regulations.

(Approved by the Office of Management and Budget under control number 2502–0313)

(5) *Ineligible Applications.* If the Secretary determines that an application or request will not be considered because it is not eligible for issuance of a technical suitability document, the Department will promptly return the application or request, refund any fees paid, and explain why the application or request is ineligible.

(6) *Cancellation of a Technical Suitability Document.* If the Department determines that (i) the conditions under which a technical suitability document was issued have so changed as to affect the production of, or to compromise the integrity of, the material, product, or system approved thereby, or (ii) that the producer has changed its organizational form without notifying HUD, or (iii) that the producer is not complying with the responsibilities it assumed as a condition of HUD's acceptance of its material, product or system, the Department will notify the producer or manufacturer that the technical suitability document may be cancelled. However, before cancelling a technical suitability document, the Department will give the manufacturer reasonable notice in writing of the specific reasons therefore and an opportunity to present its views on why the technical suitability document should not be cancelled. No refund of fees will be made on a cancelled document.

(e) *Identification.* (1) Applications for issuance of a MEB, SEB, TCB, or MR submitted to HUD Headquarters will be identified with a case number. The applicant will be notified of the case number when receipt of the application is acknowledged. Thereafter, the case number will be used on all correspondence relating to the application. When a final draft of a new document is prepared for publication and distribution, a bulletin or release number will be assigned to the new issuance.

(2) In the case of an application for an ALA submitted to a field office, the application will be processed in accordance with the identification and processing procedures established by the responsible field office. The field office will notify the applicant of receipt of the application and inform the applicant of the procedures that will be followed with respect to the issuance of an ALA.

Authority: Sec. 7 (d) and (j) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535 (d) and (j); Section 521 of the National Housing Act, 12 U.S.C. 1735e.

Dated: August 3, 1984.

Shirley Wiseman,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84–21074 Filed 8–8–84; 8:45 am]

BILLING CODE 4210–27–M

24 CFR Part 200

[Docket No. N-84-1429; FR-1827]

User Fee Schedule for the Technical Suitability of Products Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of user fee schedule.

SUMMARY: This Notice sets forth the user fee schedule for the issuance, renewal and revision of documents of technical suitability and for review of applications for program administrators under the Technical Suitability of Products Program.

EFFECTIVE DATE: October 4, 1984.

FOR FURTHER INFORMATION CONTACT: Donald R. Fairman, Office of Manufactured Housing and Construction Standards, Department of Housing and Urban Development, Room 9156, 451 Seventh Street SW., Washington, DC 20410. Telephone number (202) 755–5718. (This is not a toll free-number.)

SUPPLEMENTARY INFORMATION: The Department has adopted a final rule (published elswhere in today's issue of the **Federal Register**) adding a new section 24 CFR 200.934. This rule establishes a user fee system for the Technical Suitability of Products Program. By this notice, the Department is announcing that the fees shall be as set forth below until such time as the Department publishes an adjustment in the **Federal Register.**

Fee Schedule

(i) Initial Applications:
- Structural Engineering Bulletins (SEB), $1,500.00
- Mechanical Engineering Bulletins (MEB), $1,500.00
- Truss Connector Bulletins (TCB), $500.00
- Materials Releases (MR), $1,500.00
- Area Letter of Acceptance (ALA), $500.00
- Administrator Review for Acceptance $500.00

(ii) Revisions:
- Structural Engineering Bulletins (SEB), $1,000.00
- Mechanical Engineering Bulletins (MEB), $1,000.00
- Materials Releases (MR), $300.00
- Area Letter of Acceptance (ALA), $250.00

(iii) Basic renewal fee without revision (assessed $100.00 every three years).

Authority: Sec. 7 (d) and (j) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535 (d) and (j);

Section 521 of the National Housing Act, 12 U.S.C. 1735e.

Dated: August 3, 1984.

Shirley Wiseman,

General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-21075 Filed 8-8-84; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Parts 290 and 882

[Docket No. R-84-1198; FR-1736]

Section 8 Housing Assistance Payments Program—Targeting Existing Housing Certificates

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule permits targeting of Section 8 Existing Housing Assistance Payments to eligible Families residing in: (1) A property to be rehabilitated under the Department's new Rental Rehabilitation Program; (2) a HUD-owned multifamily project that the Department decides to sell or vacate; (3) a multifamily project with a HUD-held mortgage purchased at foreclosure by a party other than HUD; or (4) a unit covered by a project-based Housing Assistance Payments (HAP) contract when the owner, at its sole discretion, elects not to renew the contract for an additional term. In addition, the rule permits targeting of assistance to a Family on a Public Housing Agency's (PHA) waiting list for housing Certificates that agrees to move into a unit rehabilitated under the Rental Rehabilitation Program. The intended effect of these changes is to further the goals of the Section 8 Existing Housing Assistance Payments Program in providing decent housing for persons of very low income.

DATE: Effective Date: October 4, 1984. Comments must be received by October 9, 1984.

ADDRESS: Interested persons are invited to submit comments on this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Elderly and Assisted Housing, Room 6128, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755-5720. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) authorized programs of housing assistance payments to aid very low income persons in locating and renting decent housing. Two such programs are the Section 8 Certificate Program (also called the Section 8 Existing Housing Program) and the new Housing Voucher Program, which was established by section 207 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, Approved November 30, 1983.

Current Department regulations implementing the Section 8 Certificate Program (see 24 CFR Part 882) encourage the Public Housing Agency (PHA) administering the program to promote a choice of housing opportunities for Section 8 Certificate holders (see 24 CFR 882.103(c)) and prohibit the establishment of selection preferences for applicants on the basis of "the identity or location of the housing which is occupied or proposed to be occupied by the applicant." (See 24 CFR 882.209(a)(4).) However, there are situations in which national housing objectives are furthered by targeting Certificates to eligible Families occupying or willing to move into certain categories of housing. In the past, the Department has allocated Certificates for specific purposes by waiving the regulatory prohibition. The Department has determined that certain situations (described below) should be recognized and incorporated into the Section 8 Certificate Program regulations.

This regulation (§ 882.209(a)(4)(ii)) permits PHA preferences for selection of applicants based on the identity or location of the housing which is occupied by the Family in four limited situations. In addition, § 882.209(a)(4)(iii) of this regulation modifies the "Finders Keepers" policy (see 24 CFR 882.103) by allowing PHAs to issue Certificates to Families who agree to move initially into a project rehabilitated with grant funds under the Rental Rehabilitation Program. In all instances, the assistance must be used in accordance with the HUD-approved PHA administrative plan. A Family that received a Certificate because the Family resided in or moved into housing in one of the following categories and subsequently decides to move, has the same right to move with that Certificate or to request issuance of a new Certificate as other Families assisted under the Section 8 Certificate Program (see 24 CFR 882.209(m)).

Rental Rehabilitation Program

The Department has implemented the recently enacted Rental Rehabilitation Program (codified at 24 CFR Part 511, April 20, 1984, edition of the **Federal Register**, 49 FR 16926). Subpart E of Part 511 provides for using Certificates or Vouchers for eligible families living in or moving out of projects to be rehabilitated under the Rental Rehabilitation Program, or moving into projects that have been rehabilitated under the Program, to help assure that units in these projects will be used to benefit very low income families and to minimize the adverse effects of displacement on families residing in projects to be rehabilitated with rental rehabilitation grants. Section 511.40 specifically provides that HUD will provide up to one Voucher or Certificate for each $5,000 of rental rehabilitation grants. These Certificates are funded from contract authority that is made available for the Section 8 Certificate Program.

HUD-Owned Multifamily Projects

There are two circumstances in which Certificates could be targeted to eligible Families living in HUD-owned multifamily projects ("multifamily" means a project with five or more living units): When the Department decides to sell the project or to vacate unit(s) in it. The use of Certificates for these purposes does not affect the amount of contract authority available under the regular Section 8 Certificate Program. These Certificates are funded from contract authority made available for property disposition.

Current regulations on the disposition of HUD-owned property are found at 24 CFR Part 290. This rulemaking amends § 290.27(c)(2) to refer specifically to the Section 8 Certificate Program regulations (24 CFR Part 882, Subparts A and B) and to clarify that subsidy rent levels are determined in conformity with applicable Section 8 Certificate Program regulations contained in 24 CFR Part 882. In addition, this rule removes the last sentence of the old § 290.27(c)(2), because the sense of this sentence is now contained in the general reference to issuing Certificates consistent with existing regulations contained in 24 CFR Part 882, Subparts A and B.

Foreclosed Multifamily Projects

The Department may make Certificates available for eligible Families residing in multifamily projects with HUD-held mortgages when HUD

forecloses and a party other than HUD acquires the property. The use of Certificates for this purpose does not affect the amount of contract authority available for the regular Section 8 Certificate Program. As with the previous category, these Certificates are funded from contract authority made available for property disposition.

Section 8 "Opt Out" Projects

Certain project-based Section 8 Housing Assistance Payment Contracts provide for an initial contract term not to exceed five years and are renewable at the sole option of the owner for additional terms of up to five years not to exceed a specified period. (See, 24 CFR 880.109, 1979 Ed, and 24 CFR Part 1273, App. II, 1975 Ed.) The Department may make Certificates available for eligible Families residing in units in such a project when the owner has the sole discretion, at the end of the initial term or an additional term, not to renew the Contract for an additional term and elects to exercise that discretion. These Certificates are funded from contract authority made available for the Section 8 Certificate Program. It is anticipated that relatively few Certificates will be needed for this purpose, particularly since the Conference Report accompanying HUD's FY 1985 appropriations Act earmarks, for "opt outs", Voucher contract authority sufficient to assist 1000 units. H. Rept. 98-867, 98th Cong., 2d Sess., Conference Report to accompany H.R. 5713, June 26, 1984.

To effect each of the policies, the Department currently must use the authority contained in 24 CFR Part 899 to waive the Program restrictions as described earlier in this Preamble. This interim rule eliminates the need for these case-by-case waivers.

The Department has determined that prior notice and comment are contrary to the public interest and good cause exists for publishing this rule as interim to become effective without prior public comment. It is in this public interest that this rule become effective as rapidly as possible to facilitate the use of Certificates in conjunction with the Rental Rehabilitation program so that the program can meet the statutory requirement that rental rehabilitation be used for the benefit of lower income families. The remainder of this rule simply codifies what have been regularly used justifications for waiving the affected regulatory restrictions. The rule, therefore, does not alter HUD's current practices with respect to using Certificates but rather simply alters the procedural mechanism by which HUD effects these practices. The regulation potentially provides immediate benefit to Families meeting the characteristics described in this rule. However, public comments are invited and will be considered in adopting a final rule.

A Finding of No Significant Impact with respect to the environment is unnecessary, since the Section 8 Existing (Certificate) Housing Program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

This interim rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) 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.

Under 5 U.S.C. 605(b) (Regulatory Flexibility Act), the Undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities, since targetting Section 8 contract authority would not adversely affect the relative ability of small entities to participate in the affected programs.

This rule was listed as Sequence Number 120 in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902, 15932) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance Programs (Section 8) is 14.156.

List of Subjects

24 CFR Part 290

Low and moderate income housing.

24 CFR Part 882

Grant Programs—housing and community development, Housing, Manufactured homes, Rent subsidies.

Accordingly, the Department amends 24 CFR Parts 290 and 882 as follows:

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

1. In § 882.209, paragraph (a)(4) is revised to read as follows:

§ 882.209 Selection and participation.

(a) * * *

(4)(i) The PHA may establish selection preferences for applicants living in the area where the PHA determines that it is not legally barred from entering into Contracts. However, preferences may not be based upon the length of time the applicant has resided in the jurisdiction. Applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

(ii)(A) Except as provided in paragraph (a)(4)(ii)(B) of this section, a selection preference shall not be based on the identity or location of the housing which is occupied by the applicant.

(B) If HUD provides assistance to a PHA for issuance of Certificates to eligible Families residing in the following categories of housing, the PHA shall use the assistance for such Families in accordance with requirements and procedures stated in the PHA's HUD-approved administrative plan:

(*1*) A project to be rehabilitated with a rental rehabilitation grant in accordance with 24 CFR Part 511.

(*2*) A HUD-owned multifamily project, when HUD decides to sell the project or to vacate unit(s) in the project.

(*3*) A multifamily project with a HUD-held mortgage when HUD forecloses and a party other than HUD acquires the project.

(*4*) A unit covered by a project-based HAP Contract when the Owner has the sole discretion, and elects not to renew the Contract for an additional term.

(C) When a Certificate is issued to a Family residing in housing in any of the categories of housing specified in paragraph (a)(4)(ii)(B) of this section, the Family may select a dwelling unit in accordance with § 882.103 ("Finders-Keepers" policy) in any area where the PHA is not legally barred from entering into Contracts.

(iii)(A) Except as provided in paragraph (a)(4)(iii)(B) of this section, a selection preference shall not be based on the identity or location of the housing which is proposed to be occupied by the applicant.

(B) If HUD provides assistance to a PHA for issuance of Certificates to eligible Families who agree to move into units in a project that has been rehabilitated with a rental rehabilitation grant under 24 CFR Part 511, the PHA shall use the assistance for such Families in accordance with requirements and procedures stated in the PHA's HUD-approved administrative plan. Section 882.103 does not apply to the initial use by a Family of a Certificate provided under this paragraph (a)(4)(iii)(B). However, if the family subsequently wants to move to another dwelling unit with continued participation in the PHA program (see § 882.209(m)(1)), § 882.103 applies and the Family may select a dwelling unit in any area where the PHA is not legally barred from entering into Contracts.

* * * * *

2. Section 882.103 is amended by adding an undesignated introductory paragraph after the section heading and before paragraph (a) to read as follows:

§ 882.103 "Finders-Keepers" policy.

Except as provided in § 882.209(a)(4)(iii), the following applies:

* * * * *

PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY HOUSING PROJECTS

3. In § 290.27, paragraph (c)(2) is revised to read as follows:

§ 290.27 General determination of subsidy to be provided.

* * * * *

(c) * * *

(2) In a project which does not meet the criteria of paragraph (c)(1) of this section, Certificates of Family Participation shall be issued in accordance with regulations for the Section 8 Certificate Program (24 CFR Part 882, Subparts A and B) to any eligible Family (see § 882.209(a)(4)(ii)(B)).

* * * * *

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Section 8, U.S. Housing Act of 1937 (42 U.S.C. 1437f).

Dated: August 2, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-21072 Filed 8-8-84; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 968

[Docket No. R-84-1118; FR-1778]

Comprehensive Improvement Assistance Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the Comprehensive Improvement Assistance Program (CIAP) regulations by removing the defined term "major repairs" and inserting in its place the defined term "non-routine maintenance." In the existing regulations the term "major repairs" has been used to identify those CIAP-eligible work items that are subject to HUD-determined prevailing wage rates rather than to Davis-Bacon prevailing wage rates. Requests from Field Offices and Public Housing Agencies (PHAs) for clarification of the term "major repairs" suggested that the term could be interpreted incorrectly to include developmental work items that properly should be subject to Davis-Bacon prevailing wage rates. The new term "non-routine maintenance" has been defined to more clearly distinguish between work items that are operational and those that are developmental, by describing not only what constitutes non-routine maintenance but also by describing particular types of work that are not "non-routine maintenance."

EFFECTIVE DATE: October 4, 1984.

FOR FURTHER INFORMATION CONTACT: Pris Buckler, Room 4130, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C., 20410, (202) 755-6640. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

The CIAP, which was established by section 14 of the United States Housing Act of 1937 (USHA of 1937), as amended, authorizes the Secretary to provide financial assistance to PHAs for the improvement of the physical condition of existing public housing projects, and to upgrade the management and operation of such projects. Section 12 of the USHA of 1937 sets forth labor standards provisions, dealing with wage rates, which must be contained in any contract for loans, annual contributions, sale or leases pursuant to the USHA of 1937. Section 12, which is applicable to work funded under CIAP, provides in part that (1) all laborers and mechanics employed in the development of a lower income housing project must be paid "not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1101) * * *" and (2) all maintenance laborers and mechanics employed in the operation of a lower income housing project must be paid "not less than the wages prevailing in the locality, as determined or adopted * * * by the Secretary * * *."

On November 23, 1983 the Department published a proposed rule in the **Federal Register** (48 FR 52934) to amend § 868.3 to delete the term "major repairs" and to substitute a new term "non-routine maintenance." Interested parties were invited to submit comments until January 23, 1984. Comments were received from four entities, including a consortium of PHAs, a national housing organization and two unions. The comments are summarized, together with HUD's response to them, in the "Comments" section that follows.

The final rule will be placed in Part 968 of Title of 24 of the Code of Federal Regulations because of a Departmental reorganization and designation of a new Office of Public and Indian Housing. Regulations of the Assistant Secretary for Public and Indian Housing now appear in a newly organized Chapter IX in Title 24 of the Code of Federal Regulations. (See 48 FR 44071 (Sept. 27, 1983).)

While most CIAP-funded work items are developmental for purposes of section 12 prevailing wage rate determinations, the Department has long recognized that certain work items are operational and, thus, subject to HUD-determined wage rates. Both the interim rule published at 46 FR 21932 on April 14, 1981 and the existing rule published at 47 FR 22312 on May 21, 1982, provided that HUD-determined wages would be paid for work items that fell within the "major repairs" definition. "Major repairs," as defined in those regulations, was intended to reflect work items that were operational, rather than developmental, in nature.

Despite the Department's efforts to make it easier for Field Offices and PHAs to identify the proper classification of CIAP work items, numerous requests from Field Offices and PHAs for clarification of the existing regulation and for assistance in making wage rate determinations made it clear that use of the term "major repairs" not only has not had the desired effect but also was contributing to the difficulty. The Department feels

that the term "non-routine maintenance" and its definition are more descriptive of operational-type work. The Department has decided, therefore, to publish this final rule to meet its responsibility to assure that proper and consistent wage rate determinations are made.

The definition of "non-routine maintenance" differs from the definition of "major repairs" by (1) describing work items as those "that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off" and (2) describing replacement items in terms of "equipment and materials" rather than "structural elements and non-expendable equipment." The definition also states explicitly that "[w]ork that constitutes reconstruction, a substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units is not non-routine maintenance." The Department believes that the changes, by providing greater clarity as to what is an operational-type work item and by specifically identifying what work does not constitute "non-routine maintenance," will reduce the risk of improper work item classifications and use of the wrong schedule of prevailing wage rate determinations.

The Department issued HUD Notice PIH 84–1 in January 1984. The Notice provides interim guidance to Field Offices and PHAs in the determination of prevailing wage rates, by listing typical CIAP work items and indicating whether the work item is subject to HUD-determined or to Davis-Bacon prevailing wage rates.

Comments

In response to the invitation for comments on the November 23, 1983 proposed rule, comments were received from four sources. A consortium of PHAs and two union organizations submitted substantive comments; a national housing organization endorsed the proposed rule change. The following summarizes the comments, suggestions and actions taken by HUD in response to the suggestions.

1. *Method of Determining Appropriate Wage Rate/Definition of "Work."*

The PHA commenter suggested that the appropriate wage rate be determined according to who accomplishes the work rather than by the nature or type of the work item, to simplify the determination and avoid delays. The suggestion was that if the PHA's permanent maintenance staff performed the work, HUD-determined prevailing wage rates would apply; if a contractor did the work or it was performed by temporary force account employees, Davis-Bacon wage rates would apply. This suggestion was not adopted because the Department of Labor has supported the Department's long-standing position that it is the type of work, not who does the work or the source of funding, that controls the wage rate determination.

This commenter also recommended that HUD adopt a series of sub-definitions to define the term "work." The Department sees no need for imposing a set of additional definitions on PHAs, but recognizes that individual PHAs may choose to adopt such a subset of definitions for internal purposes.

2. *Definition of "Non-routine Maintenance."*

The two union organizations that submitted comments objected to the proposed rule essentially on the same grounds. The commenters suggested that the definition of "non-routine maintenance" (1) is overly broad, (2) is contrary to the express language of the statute (secton 12 of the UHSA of 1937) and (3) will result in narrowing the application of Davis-Bacon wages by moving rehabilitation and repair work previously considered "Davis-Bacon" work to coverage by the lower HUD-determined wage rates. More specifically, the commenters asserted that:

(1) The rule is inconsistent with the definitions of "development" and "operation" set forth in section 3 of the USHA of 1937 by appearing to include "reconstruction, remodeling or repair" within the definition of "non-routine maintenance" when such construction activities under secion 3 are clearly developmental and should be subject to Davis-Bacon wage rates; and

(2) Similarly, HUD Notice PIH 84–1 (January 1984) improperly classifies specific examples of work items that constitute "reconstruction, remodeling or repair of existing buildings" as "non-routine maintenance" and, thus, subjects them to HUD-determined wage rates, when, in fact, such work items are developmental in nature and should be subject to Davis-Bacon wage rates.

The Department disagrees with the assertions that the rule is inconsistent with section 3 of the USHA of 1937. The Department believes that the new rule, used in concert with HUD Notice PIH 84–1 (or similar guidance developed for Field Offices and PHAs), will help to assure that the proper wage rate is applied to the specific work items under consideration, and will reduce the potential incidences of improper wage rate determinations.

The Department sought the assistance of the Department of Labor (DOL) in developing a new rule designed to remove the ambiguities and uncertainties caused by use of the term "major repairs." DOL agreed that any repair or replacement necessitated by normal wear and tear over time would constitute "deferred maintenance," be considered operational, and, therefore, fall outside the ambit of Davis-Bacon coverage, provided that the work was not so substantial as to constitute reconstruction. DOL notes, also, that conversion of equipment or premises and replacement or alteration of property which results in "betterment" (and involves significant construction activity) would be subject to Davis-Bacon wage rates. The definition of the term "non-routine maintenance" in this rule and HUD Notice PIH 84–1 reflect DOL's advice.

The union commenters, however, attempt to give very precise and rigid boundaries to what activities constitute "development" and what activities constitute "operation", by asserting that "maintenance" does not include reconstruction, remodeling or repair of public housing facilities. The union commenters fail to indicate what activities, if any, they feel would constitute "operation" or "maintenance." The Department believes that the terms "repair" and "replacement" are not susceptible to such a simplistic approach in determining whether, on balance, the activity is one of development or of operations. Because the final determination must result from an assessment, on a case-by-case basis, of the relative scope of the work activity being undertaken, and because "development" and "operation" do not fall neatly into precise classifications, HUD, having consulted with DOL, has chosen to exercise its discretion in drawing reasonable lines to determine what constitutes "development" and "operation" for purposes of section 12.

The Department does not believe that the rule will narrow the application of Davis-Bacon wage rates. The present clarification of which work items are correctly subject to Davis-Bacon and which work items are not may bring about some increase in the interpretation of existing authority, in place since 1979, to apply HUD-determined wage rates, but the clarification does not, itself, provide any expanded authority to substitute HUD-determined wage rates for Davis-Bacon rates.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) 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.

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule may have some economic impact on small entities since it may result in certain PHAs and contractors of PHAs paying different wages to laborers and mechanics than may have been paid in the absence of the revision. However, we do not believe, on balance, that the overall impact will be great. Such impact that occurs would be the result of a more precise interpretation of the wage rate provisions already required by section 12 of the USHA of 1937.

This rule was listed as Item No. OH-141-83 at 49 FR 15936 in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number and title is 14.158—Public Housing—Modernization of Projects.

List of Subjects in 24 CFR Part 968

Loan programs: Housing and community development, Public housing, Reporting and recordkeeping requirements.

PART 968—[AMENDED]

Accordingly, 24 CFR Part 968 is amended as follows:

1. In § 968.3, the definition "major repairs" is removed and a new definition "non-routine maintenance" is added, to read as follows:

§ 968.3 Definitions

* * * * *

"Non-routine maintenance" means work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Non-routine maintenance may include replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind. Work that constitutes reconstruction, a substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units is not nonroutine maintenance.

* * * * *

2. 24 CFR Part 968 is amended by removing the words "major repairs" and inserting, in their place, the words "non-routine maintenance" in the following places:

(a) 24 CFR 968.4(a);
(b) 24 CFR 968.4(g);
(c) 24 CFR 968.9(h) (1) and (2); and
(d) 24 CFR 968.18(a).

(Secs. 12 and 14, United States Housing Act of 1937 (42 U.S.C. 1437j, *l*.); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d))).

Dated August 6, 1984.

Warren T. Lindquist,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 84-21191 Filed 8-8-84; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 58

[DOD Instruction 1120.2]

Armed Forces Physicians' Appointment and Residency Consideration Program; Removal of Part

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense has canceled the source document of 32 CFR Part 58, "Armed Forces Physicians' Appointment and Residency Consideration Program." This action removes this Part from the CFR since it is no longer valid.

EFFECTIVE DATE: August 3, 1984.

FOR FURTHER INFORMATION CONTACT: Patricia Means, Chief, Directives Division, C&D, WHS, Office of the Secretary of Defense, Washington, D.C. 20301, telephone 202-697-4111.

SUPPLEMENTARY INFORMATION: 32 CFR Part 58 represents DOD Instruction 1120.2, subject as above, which was canceled August 3, 1984.

Lists of Subjects in 32 CFR Part 58

Armed Forces, Health professions.

PART 58—ARMED FORCES PHYSICIANS' APPOINTMENT AND RESIDENCE CONSIDERATION PROGRAM

Accordingly, 32 CFR is amended by removing Part 58.

(5 U.S.C. 301)

Darlene C. Scott,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 3, 1984.

[FR Doc. 84-21110 Filed 8-8-84; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 65

[DoD Directive 1304.19]

Nomination of Chaplains for the Military Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule is being reissued to amplify the requirements for appointment of chaplains for the Military Services. The rule clarifies the criterion and procedures for religious groups that seek DoD recognition as an endorsing agent for the purpose of presenting clergy candidates for the chaplaincy in the Armed Forces.

EFFECTIVE DATE: This rule was approved and signed by the Deputy Secretary of Defense on June 1, 1984, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Captain R. Alan Plishker, CHC USN, Office of the Assistant Secretary of Defense (Manpower, Installations, and Logistics), Armed Forces Chaplains Board, Room 3E752, Pentagon, Washington, D.C. 20301, telephone (202) 697-9015.

SUPPLEMENTARY INFORMATION: In FR Doc. 83-20817 appearing in the Federal

Register on August 2, 1983 (48 FR 34974), the Office of the Secretary of Defense published a proposed rule under this Part.

Executive Order 12291

The Department of Defense has determined that this proposed rule is not a major rule because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This rule imposes no obligatory information requirements beyond internal DoD use.

Regulatory Flexibility Act of 1980

The Assistant Secretary of Defense (Manpower, Installations, and Logistics) certifies that this rule, if promulgated, shall be exempt from the requirements under 5 U.S.C. 601–612. In addition, this rule does not have a significant economic impact on small entities as defined in the Act.

List of Subjects in 32 CFR Part 65

Military services, Chaplains.

Accordingly, 32 CFR Part 65 is revised as follows:

PART 65—NOMINATION OF CHAPLAINS FOR THE MILITARY SERVICES

Sec.
65.1 Purpose.
65.2 Applicability.
65.3 Policy.
65.4 Procedures.
65.5 Responsibilities.

Authority: 10 U.S.C. 532 and 591.

§ 65.1 Purpose.

This rule reissues this part to update policy, procedures, and responsibilities, establishes the educational and ecclesiastical requirements for appointment of military chaplains, and establishes criteria and procedures under which faith groups may become an ecclesiastical endorsing agency.

§ 65.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including their National Guard and reserve components), and the Organization of the Joint Chiefs of Staff (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 65.3 Policy.

It is DoD policy that professionally qualified chaplains shall be appointed to provide for the free exercise of religion for all members of the Military Services, their dependents, and other authorized persons. Persons appointed to the chaplaincy shall be able to perform a ministry for their own specific faith groups, and provide for ministries appropriate to the rights and needs of persons of other faith groups. Persons appointed to the chaplaincy shall be capable of providing professional staff support to the Military Department concerned.

§ 65.4 Procedures.

(a) *Ecclesiastical Endorsement.* (1) To be considered for appointment and to serve as a chaplain, clergy shall be endorsed by a DoD-recognized ecclesiastical endorsing agency. The ecclesiastical endorsement shall certify that the applicant:

(i) Is a fully qualified member of the clergy of a religious faith group represented by the certifying endorsing agency.

(ii) Is qualified spiritually, morally, intellectually, and emotionally to serve as a chaplain of the Military Services.

(iii) Is a member of the clergy who is qualified to provide for the free exercise of religion by all members of the Military Services, their dependents, and other authorized persons.

(2) The required ecclesiastical endorsement shall be made on DD Form 2088. If the applicant has completed a number of years of active professional experience after the completion of educational requirements for the chaplaincy, the endorser shall so state on the DD Form 2088.

(3) Chaplains who fail to maintain their ecclesiastical endorsement shall be processed in accordance with DoD Directive 1332.31.

(b) *Criteria for Ecclesiastical Endorsing Agencies.* (1) Religious faith groups that seek to become ecclesiastical endorsing agencies for the purpose of certifying the professional qualifications of clergy for appointment as chaplains in the Military Services shall obtain DoD recognition through the action of the Armed Forces Chaplains Board (AFCB). To be considered for DoD recognition each religious faith group shall:

(i) Be organized exclusively or substantially to provide religious services to a lay constituency.

(ii) Be able to exercise ecclesiastical authority to grant or withdraw ecclesiastical endorsements.

(iii) Be able to provide continuing validation of ecclesiastical endorsements.

(iv) Be able to endorse clergy who are qualified to provide for the free exercise of religion by all members of the Military Services, their dependents, and other authorized persons.

(v) Abide by the applicable regulations and policies of the Department of Defense.

(2) Through the action of the AFCB, the Department of Defense may revoke its recognition of an ecclesiastical endorsing agency that fails to continue to meet the criteria of § 65.4(b)(1) (i) through (v). The AFCB shall include in its action a notice to the ecclesiastical endorsing agency concerned stating the reasons for the proposed revocation and providing a reasonable opportunity for the agency to reply in writing to the AFCB.

(c) *Educational Requirements.* (1) To be considered for appointment as a chaplain in the Military Services an applicant shall:

(i) Possess a baccalaureate degree of not less than 120 semester hours from a college that is listed in the *Education Directory, Colleges and Universities* or from a school whose credits are accepted by a college listed in this Directory.

(ii) Have completed 3 resident years of graduate professional study in theology or related subjects (normally validated by the possession of a Master of Divinity or equivalent degree or 90 semester hours) that lead to ecclesiastical endorsement as a member of the clergy fully qualified to perform the ministering functions of a chaplain.

(2) The applicant shall complete the graduate professional study referred to in § 65.4(c)(1)(ii), at a graduate school listed in the Education Directory or an accredited school listed in the *Directory, ATS Bulletin Part 4* or from a school whose credits are accepted by a school listed in the Education Directory or listed as accredited in the *Directory, ATS Bulletin Part 4.*

(d) *Other Requirements.* Applicants for the chaplaincy also shall meet the requirements established by the Military Departments for appointment as an officer and a chaplain.

§ 65.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Installations, and Logistics)* may modify or supplement this Directive, consistent with DoD 5025.1–M, as appropriate.

(b) The *Secretaries of the Military Departments* shall follow the policy and procedures in this Directive to ensure that persons appointed to the chaplaincy meet the minimum professional and educational qualifications prescribed herein and any additional requirements established by law and regulation for

appointment as an officer and a chaplain.

Dated: August 6, 1984.

Darlene C. Scott,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-21194 Filed 8-8-84; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 83

[DoD Directive 1304.24]

Use of Directory Information on Secondary School Students for Military Recruiting Purposes

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule is being issued to incorporate certain provisions of the DoD Authorization Act. This rule establishes DoD policy, prescribes procedures and assigns responsibilities concerning the collection, retention and use of secondary school student directory information for military recruiting purposes. The rule will enhance the ability of military recruiters to obtain student directory information for recruiting purposes.

EFFECTIVE DATE: This rule was approved and signed by the Deputy Secretary of Defense on April 20, 1984, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: LTC John A. Ford, Jr., USA, Office of the Assistant Secretary of Defense (Manpower, Installations, and Logistics), Office of the Deputy Secretary of Defense (Military Personnel and Force Management), the Pentagon, Room 2B271, Washington, D.C. 20301; telephone (202-697-8444).

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department of Defense has determined that this rule is not a major rule because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This rule imposes no obligatory information requirements beyond internal DoD use.

Regulatory Flexibility Act of 1980

The Assistant Secretary of Defense (Manpower, Installations, and Logistics) certifies that this rule, if promulgated, shall be exempt from the requirements under 5 U.S.C. 601-612. In addition, this rule does not have a significant economic impact on small entities as defined in the Act.

List of Subjects in 32 CFR Part 83

Directory information, Secondary school students, Military recruiting, Students, Military personnel.

Accordingly, 32 CFR is amended by adding a new Part 83, reading as follows:

PART 83—USE OF DIRECTORY INFORMATION ON SECONDARY SCHOOL STUDENTS FOR MILITARY RECRUITING PURPOSES

Sec.
83.1 Purpose.
83.2 Applicability.
83.3 Definitions.
83.4 Policy.
83.5 Procedures.
83.6 Responsibilities.

Authority: 10 U.S.C. 503 and Pub. L. 97-252.

§ 83.1 Purpose.

This part:

(a) Implements title 10, U.S.C., 503 to establish policy, prescribe procedures, and assign responsibilities concerning the collection, retention, and use of secondary school student directory information for military recruiting purposes.

(b) Authorizes the publication of DoD 1304.24-R, "Use of Directory Information on Secondary School Students for Military Recruiting Purposes," consistent with DoD 5025.1-M, which shall direct military recruiting officials to provide school cooperation rate data and include other uniform guidance.

§ 83.2 Applicability.

This part applies to the Office of the Secretary of Defense and to the Military Departments. The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 83.3 Definitions.

(a) *Cooperation Rate Data (CRD).* Includes total number of secondary schools in the Interservice Recruitment Committee's (IRC) [1] area of responsibility, percent of schools providing directory information, total number of junior and senior high school students and percent of those students for whom directory information has been obtained.

(b) *Directory Information.* The student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational agency or institution (also referred to as "secondary schools") attended by the student.

(c) *Student.* Any student who is 17 years old or older or in the eleventh grade (or its equivalent) or higher, and who is enrolled in a secondary school in the United States, or its territories, possessions, the Commonwealth of Puerto Rico, or in DoD high schools worldwide.

§ 83.4 Policy.

It is DoD policy that the Military Services shall strive for voluntary cooperation between education officials and military recruiters with the objective of attracting a high-quality cross section of American youth into the Military Services.

§ 83.5 Procedures.

(a) The Military Services shall coordinate information collection procedures to avoid duplication of effort and to facilitate continued access to education officials and student directory information.

(b) Coordination shall be accomplished at the local level by the IRC.

(c) The military recruiter who obtains student directory information shall provide the information to the IRC. The IRC shall compile and disseminate the information to the appropriate recruiters from each of the Military Services.

(d) Student directory information, collected and compiled consistent with this Directive, shall be used only for military recruiting purposes and shall be handled as follows:

(1) Consistent with DoD 5025.1-M and Part 286 of this title, no one having access to student directory information may disclose such information except for military recruiting purposes.

(2) Directory information pertaining to any student may not be maintained for more than 3 years after the date the information first is collected and compiled.

(e) To ensure completeness of the student directory information and maximum efficiency in the collection process, the Military Services shall:

(1) Identify and contact all local, area, or state officials who may collect and maintain school census data.

(2) Use such census data as a primary source of student directory information for Military Service recruiters.

(3) Adhere to applicable state public records or freedom of information legislation governing the disclosure of student directory information to ensure that:

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[1] The IRC is chartered in the following Joint Regulation: Army Regulation 601-207, Air Force Regulation 33-7, Chief of Naval Operations Instruction 1100.4A, Marine Corps Order P1100.75A, "Military Entrance Processing Station (MEPS)," November 15, 1983.

(i) Military recruiters contacting educational agencies and institutions follow proper request procedures.

(ii) The Military Services are afforded the same access to the data as is guaranteed to the public by state legislation.

(f) Military recruiters shall provide CRD to the IRCs.

§ 83.6 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Intallations, and Logistics)* ASD(MI&L)) shall request, receive, compile, and retain temporarily for recruiting purposes CRD pertaining to students enrolled in secondary schools throughout the United States and in DoD schools worldwide.

(b) The *Secretaries of the Military Departments* shall cooperate with the Military Entrance Processing Command (MEPCOM), Department of the Army, in the development and preparation of DoD 1304.24–R concerning the collection, compilation, use, safeguarding, and disposition of student directory information by recruiting officials.

(c) The *Secretary of the Army*, as Executive Agent for MEPCOM, shall:

(1) Direct MEPCOM to coordinate, develop, publish, and maintain DoD 1304.24–R, consistent with DoD 5025.1–M.

(2) Include in DoD 1304.24–R procedures for military recruiting officials to provide CRD, as received, to the IRC chairman, and provisions for MEPCOM to obtain CRD from the IRC.

(3) Provide yearly school CRD to the ASD(MI&L).

Dated: August 6, 1984.

Darlene C. Scott,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–21195 Filed 8–8–84; 8:45 am]

BILLING CODE 3810–01–M

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32 CFR Part 224

[DoD Directive 5105.18]

DoD Committee Management Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This rule implements the Federal Advisory Committee Act by establishing the DoD Committee Management Program, assigning responsibilities for carrying it out within the Department of Defense and prescribing procedures. The intended effect is to ensure a uniform administration of the Act as it pertains to the Department of Defense.

EFFECTIVE DATE: This rule was approved and signed by the Deputy Secretary of Defense on March 20, 1984, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. John Wilson, Office of the Director for Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense (Administration), telephone 202–695–4281.

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

List of Subjects in 32 CFR Part 224

Advisory committee management.

Accordingly, 32 CFR, Chapter 1, is amended by adding a new Part 224, reading as follows:

PART 224—DoD COMMITTEE MANAGEMENT PROGRAM

Sec.
224.1 Purpose.
224.2 Applicability.
224.3 Definitions.
224.4 Policy.
224.5 Responsibilities.
224.6 Procedures.
224.7 Information requirements.

Authority: 5 U.S.C. 552.

§ 224.1 Purpose.

This Part implements Title 5, United States Code, Appendix I (Pub. L. 92–463, "Federal Advisory Committee Act"), Executive Order 12024, "Advisory Committee Management," December 1, 1977, and General Services Administration (GSA) Interim Regulation, "Federal Advisory Committee Management," April 28, 1983 (41 CFR Part 101–6), and updates policy, responsibilities, and procedures for the DoD Committee Management Program.

§ 224.2 Applicability.

This Part 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").

§ 224.3 Definitions.

Committee. A body of persons with a collective responsibility appointed to consider, investigate, advise, or take action, and usually to report on specific problems or subject areas. The prime characteristic, however, is the corporate or collective responsibility. The term "committee" applies to any committee, board, commission, council, conference, panel, task force, or other similar group or any subcommittee or any subgroup thereof that is established by statute or reorganization plan, established or used by the President, or established or used by one or more agencies in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the U.S. Government.

(a) *Advisory Committee.* Any committee that is not composed wholly of full-time officials of the U.S. Government.

(b) *Interagency Committee.* Any committee composed wholly of representatives from two or more U.S. Government agencies.

(c) *International Committee.* Any committee established by formal agreement between the United States and the government of another country or countries or by an international body in which the United States participates.

(d) *Intra-Component Committee.* Any committee composed wholly of representatives from one DoD Component.

(e) *Joint DoD Committee.* Any committee composed wholly of DoD representatives from two or more DoD Components.

(f) *Operational Committee.* One whose primary functions and responsibilities are operational rather than advisory. An operational committee that is not composed wholly of full-time U.S. Government officials may not be established without the express approval of the DoD committee management officer. This approval shall be given only after consultation with the General Counsel, Department of Defense.

§ 224.4 Policy.

(a) Committees may not be established to perform duties, responsibilities, and functions that can be accomplished effectively through command or staff actions.

(b) Committees shall be established to perform such tasks as factfinding, research, special studies, audit, review, and inspections.

(c) Advisory committees may not be established to perform operational, administrative, or management responsibilities, such as administering programs and making determinations, or to effect coordination required in the performance of such responsibilities.

(d) Membership of advisory committees is to be fairly balanced in terms of the points of view represented and the functions to be performed by each advisory committee.

(e) Nothing contained in this Part shall be construed to limit or restrict the free exchange of information, advice, and

ideas between representatives of DoD Components or other federal agencies through regular or occasional meetings or other means, as long as such arrangements do not require the issuance of formal charters or terms of reference or the formal designation of membership on a committee.

§ 224.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C)), or designee, shall:

(1) Provide policy guidance and prescribe operating procedures for the DoD Committee Management Program to ensure compliance with the requirements of this Part and 5 U.S.C. App I, E.O. 12024, 41 CFR 101-6, 32 CFR Part 286, and 5 U.S.C. 552b.

(2) Recommend approval or disapproval to the Committee Management Secretariat, GSA, of the establishment or the continuation of DoD advisory committees.

(3) Obtain such information, analyses, reports, and assistance from DoD Components as considered necessary to perform his assigned functions consistent with the policies and criteria of DoD Directive 5000.19.

(4) Maintain liaison with the GSA, Office of Management and Budget (OMB), and other government agencies, as required.

(5) Designate a DoD committee management officer who shall ensure compliance with this part and 5 U.S.C. App I, E.O. 12024, 41 CFR 101-6, 32 CFR Part 286, and 5 U.S.C. 552b.

(b) The *Heads of DoD Components* shall: (1) Ensure that the committees under their cognizance comply with the requirements of this part and 5 U.S.C. App I, E.O. 12024, 41 CFR Part 101-6, 32 CFR Part 286, and 5 U.S.C. 552b.

(2) Provide supplemental guidance as required for the efficient operation of the DoD Committee Management Program.

(3) Manage all aspects, including internal reporting requirements and the approval or disapproval of proposals for the establishment, revision, continuation, or termination of interagency, operational, joint DoD, and intra-Component committees under their cognizance.

(4) Approve or disapprove proposals for participation by their Component on committees chaired by another DoD Component or federal agency.

(5) Submit to the ASD(C) proposals to establish, revise, continue, or terminate all advisory committees under their cognizance.

(6) Maintain information about the program, objectives, and activities of each committee established within their Component (including affiliation and participation) and provide, as required, reports to the ASD(C) on such matters.

(7) Ensure that action is taken to respond to requests submitted under 32 CFR Part 286 requesting information concerning committees.

(8) Provide assistance to the ASD(C) in the review of existing committees and the development of recommendations for revision, consolidation, or termination.

(9) Make a determination, when appropriate, that part or all of an advisory committee meeting shall be closed to the public in accordance with section 10(d) of 5 U.S.C. App. I.

(10) Submit required reports on a timely basis.

(11) Designate a DoD committee management officer to assist in the performance of the above responsibilities, ensuring that he or she is a key management official who is capable of carrying out this program effectively.

§ 224.6 Procedures.

(a) Except when the President determines otherwise for reasons of national security, a notice of each advisory committee meeting shall be published in the **Federal Register** at least 15 days before the date of the meeting. If an emergency situation arises whereby a notice is to be published in less than 15 days before the meeting is scheduled, such notice may not be published without prior approval of the DoD committee management officer.

(b) The notice shall state the name of the advisory committee, the time, the place, and the purpose of the meeting (including, when possible, a summary of the agenda). The notice also shall state whether the meeting is open or closed to the public. If the meeting is to be closed in whole or in part, the notice shall give the reason and cite the applicable provisions of 5 U.S.C. 552b(c).

(c) Subject to 5 U.S.C. 552b(c), the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the federal agency to which the advisory committee reports.

(d) A U.S. Government official shall be designated to chair or attend each meeting of each advisory committee. The official so designated is authorized to adjourn any such meeting whenever he or she determines it to be in the public interest. Advisory committee meetings may not be conducted in the absence of that official.

(e) Detailed minutes of each advisory committee meeting shall be kept and shall contain a record of person present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified by the chairman of the advisory committee.

(f) Advisory committees may not hold any meetings except at the call or with the advance approval of a designated U.S. Government official.

(g) Eight copies of each advisory committee report shall be filed with the Library of Congress.

§ 224.7 Information requirements.

(a) As prescribed in 5 U.S.C. App. I, E.O. 12024, and 41 CFR Part 101-6, annual reports on federal advisory committees are required by the GSA.

(b) These information requirements are assigned Interagency Report Control Number 0304-GSA-OT.

(c) Since the due dates and formats of these reports have varied from year to year, no specific reporting requirements are included in this Part. All DoD Components will be given as much leadtime as possible.

Dated: August 6, 1984.

Darlene C. Scott,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-21172 Filed 8-8-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 84-43]

Regatta; National Sweepstakes Regatta, Red Bank, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the National Sweepstakes Regatta being sponsored by the National Sweepstakes Regatta Association of Red Bank, NJ to be held on August 18-19, 1984 between the hours of 8:00 a.m. and 6:00 p.m. This regulation is needed to provide for the safety of participants and spectators on navigable waters during the event.

EFFECTIVE DATES: This regulation will be effective from 8:00 a.m. to 6:00 p.m. on both August 18 and 19, 1984.

FOR FURTHER INFORMATION CONTACT: LTJG D.R. Cilley, (212) 668–7974.

SUPPLEMENTARY INFORMATION: On June 28, 1984, the Coast Guard published a notice of proposed rule making in the Federal Register for this regulation (49 FR 26606). Interested persons were requested to submit comments, and no comments were received, accordingly no changes are made to the regulation as proposed. There is not sufficient time remaining in advance of the event to provide for a thirty day delayed effective date. Therefore, it has been determined that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective in less than thirty days.

Drafting Information

The drafters of this regulation are LTJG D.R. Cilley, Project Officer, Boating Safety Office and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The annual National Sweepstakes Regatta is a powerboat race event to be held on the Navesink River on August 18–19, 1984. It is sponsored by the National Sweepstakes Regatta Association, sanctioned by the American Powerboat Association and is well known to the boaters and residents of this area. The race track oval will be approximately 1.25 miles in length. Races will be held on both days on a section of the Navesink River just east of the N.J. Route 35 Bridge. Race heats will run both days from approximately 10:00 a.m. to 6:00 p.m. with 100 inboard/hydroplane powerboats participating each day. The sponsor will place several temporary buoys on the river to mark both the race course and spectator areas. There will be 2 race committee boats anchored within the oval course, one on each end with turn judges and press onboard. The U.S. Coast Guard will assist the sponsor and local authorities in providing a safety patrol during this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement and establish spectator areas prior to and during the races. Vessels desiring to transit the area will be given an opportunity to do so several times during each day in between race heats as directed by the Coast Guard Patrol Commander.

Discussion of Comments

No comments were received.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the races. This should easily compensate area merchants for the slight inconvenience of having navigation restricted.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–309 to read as follows:

§ 100.35–309 National Sweepstakes Regatta, Red Bank, NJ.

(a) *Regulated Area.* That portion of the Navesink River in Red Bank, N.J. between the N.J. Route 35 Bridge and a line running across the Navesink River connecting Guyon and Lewis Points.

(b) *Effective Period.* This regulation will be effective from 8:00 a.m. to 6:00 p.m. on both August 18 and 19, 1984.

(c) *Special Local Regulations.* (1) the regulated area shall be intermittently closed to all vessel traffic during the effective period, except as may be allowed by the Coast Guard Patrol Commander.

(2) No person or vessel shall enter or remain in the regulated area while it is closed unless participating in or authorized by the event sponsor or Coast Guard patrol personnel.

(3) Vessels awaiting passage through the regulated area shall be held in unmarked anchorages in the area to the east of the N.J. Route 35 Bridge and in the vicinity of Lewis Point.

(4) No transiting vessels shall be allowed out onto or across the regulated area without Coast Guard escort.

(5) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility in a way that will not interfere with the progress of the event. The following are established as spectator areas:

(i) Spectator vessels shall be held behind (north of) a line of buoys provided by the sponsor running approximately west to east starting .25 miles east of the N.J. Route 35 Bridge.

(ii) A second spectator area shall be marked by a curved line of sponsor provided buoys centered on a line drawn approximately due south from Jones Point, running through Can Buoy #21. All spectator craft shall stay to the east of this string of buoys.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b) and 33 CFR 100.35)

Dated: July 30, 1984.

R.L. Johanson,

Captain, U.S. Coast Guard, Commander, Third Coast Guard District; Acting.

[FR Doc. 84–21145 Filed 8–8–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD 08–83–05]

Drawbridge Operation Regulations; Vermilion River, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulations governing three LDOTD drawbridges across the Vermilion River: one on State Route 733, mile 41.0 at Eloi Broussard; one on State Route 3073, mile 44.9 at New Flanders; and one on State Route 182, mile 49.0 at Lafayette, by requiring that at least four hours advance notice for opening be given at all times. The Eloi Broussard bridge and the New Flanders bridge presently are required

to open on signal from 5:00 a.m. to 9:00 p.m. and on 12 hours advance notice from 9:00 p.m. to 5:00 a.m. The Lafayette bridge presently is required to open on signal if at least 48 hours advance notice is given. This change is being made because of infrequent requests for opening the draws, and to standardize the advance notice requirement for all three bridges. This action will relieve the bridge owner of the burden of having a person constantly available to open the draws and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: September 10, 1984.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 11 August 1983, the Coast Guard published proposed rule (48 FR 36477) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 11 August 1983. In each notice interested persons were given until 26 September 1983 to submit comments. The proposal was to require at least four hours advance notice for opening the Eloi Broussard bridge and at least 48 hours advance notice for opening the New Flanders bridge. The Lafayette bridge was not involved in the proposed rule. 48 FR 36477 codified the proposed rule as § 117.245(j)(14). This final rule would now appear in § 117.509 of the renumbered sections established by 49 FR 17450 dated April 24, 1984.

Drafting information: The drafters of these regulations are Perry Haynes, Project Manager, and Steve Crawford, Project Attorney.

Discussion of comments: Nine letters of objection to the proposal were received in response to the public notice, expressing concern in two areas; namely, the effect of the proposal on the existing schedule of a small cruise boat presently operating through the bridges, and the effect on future water oriented recreational activities that may develop in the area. Meetings were held in May and June 1984 between LDOTD and representatives of the cruise boat organization and the local agency responsible for future development of boating in the area to discuss the proposed method of operating the bridges and the concerns of navigation. As a result, those concerns were satisfactorily resolved when navigational interests agreed with a proposal that LDOTD would operate all three bridges on four hours advance notice, thereby reducing from 48 hours to four hours both the proposed advance notice requirement for the New Flanders bridge and the existing advance notice requirement for the Lafayette bridge.

This modification to the rule as originally proposed has a possible adverse impact only upon the bridge owner. The owner has, however, been involved in formulating these final rules and has assented to the provisions contained in this rule. Moreover, this revision, which resulted from meetings between affected parties, will serve to enhance local navigation. Therefore, the Coast Guard finds that supplemental notice of the modified rule and public procedure thereon are unnecessary under 5 U.S.C. 553(b).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that, on average, fewer than one vessel per day uses the Eloi Broussard bridge, fewer than one per week uses the New Flanders bridge, and only one per month uses the Lafayette bridge. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by removing § 117.509(a)(6) and § 117.509(a)(7), and by revising § 117.509(b) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.509 Vermilion River.

* * * * *

(b) The draws of the following bridge shall open on signal if at least four hours notice is given:

(1) S733, mile 41.0 at Eloi Broussard.

(2) S3073 bridge, mile 44.9 at New Flanders.

(3) S182 bridge, mile 49.0 at Lafayette.

(33 U.S.C. 499, 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: July 25, 1984.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 84-21146 Filed 8-8-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 21

Equal Access to Justice

AGENCY: Department of Education.

ACTION: Final regulations.

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

EFFECTIVE DATE: September 10, 1984.

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

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

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

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

The Department participated in meetings held by the Administrative

Conference to draft a set of comprehensive model regulations.

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

The Department published proposed regulations on March 14, 1984 at 49 FR 9577. In its adaption of the model rules, the Department changed the order of various provisions to make it easier for applicants to use the regulations. The Department also made a number of changes to ensure that a minimal burden is placed on applicants.

In addition the Department—

• Omitted provisions having no application to the types of adversary adjudications conducted in the Department;

• Changed other provisions to reflect departmental policy more clearly; and

• Excerpted from the model rules definitions of various terms and collected them in these regulations under the section entitled "Definitions."

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

Comments were received on the proposed regulations from one commenter.

Comment: The single commenter asked the Department to add a new section to the regulations to correspond to a provision that was included in the model regulations of the Administrative Conference. The Administrative Conference provision explained that agencies have the authority under 5 U.S.C. 504(b)(1)(A) to raise through rulemaking the statutory ceiling on hourly rates of attorneys.

Response: No change has been made. The Secretary has decided not to add the provision that was included in the Administrative Conference regulations. The authorization to raise the statutory rate, if exercised, would require the Department to engage in further rulemaking consistent with the procedure in 5 U.S.C. 553. The Secretary does not believe that a regulation is necessary or appropriate to engage in rulemaking which is authorized by statute.

Comment: The commenter also believed that the information requirement in § 21.31 of the regulations should be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980.

Response: No change has been made. The regulations of OMB implementing the Paperwork Reduction Act of 1980 specifically exempt information collected "during the conduct of an administrative action or investigation involving an agency against specific individuals or entities." 5 CFR 1320.3(c).

The Secretary has decided to delete proposed § 21.61, *Time for payment of awards.* This section unnecessarily limits the discretion of the Secretary in determining the timing of payments. Congress is currently considering an extension of the Equal Access to Justice Act. If Congress finds that such a limitation is necessary to ensure prompt payment, Congress may impose the limitation under the reauthorized legislation. Section 21.62 of the proposed regulations has been redesignated as § 21.61.

Executive Order 12291

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

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

List of Subjects in 34 CFR Part 21

Equal Access to Justice, Adjudications, Attorney fees, Claims, Expert witnesses, Lawyers.

Citation of Legal Authority

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

Dated: August 3, 1984.

T.H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance number does not apply)

March 14, 1984.

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

PART 21—EQUAL ACCESS TO JUSTICE

Subpart A—General

Sec.
21.1 Equal Access to Justice Act.
21.2 Time period when the Act applies.
21.3 Definitions.

Subpart B—Which Adversary Adjudications Are Covered?

Sec.
21.10 Adversary adjudications covered by the Act.
21.11 Effect of judicial review of adversary adjudication.

Subpart C—How Is Eligibility Determined?

21.20 Types of eligible applicants.
21.21 Determination of net worth and number of employees.
21.22 Applicants representing others.

Subpart D—How Does One Apply for an Award?

21.30 Time for filing application.
21.31 Contents of application.
21.32 Confidentiality of information about net worth.
21.33 Allowable fees and expenses.

Subpart E—What Procedures Are Used in Considering Applications?

21.40 Filing and service of documents.
21.41 Answer to application.
21.42 Reply.
21.43 Comments by other parties.
21.44 Further proceedings.

Subpart F—How Are Awards Determined?

21.50 Standards for awards.
21.51 Initial decision.
21.52 Review by the Secretary.
21.53 Final decision if the Secretary does not review.
21.54 Judicial review.

Subpart G—How Are Awards Paid?

21.60 Payment of awards.
21.61 Release.

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

Subpart A—General

§ 21.1 Equal Access to Justice Act.

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

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

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

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

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

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

(ii) Special circumstances make an award unjust; or

(2) The adversary adjudication is under judicial review, in which case the applicant may receive an award only as described in § 21.11.

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

§ 21.2 Time period when the Act applies.

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

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

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

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

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

§ 21.3 Definitions.

The following definitions apply to this part:

"Act" means the Equal Access to Justice Act.

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

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

"Adversary adjudication" means a proceeding—

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

(b) Listed in § 21.10; and

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

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

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

"Employee."

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

(1) For remuneration; and

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

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

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

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

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

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

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

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

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

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

Subpart B—Which Adversary Adjudications Are Covered?

§ 21.10 Adversary adjudications covered by the Act.

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

(a) Proceedings to—

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

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

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

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

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

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

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

(g) Proceedings under—

(1) Section 5(g) of Pub. L. 81–874, as amended (Financial Assistance for Local Education Agencies in Areas Affected by Federal Activity). (20 U.S.C. 240(g)); or

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

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

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

§ 21.11 Effect of judicial review of adversary adjudication.

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

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

Subpart C—How Is Eligibility Determined?

§ 21.20 Types of eligible applicants.

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

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

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

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

(2) Not more than 500 employees.

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

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

(2) Having not more than 500 employees.

(d) A cooperative association—

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

(2) Having not more than 500 employees.

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

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

(2) Not more than 500 employees.

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

§ 21.21 Determination of net worth and number of employees.

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

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

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

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

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

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

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

§ 21.22 Applicants representing others.

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

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

Subpart D—How Does One Apply for an Award?

§ 21.30 Time for filing application.

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

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

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

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

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

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

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

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

§ 21.31 Contents of application.

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

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

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

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

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

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

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

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

(ii) An itemized statement of—

(A) Each expense; and

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

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

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

(ii) The actual time expended for the fee.

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

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

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

§ 21.32 Confidentiality of information about net worth.

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

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

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

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

(c) The motion must—

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

(2) Explain in detail—

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

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

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

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

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

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

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

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

§ 21.33 Allowable fees and expenses.

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

(1) An adversary adjudication; or

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

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

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

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

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

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

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

Subpart E—What Procedures Are Used in Considering Applications?

§ 21.40 Filing and service of documents.

Except as provided in § 21.32, an applicant shall—

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

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

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

§ 21.41 Answer to application.

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

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

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

(b)(1) The Department's answer must—

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

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

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

(i) Supporting affidavits; or

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

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

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

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

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

§ 21.42 Reply.

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

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

(1) Supporting affidavits; or

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

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

§ 21.43 Comments by other parties.

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

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

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

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

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

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

§ 21.44 Further proceedings.

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

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

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

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

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

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

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

Subpart F—How Are Awards Determined?

§ 21.50 Standards for awards.

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

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

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

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

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

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

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

(b) The adjudicative officer does not grant—

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

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

(c) The adjudicative officer may also determine whether—

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

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

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

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

(2) Special circumstances make an award unjust.

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

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

§ 21.51 Initial decision

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

(b) The initial decision includes the following:

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

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

(ii) The applicant's eligibility;

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

(iv) Whether special circumstances make an award unjust;

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

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

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

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

(A) Whether the amount requested was reasonable; and

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

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

(4) A statement of the applicant's right under § 21.45 to seek judicial review of the final award determination.

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

§ 21.52 Review by the Secretary.

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

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

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

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

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

(i) The written request; and

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

(3) The Secretary either—

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

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

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

(1) Is in writing:

(2) States the reasons for the decision; and

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

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

§ 21.53 Final decision if the Secretary does not review.

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

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

§ 21.54 Judicial review.

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

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

Subpart G—How Are Awards Paid?

§ 21.60 Payment of awards.

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

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

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

(c) A statement that—

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

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

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

§ 21.61 Release.

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

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

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

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

[FR Doc. 84-21153 Filed 8-8-84; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 87

[AMS-FRL-2609-4]

Control of Air Pollution From Aircraft and Aircraft Engines; Smoke Emission Standard

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This action denies a petition for reconsideration of the aircraft gas turbine smoke standard submitted by the General Aviation Manufacturers Association (GAMA) on March 17, 1983 and extends the compliance date of specified small engines until (one year from the date of publication). The petition is denied because EPA has concluded that the smoke standard is not excessively stringent as was claimed in the petition.

DATE: This action is effective September 10, 1984.

ADDRESS: Material relevant to this action is contained in Public Docket OMSAPC-78-1, located at the Central Docket Section, West Tower Lobby, 401 M Street SW., Washington D.C. 20460. The docket is open to the public and may be inspected between 8:00 am and 4:00 pm on weekdays. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Kittredge, U.S. Environmental Protection Agency, Office of Mobile Sources, (AR-455), 401 M Street SW., Washington D.C. 20460. Telephone: (202) 382-4981.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA aircraft engine emissions standards, as amended on December 30, 1982 (47 FR 58462), contain a provision that all turbojet/turbofan aircraft gas trubine engines must comply with a smoke standard which is expressed as a mathematical equation relating an allowable smoke limit inversely to engine-rated thrust (40 CFR 87.21). This standard was developed and adopted by the International Civil Aviation Organization (ICAO) in 1981 and was incorporated in the amended EPA standards in the interests of international harmonization. It superceded an earlier standard contained in the original 1973 EPA standards (38 FR 19088), which was of comparable stringency but expressed graphically.

On March 17, 1983 GAMA submitted a petition for reconsideration of the amended smoke standard, asserting that EPA did not consider comments it had submitted during the rulemaking process which argued that the standard proposed (similar but not identical to the standard adopted) was based on erroneous data and was inequitable as applied to small gas turbine engines. The petition went on to recommend an alternative standard which GAMA believed would be more equitable.

The Garrett Turbine Engine Company, a member of GAMA, also filed a petition for review of the 1982 amendments in the U.S. Court of Appeals for the District of Columbia Circuit.

In an agreement reached between EPA and Garrett, EPA stayed the date of compliance for engines rated below 26.7 kilonewtons (kN) thrust, so as to provide time for careful evaluation of the issues raised by the GAMA petition (48 FR 46481).

On January 4, 1984, EPA proposed (49 FR 422) that the GAMA petition be denied. The proposal explained that the 1979 EPA report cited in the GAMA petition did indeed contain erroneous data and also confirmed that the 1980 GAMA comments on the report had been overlooked in the rulemaking process leading to the 1982 amendments. However, the proposal went on to point out that the report was not used as a basis for the amended smoke standard, which was in fact based on an equation developed by British investigators to fit the 1973 EPA smoke curve in 1978, over

a year prior to publication of the EPA report. Since the 1979 report was not used in the rulemaking, EPA's failure to consider GAMA's comments was a harmless error. Moreover, reexamination of the optical basis for the amended smoke standard showed that it was not excessively stringent and that all but one of the engines in current production are in compliance. Accordingly, it was proposed that the GAMA petition be denied and recommended that the manufacturer of the single non-complying engine apply to the Federal Aviation Administration (FAA) for an exemption.

Three comments were received on the NPRM, from GAMA and Garrett Turbine Engine Company, both opposing denial of the petition, and from the British National Gas Turbine Establishment, verifying the history of the ICAO smoke standard.

II. Discussion of Issues

Garrett commented that a statement in the EPA report containing the erroneous data shows that the author believed the proposed revised smoke standard referred to in the report was based on 98 percent light transmission measured directly across turbine engine exhaust plumes. From this, Garrett reasoned that the original 1973 smoke curve must also have been based on 98 percent light transmission as a criterion for smoke plume invisibility. However, it is clear from a careful reading of the report that the author simply used the erroneous data to convert the EPA smoke-versus-thrust standard to smoke-versus-exhaust nozzle diameter units, to facilitate comparison with the Air Force smoke standard which is expressed in these units. The proposed EPA standard itself was unaffected by this process and the conclusion that it was based on 98 percent light transmission was incorrect.

The 1973 EPA smoke standard was developed over six years prior to the 1979 EPA report, by different EPA staff members using different data. It is not known what light transmission criteria, if any, were used as a basis for the standard, only that the goal was to derive a standard which would eliminate emissions of visible smoke from civil aircraft to the maximum extent achievable by available technology. No adverse comments were received on the 1973 EPA smoke standard until the 1980 GAMA comments and compliance was achieved before the January 1, 1984 compliance date by all but a single currently-produced engine type. The single engine type not complying with the standard, manufactured by Garrett, has been observed to produce readily visible smoke from aircraft in flight, contrary to the purpose and intent of the smoke standard.

EPA concludes that both the original 1973 EPA smoke standard and the amended EPA/ICAO standard are reasonably valid predictors of the threshold smoke limits for engines which power current civil aircraft and yet represent limits which are achievable with available engine combustor design technology. At this time EPA sees no reason not to continue with the present smoke standard and associated measurement procedure.

Both Garrett and GAMA questioned the equity of reliance on the exemption process as the sole avenue of relief for a manufacturer experiencing compliance problems, in part because they believe the standard itself is overly stringent but also because of their concern that a denial of an exemption request by FAA would inflict economic losses on the requestor out of proportion to the social value of compliance with the standard. EPA does not agree with this argument, since consideration of economic issues by FAA is very much a part of the exemption provisions described in § 87.7(c) of the EPA emissions standards. The cost of compliance with the smoke standard on any given schedule would likely be a major determinant in a decision to grant an exemption request.

Garrett asked that the compliance date be extended two or three years, instead of one year as proposed, to allow additional time to complete the development of smoke reduction technology for the TFE731 engine. However, since the original compliance date, January 1, 1984, has already passed, the one year extension originally proposed by EPA will allow considerably more than one year of additional leadtime for Garrett before an exemption becomes necessary. During this period it should be easily possible for FAA to complete evaluation of Garrett's exemption request.

Garrett also questioned the need for a standard as stringent as the present EPA/ICAO standard, stating that the more relaxed standard recommended by GAMA would be enough to protect the interests of the public. However, EPA has no reason to believe that the GAMA proposal would in fact ensure the absence of visible smoke under realistic flight conditions for aircraft powered by the small engines of interest to GAMA members. The present standard appears to accomplish this.

III. Action

Accordingly, this rulemaking action will deny the GAMA petition, lift the stay in implementation date for smoke standards applicable to small engines which was established on October 12, 1983, and establish a new compliance date for these engines, i.e. one year after the date of publication.

Several unrelated non-substantive corrections and deletions are also made to the standards. The definitions for "Instrumentation system", "Rated compressor discharge temperature" and "Reference Day conditions" and the abbreviations for "carbon dioxide" and "carbon monoxide" are eliminated as superfluous, since these terms are nowhere used in the standards as revised on December 30, 1982. In § 87.7(d)(4), the words "do not apply" are being inserted before the word "shall", since these words were inadvertently omitted when the revised rule was printed. In § 87.60(e), the word "of" is being changed to "or" following "Administrator."

IV. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore not subject to the requirements for a Regulatory Impact Analysis. This rulemaking is not major because it will result in adverse effects on the economy of less than $100 million. There are no discernible effects on competition, productivity, investment, employment or innovation. For these reasons, EPA has not prepared a formal Regulatory Impact Analysis.

This rulemaking action has been sent to the Office of Management and Budget (OMB) for review pursuant to Executive Order 12291. Any comments from OMB and any EPA responses thereto are in the public docket for this rulemaking.

V. Impacts on Reporting Requirements

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine when a regulation will have a significant effect on a substantial number of small entities so as to require a Regulatory Flexibility Analysis. This regulation should have no significant effect on small entities, since it only affects a small class of engines not manufactured by small businesses. Accordingly, I certify that this regulation will not have a significant impact on a

substantial number of small entities. Therefore, no Regulatory Flexibility Analysis has been prepared.

List of Subjects in 40 CFR Part 87

Air pollution control, Aircraft engines.

Dated: July 30, 1984.

William D. Ruckelshaus,

Administrator.

PART 87—[AMENDED]

As set forth in the preamble, Part 87 of Title 40 of the Code of Federal Regulations is amended as follows:

Authority: Sec. 321, 301(a), Clean Air Act as amended (42 U.S.C. 7571, 7601(a)).

§ 87.1 [Amended]

1. In § 87.1 the definitions for "Instrumentation system," "Rated compressor discharge temperature" and "Reference day conditions" are removed.

* * * * *

§ 87.2 [Amended]

2. In § 87.2 the abbreviations for "CO_2, Carbon Dioxide" and "CO, Carbon Monoxide" are removed.

* * * * *

3. Section 87.7(d)(4) is revised to read as follows:

§ 87.7 Exemptions.

* * * * *

(d) * * *

(4) Applications for a determination that any requirements of § 87.11(a), § 87.31(a) or § 87.31(c) do not apply shall be submitted in duplicate to the Secretary in accordance with procedures established by the Secretary.

4. Section 87.21(e) is revised to read as follows:

§ 87.21 Standards for Exhaust Emissions.

* * * * *

(e) Smoke exhaust emissions from each gas turbine engine of the classes specified below shall not exceed:

(1) Class TF of rated output less than 26.7 kilonewtons manufactured on or after (one year from date of publication):

$SN=83.6(ro)^{-0.274}$ (ro is in kilonewtons) not to exceed a maximum of SN=50.

(2) Classes T3, T8, TSS and TF of rated output equal to or greater than 26.7 kilonewtons manufactured on or after January 1, 1984:

$SN=83.6(ro)^{-0.274}$ (ro is in kilonewtons) not to exceed a maximum of SN=50.

(3) Class TP of rated output equal to or greater than 1,000 kilowatts manufactured on or after January 1, 1984:

$SN=187(ro)^{-168}$ (ro is in kilowatts)

* * * * *

5. Section 87.60(e) is revised to read as follows:

§ 87.60 Introduction.

* * * * *

(e) Other gaseous emissions measurement systems may be used if shown to yield equivalent results and if approved in advance by the Administrator or the Secretary.

[FR Doc. 84-21121 Filed 8-8-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 147

[WH-FRL-2633-4]

Washington Department of Ecology; Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of Washington has submitted an application under Section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program for all classes of injection wells meets the requirements of Section 1422 of the Act and, therefore, approves it.

EFFECTIVE DATE: This approval shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on August 23, 1984. This approval shall become effective on September 24, 1984.

FOR FURTHER INFORMATION CONTACT: Harold Scott, Environmental Protection Agency, Region X, 1200 Sixth Avenue (M/S 409), Seattle, Washington 98101. PH: (206) 442-1846 or FTS 399-1846.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Washington was listed as needing a UIC program on June 19, 1979 (44 FR 35288). The State submitted an application under Section 1422 on March 5, 1984, for a UIC program to regulate Class I, II, III, IV, and V injection wells to be administered by the Washington Department of Ecology (WDE).

On March 21, 1984, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the WDE (49 FR 10555). Neither requests for public hearing nor requests to offer testimony at such hearings were received by EPA. Therefore, pursuant to the provisions of 40 CFR 145.31(c), the public hearing was cancelled because of lack of sufficient public interest.

After careful review of the application, I have determined that the portion of the Washington UIC program submitted by the WDE applicable on all State lands other than Indian lands meets the requirements established by the Federal regulations pursuant to section 1422 of the SDWA and, hereby approve it. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for non-Indian lands in the State of Washington.

This approval will be codified in 40 CFR 147.2400. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference. These provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA.

At the request of the Business Council of the Confederated Tribes of Colville, Washington, dated April 23, 1984, the public comment period for the Indian lands portion of the application was extended on May 25, 1984 (49 FR 22110). Therefore, this approval is for the regulation of all injection wells in the State except for wells located on Indian lands. EPA's approval of the State's

program only on non-Indian lands should not be interpreted as a denial of the program with respect to Indian lands. Rather, today's action only defers EPA's decision regarding the Indian lands portion of the program. That decision will be made after the extended public comment period on Indian lands closes.

On May 11, 1984, EPA proposed a Federally administered UIC program for the State of Washington (49 FR 20238). Approval of the State-administered program withdraws the proposed EPA-administered program (§ 147.2401).

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 147, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 147

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply, Incorporation by reference.

OMB Review

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the Washington Department of Ecology will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Dated: July 30, 1984.

William D. Ruckelshaus,

Administrator.

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

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart WW—Washington

Amend 40 CFR Part 147 by revising § 147.2400 to read as follows:

§ 147.2400 State-administered program—Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV, and V wells in the State of Washington other then those on Indian lands, is the program administered by the Washington Department of Ecology, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the **Federal Register** on August 9, 1984; the effective date of this program is September 24, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Washington. This incorporation by reference was approved by the Director of the Federal Register effective September 24, 1984.

(1) Revised Code of Washington §§ 90.48.020, —.080, —.160, and —.162 (Bureau of National Affairs, 1983 Laws);

(2) Washington Administrative Code §§ 173–218–010 to 173–218–110 (Bureau of National Affairs, 2/29/84);

(3) Washington Administrative Code §§ 344–12–001 to 344–12–262 (1983 Ed.)

(b) *Other Laws.* The followng statutes and regulations although not incorporated by reference, also are part of the approved State-administered program:

(1) Revised Code of Washington, ch. 34.04 (Bureau of National Affairs, 1981 Laws), entitled "Administrative Procedure act";

(2) Revised Code of Washington, ch. 43.21A (Bureau of National Affairs, 1980 Laws), entitled "Department of Ecology," as amended by 1983 Washington Laws, Chapter 270

(3) Revised Code of Washington, ch. 70.105 (Bureau of National Affairs, 1983 Laws), entitled "Hazardous Waste Disposal";

(4) Revised Code of Washington, ch. 78.52 (Bureau of National Affairs, 1983 Laws), entitled "Oil and Gas Conservation";

(5) Revised Code of Washington, ch. 90.48 (Bureau of National Affairs, 1986 Laws), entitled "Water Pollution Control."

(c)(1) The Memorandum of Agreement between EPA Region X and the Washington Department of Ecology, signed by the EPA Regional Administrator on May 14, 1984;

(2) Memorandum of Agreement between the Washington Department of Ecology and Oil and Gas Conservation Committee, Related to the Underground Injection Control Program for the State of Washington, signed March 23, 1984;

(3) Memorandum of Agreement between the Washington Department of Ecology and Washington Department of Natural Resources, Related to the Underground Injection Control Program for the State of Washington, signed March 23, 1984;

(4) Memorandum of Agreement between the Washington Department of Ecology and Department of Social and Health Services, Related to the Underground Injection Control Program for the State of Washington, signed March 23, 1984;

(d) *Statement of Legal Authority.* Letter from Attorney General of the State of Washington, by Senior Assistant Attorney General, to Director, Washington State Department of Ecology, "Re: Underground Injection Control Regulatory Program—Attorney General's Statement," February 28, 1984.

(e) The Program Description and any other materials submitted as part of the original applicaiton or as supplements thereto.

[FR Doc. 84–21112 Filed 8–8–84; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6559

[FF–081994]

Alaska; Modification of Public Land Order No. 5180, of March 9, 1972, as Amended

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies a public land order to allow sale or lease of 229,421 acres of unsurveyed public lands in the Pah River Surface Management Area of the Shelukshuk Subunit. Such appropriations would be made pursuant to sections 203 and 302 of the Federal Land Policy and Management Act of 1976. The lands have been and remain open to mining and mineral leasing.

EFFECTIVE DATE: September 6, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, 907–271–3240.

By virtue of the authority vested in the Secretary of the Interior (hereinafter, Secretary), by section 204 of the Federal Land Policy and Management Act of 1976 (hereinafter FLPMA), it is ordered as follows:

1. Public Land Order No. 5180 of March 9, 1972, as amended, which withdrew lands for classification is hereby modified as stated in paragraph 2 of this order, as to the following

described lands in the Pah River Surface Management Area of the Shelukshuk Subunit:

Pah River

Kateel River Meridian

T. 13 N., R. 11 E.,
Secs. 1 to 4, inclusive, secs. 9 to 16, inclusive, secs. 21 to 27, inclusive, and secs. 34, 35, and 36.
T. 14 N., R. 11 E.,
Secs. 1, 2, and 3, secs. 10 to 15, inclusive, secs. 22 to 27, inclusive, and secs. 34, 35, and 36.
T. 13 N., R. 12 E.
T. 12 N., R. 13 E.,
Secs. 2 to 36, inclusive.
T. 13 N., R. 13 E.
Tps. 11 and 12 N., R. 14 E.
T. 13 N., R. 14 E.,
Secs. 1 to 21, inclusive, and secs. 23 to 36, inclusive.
Tps. 11, 12, and 13 N., R. 15 E.

The areas described aggregate approximately 229,421 acres.

2. At 8 a.m. on September 6, 1984, except as provided in paragraph 3, the lands will be opened to sale or lease pursuant to sections 203 and 302 of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1713, 1732, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

3. The following described land will not be opened to sale or lease pursuant to sections 203 and 302 of FLPMA and surface occupancy will not be allowed:

The Pah River along with those portions of land lying within the bed and 300 feet upland of the ordinary high waterline of the Pah River within T. 13 N., R. 13 E., Kateel River Meridian.

4. No lands are opened by this order which are within the boundaries of the Selawik National Wildlife Refuge as designated by section 302(7) of the Alaska National Interest Lands Conservation Act (94 Stat. 2387). (Or the subject of prior withdrawals or appropriations still in effect.)

5. The lands opened to appropriation by this order continue to be subject to the authority of the Secretary to make contracts, and to grant leases permits, rights-of-way, or easements. The State of Alaska has been afforded full opportunity to exercise its preference right of selection on all lands described herein which were withdrawn under Public Land Order No. 5180, as amended, modified, or corrected.

The lands described in paragraph 1 have been and remain open to location and entry under the mining laws, and application and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Fairbanks District Office, North Post, Gaffney Road, Fort Wainwright, Box 1150, Fairbanks, Alaska 99707.

Dated: August 1, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-21116 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Gen. Docket No. 83-1009; FCC 83-440]

Amendment of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein adopts a Report and Order regarding the modification and elimination of that aspect of the FCC's rules commonly known as the "seven station" rule. The rule prohibits any person from holding interests in more than seven stations in the same broadcast service. The dramatic changes in the communications marketplace during the three decades the rule has been in effect, as well as the unlikelihood of a concentration of control, form the basis for taking this action.

EFFECTIVE DATE: September 10, 1984.

FOR FURTHER INFORMATION CONTACT: Trevor Potter, Office of General Counsel, (202) 632-6990.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcast, Television.

Report and Order (Proceedings Terminated)

In the matter of amendment of § 73.3555, [formerly §§ 73.35, 73.240, and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Docket No. 83-1009.

Adopted: July 26, 1984.
Released: August 3, 1984.

By the Commission: Commissioners Fowler, Chairman; and Patrick issuing separate statements; Commissioner Dawson dissenting and issuing a statement; Commissioner Rivera concurring in part and dissenting in part and issuing a full text statement at a later date.

I. Introduction

1. The Commission has before it the *Notice of Proposed Rule Making* in this proceeding (Gen. Docket 83-1009, released Oct. 20, 1983, 48 FR 49438), and the voluminous comments and reply comments filed by interested parties.

2. This Rulemaking addresses the Commission's Seven Station Rule, which prohibits persons from holding cognizable ownership positions in more than seven AM, seven FM and seven TV stations (of which no more than five may be VHF Stations). This rulemaking does not affect the Commission's Duopoly Rules [1] or the companion One to a Market Rule.

3. The stated purpose of the rule when it was adopted was twofold: (1) To encourage diversity of ownership in order to foster the expression of varied viewpoints and programming, and (2) to safeguard against undue concentration of economic power.

4. Since the rule as adopted over three decades ago, the nature and scope of broadcasting in the United States has experienced an enormous transformation. The mass media market *in toto* likewise has witnessed explosive growth and change. The number of on-the-air radio stations has tripled to over 9000, and the number of television stations has risen from 199 to 1,169. Additionally, cable television service is now available to 64 percent of all television households through more than 6,400 different systems, and new technologies and services such as MDS and LPTV are adding more diversity and competition to mass media markets. Equally important, there has been increasing question as to whether a national ownership rule is relevant to or indeed fosters the Commission's dual goals of promoting diversity and competition. These changes and concerns caused the Commission to issue a Notice of Proposed Rule Making to examine the wisdom of altering the Rule of Sevens.

5. Nevertheless, we recognize that some commenters believe a significant and rapid restructuring of the broadcast industry might occur if the rule is repealed immediately in its entirety. While we do not believe that repeal will result in any harmful restructuring of the industry, we are sensitive to their concern that if all restrictions were removed immediately then structural changes might occur before the full ramifications of these changes became evident. Therefore, out of an abundance of caution, the Commission is establishing a transitional limitation for a period of six years during which multiple station ownership in each broadcast service will be capped at a numerical limit of 12. Six years from the effective date of this Order, this

[1] *See* para. 12, *infra*, and accompanying notes.

transitional limitation will expire unless experience shows that continued Commission involvement is warranted, in which case corrective action will be taken. In any case, the Commission will continue to scrutinize each individual acquisition to assure itself that the acquisition does not contravene any of the Commission's public policy concerns, particularly those related to diversity[2] and competition.

6. As discussed in detail below, our action is based upon several grounds. To the extent the rule was intended to ensure diversity of viewpoints, changes in the broadcasting and communications markets, new evidence of the effects of group ownership on the quality and quantity of public affairs and other programming responsive to community needs, and the lack of relevance of a national ownership rule to the availability of diverse and independently owned radio and TV voices to individual consumers in their respective local markets lead us to conclude that the rule is unnecessary to achieve that objective; indeed the rule may be an obstacle to the broadcast of the types of programming that might more adequately address the interests and concerns of the public.

7. The Commission's initial decision to restrict multiple ownership implicitly relied on traditional scarcity arguments—that broadcast stations were sufficiently limited in number that regulation was necessary to eliminate the possibility of "monopolistic" control, and that the limited frequencies as compared to the numerous applicants justified restrictions on ownership. This rationale as a basis for continued regulation, however, fails to recognize several important points. First, improvements in technology and changes in spectrum regulation accompanied by expanding audience and advertising markets have eliminated monopolistic control as a serious threat. The number of broadcast stations has increased more than tenfold since the initial multiple ownership rules were adopted. And raw numbers of stations tell only part of the story. FM radio stations and UHF television stations have emerged as thriving rivals of other broadcasting outlets. Existing stations of all types, moreover, continue to improve their transmission facilities and thereby increase the service to which the public has real access. As a consequence, reliance on scarcity of broadcast service in any absolute sense, and certainly in comparison with daily newspapers, is increasingly anachronistic. Second, and equally important, the fact that there are more who would like to operate broadcast facilities than can actually do so, while undeniably true, fails to distinguish broadcasting in any practical sense from other businesses, including particularly the nonbroadcast media, for which resources are limited or the available economic base constrains the number of firms that can successfully participate in the market. A federal license is needed to enter broadcasting, which is not the case in the newspaper industry. But because broadcasting stations can be purchased,[3] typically the only genuine barrier to entry into broadcasting is insufficient capital, as is the case regarding entry into the newspaper field. A substantial number of incumbent broadcasters have entered the industry through station acquisitions.

8. To the extent that the Rule rests upon a premise that broadcasters should be subject to regulatory constraints because of a "unique" power to influence or persuade, and therefore to manipulate the nation's political process—a view that ignores the multitudinous alternative outlets for the expression of ideas and the diversity of conflicting opinions and ideas among broadcast outlets themselves—we have grave doubts that such a notion can withstand scrutiny on constitutional grounds. The fact that the government may fear the persuasive power of this organ of the press does not mean that the First Amendment allows it to act on those fears.[4]

9. Apart from our recognition of fundamental changes in the broadcast marketplace and in our perceptions of the "scarcity" and "uniqueness" doctrines, new information also causes us to reevaluate some of the basic assumptions underlying the Rule and its relationship to viewpoint diversity. Evidence in this proceeding suggests that group owners do not impose a monolithic editorial viewpoint on their stations, but instead permit and encourage independent expression by the stations in response to local community concerns and conditions. Thus, it appears that Commission policy founded on the purported dangers of group ownership in terms of a restraint on the diversity of ideas available to the country may have been based in large degree upon a false assumption. Statistical evidence adduced in the record of this proceeding, set out more fully at para. 45–47 below, shows that group owners broadcast more issue-oriented programming than non-group-owned stations. Because of this it may be said that group ownership actually furthers, rather than frustrates, the foremost First Amendment goal of augmenting popular discussion of important public issues. These benefits of group ownership provide an important basis for our decision to eliminate the Rule.

10. Further, whereas the Rule imposes a national ownership limit, we believe that the more correct focus for addressing viewpoint diversity and economic competition concerns is the number and variety of information and advertising outlets in local markets, a matter that is not addressed by a nationwide restriction on ownership.

II. Historical Background

11. The genesis of the Seven Station Rule has been set forth in detail at paras. 2–24 of the *Notice* and need not be discussed extensively herein. For purposes of general summary, however, we will reiterate the salient steps in the Commission's development of the rule.

12. As the Notice points out, the FCC's first interest in multiple ownership came in the area of duopoly, the term the Commission has applied to "common ownership of more than one station in the same service in a particular community."[5] The Commission in 1938 adopted a strong presumption against granting licenses which would create such duopolies, based largely on the perceived virtues of "diversification of service."[6] This presumption against duopoly ownership became an absolute prohibition when the Commission adopted rules governing commercial FM service in June, 1940.[7] To reiterate, we do not propose to change this rule.

[2] Diversity is also considered by the Commission in the granting of new licenses and has substantial weight in comparative proceedings.

[3] A staff tabulation shows that as of 1983, 54 percent of television stations and 71 percent of radio stations had changed hands in this way. See "Television and Radio Licenses: Original Grant or Purchased," memorandum from Michele M. Harding to Chief, Office of Plans and Policy, August 16, 1983.

[4] See *Buckley* v. *Valeo*, 424 U.S. 1 (1975); *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765 (1977).

[5] *Notice*, 48 FR 49438.

[6] The Commission's duopoly policy was stated in *Genesee Radio Corp.*, 5 F.C.C. 183 (1938). For more general background information, *see* H.H. Howard, *Multiple Broadcast Ownership: Regulatory History*, 27 Fed. Comm. B.J. 1 (1974) and L.A. Powe, Jr., *FCC Determinations on Networking Issues in Multiple Ownership Proceedings* (Network Inquiry Special Staff Preliminary Report on Prospects for Additional Networks) (February 1980).

[7] See Federal Communications Commission, *Sixth Annual Report* Fiscal Year 1940 (1941) at 68. In 1968 the Commission issued a *Notice of Proposed Rulemaking* indicating a desire to broaden the duopoly rules by restricting broadcast licensees to one full time station of any type per market. *Notice of Proposed Rule Making*, Docket 18110, 33 FR 5315 (1968). This rule making was initiated to "promote diversity in the viewpoints expressed over the air in

Continued

13. The commercial FM rules also contained the Commission's first restrictions on ownership based not on the location of the broadcasting stations but rather simply on the number of stations under common ownership. The FCC adopted a "six station rule" prohibiting an owner from owning more than six FM stations. Further, applicants who already owned stations would be required to prove that their ownership of additional stations "would not result in the concentration of control of high frequency broadcasting facilities in a manner inconsistent with the public interest, convenience and necessity."[8] The purpose of these rules was stated to be "[t]o obviate possible monopoly, and encourage local initiative."[9]

14. The infant television industry was regulated by a similar set of rules in 1940, but the limit on the number of stations under common ownership was set at three on the unedifying rationale that "the more limited television channels make three such stations the limit for the main television band."[10]

15. Having limited the number of stations which any one owner could operate in the new FM service and in the experimental television service, the Commission extended those limits to the more established AM service in 1946 by creating a *de facto* limit of seven.[11]

16. At this point the Commission's move towards an absolute numerical limit of stations under common ownership, without regard to population served, size of station, or changes in the media market, was clear.[12] This policy was formalized as the current Seven Station Rule through a rulemaking proceeding initiated in 1948. The Commission began the process with a *Notice*,[13] and solicited comments and held oral argument. In November of 1953 the Commission formally adopted a seven station limit for AM, raised the existing six station limit of FM to seven, and retained the existing five station TV limit[14] (which within a year was raised to seven, no more than five of which could be VHF).[15]

17. The Commission stated that it adopted the Seven Station Rule[16] in order to further its policy of "diversification" and to "implement the Congressional policy against monopoly." The Commission elaborated on these two themes, saying that the fundamental purpose of its new national ownership rules was both "to promote diversification of ownership in order to maximize diversification of program and service view-points" and to "prevent any undue concentration of economic power contrary to the public interest."[17] These two theories—the need for diversity of programming and editorial viewpoints, and the need to ensure that no competitive harm occurs—are the two explicit rationales for the Commission's Seven Station Rule.

18. Since 1954 the Commission has several times revisited the Seven Station Rule, but only to question whether an absolute numerical limit, rather than geographic or nature of service limits, was the most appropriate form of regulation.[18]

III. Discussion of the Issues

19. The Commission not only has the authority to reexamine longstanding rules as circumstances change, but is virtually required to do so in order to ensure that it continues to regulate in the public interest.[19] As the Supreme Court has stated, "[i]f time and changing circumstances reveal that the 'public interest' is not served by application of the regulations, it must be assumed the Commission will act in accordance with its statutory obligations."[20] It has been over thirty years since the Seven Station Rule was adopted, and we believe that changed circumstances, as well as new information bearing on the purposes and effects of the rules, now justify its repeal. These issues, as they relate both to television and radio broadcast services, are discussed below.

20. In our *Notice of Proposed Rulemaking* we noted that the Rule of Sevens had been adopted for two purposes: to encourage diversity of programming and the expression of a variety of viewpoints, and to safeguard against an undue concentration of economic power. The Commission adopted the rule on the basis of prognostication, not empirical proof, and relied on assumptions which at the time were untestable. That the Seven Station Rule promotes or is integral to genuine diversity in the expression of viewpoints, and prevents anticompetitive activity, was assumed, but this assumption was not based on hard evidence in the record.

21. Thirty-one years have elapsed since the Rule was adopted. We have

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individual localities." *Id.* This "one to a market" proposal was adopted by the Commission in modified form in 1970, *First Report and Order*, Docket 18110, 22 FCC 2d 306 (1970), and further altered in 1971, *Memorandum Opinion Order*, Docket 18110, 21 P&F Radio Reg. 1551 (1971). The formation of new radio-VHF television combinations in the same market is prohibited although radio-UHF combinations may be approved on a case by case basis and there is no bar to AM-FM combinations.

[8] *Rules Governing High Frequency Broadcast Stations*, 5 FR 2382, 2384 (1940).

[9] Federal Communications Commission, *Sixth Annual Report* 68 (FY 1940) (1941).

[10] Federal Communications Commission, *Seventh Annual Report* 34 (FY 1941) (1941). For a discussion of the imposition of these early limits on multiple ownership in the television industry, *see* H.H. Howard, *supra* note 3, at 8. The number of television stations which could be held under common ownership was raised to five in 1944. Rules Governing Broadcast Services Other Than Standard Broadcast, 9 FR 5442 (1944).

[11] The Commission denied CBS' application to purchase an eighth AM station, KQW in San Jose, California, indicating in its decision that the company had already reached the full complement of stations the Commission would allow it to have.

[12] This regulatory policy was questioned by Senator Wallace White, the Chairman of the Committee on Interstate and Foreign Commerce, who introduced legislation in 1947 to bar the use of numerical national ownership ceilings. White instead proposed limiting common ownership to stations "which in the aggregate provide a primary service . . . for more than 25 percentum of the population of the continental United States as determined in the last preceding decennial census." S. 1333, 80th Cong., 1st Sess. (1947). The Commission opposed the proposal, arguing *inter alia* that it was "not conducive to the prevention of monopoly." *To Amend the Communications Act of 1934: Hearings Before a Subcomm. and Foreign Commerce on S. 1333*, 62–63, 70, 80th Cong., 1st Sess. (1947). The proposed legislation died in Committee.

[13] *Amendment of §§ 3.35, 3.240 and 3.636 of the Rules and Regulations Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, 13 FR 5060 (148). The Commission then froze all television applications pending the revision of the table of television assignments, which had the effect of holding back the tremendous expansion of television service and surge of new licenses until after the Rule of Sevens proceeding was virtually complete.

[14] *Amendment of §§ 3.35, 3.240 and 3.636 of the Rules and Regulations Relating to Multiple Ownership of AM, FM and Television Broadcasting Stations*, 18 F.C.C. 288 (1953).

[15] This action was taken to encourage the development of UHF stations, which were then just becoming available in the marketplace.

[16] The Commission in its *Report and Order* explicity rejected "any proposal to limit multiple ownership on the basis on such factors as class of station or geographic location "stating that such proposals were either "unsatisfactory or unworkable." *Amendment of §§ 3.25, 3.240 and 3.636 of the Rules and Regulations Relating to the Multiple Ownership of AM, FM and Television Broadcasting Stations, supra* notes 11–13.

[17] *Id.* at 292–293.

[18] *See* H. H. Howard, *supra* note 5 at 19–31; the "Barrow Report," published as *Network Broadcasting: Report of the Committee on Interstate and Foreign Commerce*, 85th Cong., 2d Sess (1958).

Concern about the possibility of excessive concentration in major markets led the Commission to propose a series of restrictions on the ownership of multiple VHF stations in the top fifty markets. *Hearings on Applications for Second VHF Stations*, 3 R.R. 2d 909 (1964); *Interim Policy Concerning Acquisition of Television Broadcast Stations*, 5 R.R. 2d 271, 272 (1965) and *Multiple Ownership of TV Broadcast Stations*, 22 F.C.C. 2d 686 (1968). Attempts to formulate such restrictions ended in 1979, when the Commission found there was insufficient ownership concentration to justify them. *Amendment of Section 73.636(a) of the Commission's Rules (Multiple Ownership of Television Stations)*, 75 F.C.C. 2d 585 (1979), *recon. denied*, 82 F.C.C. 2d 329 (1980), aff'd sub. nom. *National Association for the Advancement of Colored People* v. FCC, 682 F. 2d 993 (D.C. Cir. 1982).

[19] *Geller* v. *FCC*, 610 F. 2d 973, (DC Cir., 1979).

[20] *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 255 (1943). *U.S.* v. *Storer Broadcasting*, 351, U.S. 192, 205 (1955).

adduced, in our *Notice* in this proceeding, a number of developments and changes in broadcasting over the course of those years. Commenters in this proceeding have thoroughly examined the state of today's broadcast market, focusing not only on competitive concerns but also on essential questions concerning viewpoint diversity. As a result of these efforts, the Commission has before it a full and persuasive record on the effect of its Seven Station Rule.

22. This information enables the Commission to consider carefully the degree to which the broadcast market has changed since the Rules were adopted, and the effect of those changes on the Commission's regulatory goals and methods. Because there was no historical record of the procedures and performance of the infant television industry in 1953, the Commission can now consider these data for the first time. We therefore have examined in this proceeding the evidence of vast changes in broadcasting, as well as the potential for further developments through new technologies. Further, we have considered evidence in the record which indicates that the Commission in the past failed to recognize some of the advantages of group ownership and overestimated the potential dangers of such ownership. The record in this proceeding accordingly allows us to reexamine not only the state of the market, but also some of the basic assumptions which guided our decisions in 1953.

23. In the course of this reexamination, we will discuss the effect of eliminating the Seven Station Rule on, first, diversity of viewpoint in today's information market, and second, economic competition in the marketplace. Then we will consider two other issues, the effect on minority participation in broadcasting and treatment of the three television networks.

A. Viewpoint Diversity

24. A primary goal of the Commission in adopting the Rule of Sevens was to encourage a diversity of independent viewpoints. In order to analyze the effect of eliminating this rule on viewpoint diversity, it is necessary to determine what types of mass media provide reasonable alternatives to TV and radio stations; from what geographic area, local or national, are consumers able to select these mass media alternatives; and what effects group ownership might have on an individual station's contribution as a source of its community's information and entertainment. We consider these questions in detail below. In brief, we conclude that a national rule is irrelevant to the number of diverse viewpoints in any particular community and that even if we believed that radio and television were the only media relevant to diversity of viewpoint, the phenomenal growth in both television and radio since the rule was adopted in 1953 provides sufficient basis for raising the 7 station limit. Indeed, a 12 station owner today would own proportionately fewer stations than did a 7 station owner in 1953. Our conclusion to modify the rules is made even more compelling, however, when other mass media relevant to diversity of viewpiont are considered.

1. The Mass Media Relevant to Viewpoint Diversity

25. The record in this proceeding supports the conclusion that the information market relevant to diversity concerns includes not only TV and radio outlets, but cable, other video media, and numerous print media as well. In the *Notice* we took account of the fact that these other media compete with broadcast outlets for the time that citizens devote to acquiring the information they desire. That is, cable, newspapers, magazines and periodicals are substitutes in the provision of such information.[21] With regard to this issue, some commenters argue that "[i]n America as a whole, there are literally countless independently-owned press outlets and groups of press outlets . . ." citing in particular the "more than 10,000 American broadcast stations, owned by at least 3,800 different firms; 1,711 daily newspapers, owned by a total of 682 firms; 4,791 cable systems (as of 1982), owned by 1,309 firms; 1,500 consumer magazines owned by 1,110 firms; 4,742 non-daily newspapers and 4,507 other periodicals owned by innumerable firms." [22]

26. These figures were presented as part of CBS's argument that, in terms of diversity, "the relevant consideration . . . is the number of separately-owned press outlets, rather than the relative circulations of the outlets." This is so, the commenter maintains, because the purpose of the multiple ownership rules is to maintain a diversity of independent viewpoints "in the nation's overall intellectual marketplace." "Every press outlet," CBS contends, "—ranging from sidewalk leafleteers to tiny 'underground' newspapers to iconoclastic journals to mass circulation print and electronic outlets—makes an important contribution to the stimulation of society's collective thought process." [23]

27. The very existence of this plethora of mass media outlets and the broad spectrum of media alternatives that CBS cites suggests that consumers patronize numerous alternative sources of information and entertainment. Moreover, while it is often asserted that television is a unique source of information, we believe that that product definition is too narrow.

28. In this regard, there is empirical evidence discussed in the FCC staff report filed in this docket which supports this conclusion.[24] A Roper organization poll suggests that the various media are substitutes in the provision of news. In 1981, when asked to list primary news sources, 64 percent of those surveyed listed television, 18 percent listed radio, and 44 percent listed newspapers.[25] The fact that the respondents often listed more than one choice implies that many people actually use more than one medium as a news source. Even those who do not do so could turn to an alternative medium if they became dissatisfied with their current one. Another study challenges the conventional wisdom that Americans acquire most of their news from television. Using data collected by the Simmons Market Reseach Bureau, University of Maryland mass communications professor Lawrence Lichty shows that 68 percent of U.S. adults read at least part of a newspaper every day, while fewer than one-third watch television news, local or national, on a given day.[26]

29. We also believe that this Commission's longstanding concern with media cross ownership in a given local market, discussed at para. 12 above, supports an expansive definition of the media which comprise the information market. Prohibition of cable and television, newspaper and television, and radio and television cross ownership in the same market would make little sense unless these different media were important substitutes for each other.[27]

[21] *Notice*, 48 FR 49447.

[22] *Comments of CBS, Inc.* at 28.

[23] *Id.* at 26.

[24] J. Levy and F. Setzer, *Measurement of Concentration in Home Video Markets*, Office of Plans and Policy, FCC, December 23, 1982.

[25] *Broadcasting*, 15 November 1982, p. 94.

[26] Lawrence W. Lichty, "Video versus Print," 6 *The Wilson Quarterly* 48–57 (Special Issue, 1982).

[27] See *Second Report and Order* in Docket No. 18397, 23 FCC 2d 816 (1970) for the television-cable rule and *Second Report and Order* in Docket No. 18110, 50 F.C.C. 2d 1046, 1083 (1975) for the newspaper-broadcast station rule.

30. We conclude that, in terms of viewpoint diversity, the market includes a wide variety of active, energetic organs engaged in the dissemination of ideas, and that these instruments include not simply television and radio, but also cable, video cassette recorders, newspapers, magazines, books, and, when they are in operation, MDS, STV, LPTV and DBS, all of which should be considered when evaluating diversity concerns.

2. The Geographic Markets Relevant to Viewpoint Diversity

31. The area from which consumers can select the relevant mass media alternatives is generally the local community in which they work and live. Radio and TV signals are available over the air in generally discrete local markets. Consumers also have recourse to local outlets for other material, such as newspapers, magazines, videocassettes, records, and movies.

32. It is for this reason that many commenters recommend that the Commission focus its concerns for diversity on the local markets. Indeed, it would appear eminently reasonable to consider viewpoint diversity to be primarily a matter pertaining to local diversity, in that viewers in San Francisco, St. Louis and Philadelphia each judge viewpiont diversity by the extent of sources of ideas available in other broadcast markets. Moreover, it is apparent that restrictions on the ownership of radio and TV stations at a nationwide level bear no necessary relationship to the number of independent viewpoints in a particular local market, nor does relaxation or abolition of this rule affect the Commission's local ownership restrictions. Consequently, the lack of relevance of the rule to local viewpoint diversity persuades us that elimination of the national ownership rule is unlikely to have an adverse impact on the number of independent viewpoints available to consumers.

33. Even if the relevant geographic area were the entire nation, the number of independently owned mass media relevant to diversity of viewpoint is enormous. We earlier referred to the literally thousands of radio, TV, magazine, newspaper, cable and periodical outlets available nationwide. Even narrowing the focus of analysis to TV and radio outlets alone, it is readily apparent that each service now provides a wide range of independent voices nationwide.

3. Changes in the Availability of Diverse Viewpoints Nationwide

34. In the thirty years since the Rule was adopted, the growth in radio and TV outlets has been truly extraordinary. Where there were 2,458 AM stations and 686 FM stations in 1953, there are today 4,747 AM stations and 4,717 FM stations on the air; more than 10,000 AM and FM stations on the air or with construction permits.[28] The total number of stations has therefore more than tripled, and 684 recently allocated additional FM stations should be in operation shortly.[29] Furthermore, in today's radio programming and service markets, there currently exist 118 national and regional radio networks, 23 radio program distributors, and 221 firms in the business of producing and distributing fare for radio stations.[30] This is in sharp contradistinction to the early development of radio, when a few large networks dominated programming nationwide.[31]

35. The primary changes in the television market have been the explosion in the number of stations on the air and the competition that traditional broadcast outlets now face from new broadcast technologies and from non-broadcast services such as cable:

- The number of television broadcast stations on the air has increased from 199 in 1953 to 1,169, in April 1984;[32]
- Cable television has grown from an estimated 150 systems serving 30,000 subscribers in 1953 to approximately 6,400 systems with 32–35 million subscribers in 1984. Cable now passes 64 percent of all television households;[33]
- Other sources of programming, now in their infancy, are expected to offer an increasing number of alternatives to viewers. These, of course, were not available in 1953. There were 99 multipoint distribution service (MDS) systems in place in 1982, serving some 565,000 subscribers, and the Commission expects this service to expand as a result of the reallocation of certain spectrum for multichannel MDS service.[34] The Commission has received over 16,000 applications for multichannel MDS systems, some of which propose systems of eight or more channels. Subscription television stations serve almost a million viewers, satellite master antenna services should pass one million television homes by the end of 1984, direct broadcast satellite service is expected to commence in the near future, and the Commission is currently processing over 12,000 applications for lower power television stations. Additionally, the existence of over 8.3 million home video cassette recorders ("VCR's") in American homes as of December, 1983, with cassettes available for rent as well as for purchase, adds a new dimension to programming diversity.[35] Sales of VCR's are projected at 5 to 6 million annually over the next 5 years; VCR penetration is expected to reach 50 percent by 1990.[36]

36. The *Notice* suggested that, in light of these developments:

> the potential for such national ownership concentration as would tend to . . . threaten diversity is far less a matter of concern today than might have been the case in 1953 and earlier years . . .[37]

Examination of the record in this proceeding now convinces us that this growth in the number of programming sources is a significant factor that supports abolition of the rule.

37. Commenters challenged various aspects of this analysis. Some disagreed that there had been a significant growth in viewpoint diversity as a result of the tremendous increase in the number of television stations. In this regard it was suggested that the growth in the number of on-air broadcasting stations was overstated by the *Notice* and that the increases are not as dramatic as they appear because the population grew also.[38]

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[28] *Broadcasting*, 9 July 1984, p. 78.

[29] See *Report and Order*, BC Docket No. 80–90, 53 R.R. 2d 1550 (1983).

[30] *Joint Comments of Broad Street Communications Corp., Cox Communications Inc., and Plough Broadcasting Co., Inc.* at 11–12, citing the *1983 Broadcasting/Cablecasting Yearbook*.

[31] "Those early networks owned or controlled most radio stations and provided the bulk of programming . . . [s]tructurally radio was tending toward a concentration of voices. Today's networks primarily provide specialized programming for only a portion of the day. The result has been to increase diversity rather than uniformity." *Notice of Proposed Rulemaking*, B.C. Docket No. 79–219, 44 FR 57,636, 57,648 (October 5, 1979) ["Deregulation Notice"].

[32] See Federal Communication Commission, *48th Annual Report* Fiscal Year 1982 (1983) at 106–07 and *Broadcasting*, 9 July 1984, p. 78.

[33] *Television Factbook*, (Cable and Services volume, 1984 ed.), p. 1,725.

[34] MDS is a microwave service capable of delivering video programming to points within line of sight of the transmitter. Initially this was a one-channel service, but our 1963 reallocation of spectrum for MDS use and concomitant grant of permission to ITFS operators to leave some capacity to commercial users has opened up the possibility of multichannel service. See *Report and Order* in Gen. Docket 80–112,48 FR 33873.

[35] *Id.* at 18.

[36] *Television Digest with Consumer Electronics*, 6 February 1984, p. 15; "Ad 'Zapping' Held Threat to TV Market," *Washington Post*, 18 July 1984. Sec. D, p. 1.

[37] *Notice*, 48 FR 49444.

[38] These arguments are contained in the *Joint Comments of Black Citizens for a Fair Media*,

Continued

38. In regard to the growth of on-air stations, these commenters suggest that the Commission's use in the *Notice* of statistics indicating the number of on-air stations in 1953 is misleading because "the Commission's reliance on on-air stations does not recognize the fact that in 1953 the Commission was fully aware of impending growth in the industry."[39]

39. The Commission, however, specifically sought to identify in the *Notice* the number of stations actually broadcasting in 1953, as it similarly did when listing the current availability of the new technologies of STV, MDS, LPTV and SMATV.[40] Even the alternative numbers the commenters propose—273 television stations authorized as of January 1, 1953, or 567 stations licensed as of January 1, 1955—amply demonstrate the dramatic difference between the number of stations broadcasting in the 1950's and the 1,169 television stations on the air or under construction today.

40. Further, some commenters [41] object to the Commission's recognition of the impact of the newly emerging technologies such as STV, MDS, LPTV and SMATV in its evaluation of the existing broadcast market by declaring that "[a]t best, many of the substitutes enumerated by the Commission are in their infancy and are not available to most people."[42] At the outset we note that this issue is irrelevant to the central fact that the number of broadcast stations has increased dramatically since 1953, and also dramatically above the number of stations authorized in 1955. Moreover, it is entirely appropriate for the Commission to attempt to evaluate the future of the broadcast and cablecast market and of the new technologies and services as part of this rulemaking. Indeed, we would be derelict in our responsibilities to the public interest were we to ignore the developments now occurring, and those evidently on the way.

41. We also reject the argument that "[p]opulation shifts and increases, demographic changes and increases in the number of television homes have neutralized the effect that the growth in broadcast stations has had on diversity of programming and ownership" [43] and that "the Commission must concede the fact while more people are being served by more stations, the ratio of stations to viewers has greatly *declined*." [44] The Commission does indeed agree that "more people are being served by more stations," which was one of our primary contentions in the *Notice*, but cannot accept the notion that the "ratio of stations to viewers" has any possible relevance to this proceeding.

42. This theory is apparently based on the premise that the proper way to measure diversity is the ratio of viewers to stations, so that a city of 100,000 and one station has the same diversity per viewer as a city of 1,000,000 and ten stations, a notion we cannot accept. The Commission instead believes it to be clear that, particularly in the realm of "free" commercial television, each new station adds a new voice and the potential for greater viewpoint diversity. For no matter how much the viewing population grows, each individual viewer can receive all available stations, a fact not diminished by the existence of any additional number of viewers. And in terms of sheer numbers, the dramatic increase in broadcast outlets, especially when considered relative to the numnber of print outlets such as daily newspapers, does not support applying special restrictions on ownership of broadcast media that do not apply to those other media forms.

43. In short, elimination of the Seven Station Rule poses no threat to the diversity of independent viewpoints in the information and entertainment markets. The mass media relevant to these markets include a wide range of new technologies as well as print, TV and radio outlets. Media ownership at the national level need not—and given the Commission's local ownership rules cannot—reduce the number of independently owned cable, TV and radio outlets available to the individual consumer in his community. Thus, the rule does not affect the number of viewpoints in the relevant information market. Looking at the national level, *arguendo*, the U.S. enjoys an abundance of independently owned mass media outlets. This is true generally and for TV and radio stations when each group is considered alone.

4. The Effect of Group Ownership on Viewpoint Quality

44. Thus far we have examined the effect that elimination of the rule would have on viewpoint diversity in the local information market. Also relevant to our diversity goal is whether its repeal would remove any hindrances to the flow of information, which might be the case if group-owned stations provide a different mix of programming that better matches consumer preferences. We accordingly specifically requested in the *Notice* that commenters address themselves to this issue.[45] At the outset, we note a study by Professor Parkman showing that group-owned stations have significantly higher ratings on their local news programming.[46] This suggests that group-owned stations do a superior job of responding to viewer demand for news.

45. Several commenters discussed the quality and diversity of programming by group and network owners. The National Association of Broadcasters (NAB) [47] states that "[s]tudies of the performance of group-owned stations suggest the fallacy of assuming direct inflexible correlation between diversity of ownership and diversity of programming." [48] NAB cites a study which compared group-owned and individually owned television stations in six markets, based on interviews with media personnel, owners, managers, staff and business and community leaders.[49] The study concluded that:

> Commonly-owned media have larger news staffs, do more news programming, and are less dependent on the wire services and networks for news than singly-owned media:
>
> Commonly-owned media are perceived by business and community leaders as providing greater validity and depth of news coverage, better quality programs, more public service, . . .
>
> [s]ingle owners are more concerned with short-term profits, while common owners (who are generally stronger financially) are more concerned with establishing a reputation for service which will provide long-term economic stability.[50]

46. NAB also cites a study it conducted which indicates that, on average, group owned stations offer more public service programming than non-group stations. The study found that "group-owned stations devoted 18.4

League of United Latin American Citizens, National Association for the Advancement of Colored People, National Association for Better Broadcasting, National Conference of Black Lawyers Communications Task Force, and Telecommunications Research and Action Center.

[39] *Id.* at 41–42.

[40] *Notice*, 48 FR 49443–44.

[41] *Supra.*, note 38 at 46–52.

[42] *Id.* at 46.

[43] *Id.* at 36.

[44] *Id.* at 38.

[45] *Notice*, 48 FR 49446.

[46] Parkman, Allen M. "The Effects of Television station Ownership on Local News Ratings," 64 *Review of Economics and Statistics* (1982): 289–95. For 1975, the average rating for early evening news programs in the sample was 12.02; for late evening it was 9.97. The ratings for group-owned stations were 2.65 and 1.99 points respectively higher than those for stations that were not group-owned.

[47] *Comments of the National Association of Broadcasters* at 19.

[48] *Id.*

[49] The study was by George H. Litwin and William H. Wroth and is entitled "*The Effects of Common Ownership on Media Content and Influence: A Research Evaluation of Media Ownership and the Public Interest.* For methodology and a further description, *see Comments of the National Association of Broadcasters* at 19

[50] *Id.* at 20.

percent, 10.1 percent and 32.0 percent of an average broadcast day (6 a.m. to midnight) to informational, local, and total nonentertainment programming, respectively. Non-group-owned stations devoted 12.9 percent, 6.9 percent and 24.8 percent of a broadcast day to these same program categories, respectively." [51]

47. NBC compares the programming of its stations with all those stations broadcasting in the top 25 markets, and notes that the comparison, using FCC figures, is quite favorable: [52]

	Top 25 market stations (percent)	NBC owned stations (percent)
6 a.m.–midnight:		
Total news and public affairs	14.3	20.7
Local news and public affairs	8.7	12.0
6 pm–11 pm:		
Total new and public affairs	15.1	22.3
Local news and public affairs	9.3	13.2

48. NBC also cites a lengthy list of honors garnered by NBC-owned stations, including "national honors such as the George Foster Peabody Award; Ohio State University awards for meritorious achievement in educational, informational, and public affairs broadcasting; NATPE awards from Action for Children's Television; and awards from American Women in Radio and Television for presenting positive women's images." [53]

49. CBS presents much the same evidence of quality in local programming, noting that each of its television stations "devote[s] a very significant portion—from one and three-quarters to three and a quarter hours—of each weekday's programming to local hard news broadcasts. This local news service is scheduled almost entirely in the high viewership hours of early and late evening." [54] Further, "[i]n a time when television news is often characterized as nothing more than a headline service, the CBS stations have a variety of well versed specialists. For example, each station has a medical/science report er, including in New York, a physician . . . all of the stations have economics or consumer reporters. . . ." [55] CBS claims that "[t]he excellence of this news service has been recognized in the dozens of awards each station has received from leading professional organizations and community organizations." [56]

50. Similiarly, Metromedia cites a large number of programs which it has produced as a group owner, either by itself or in coordination with other owners, including information and public service programming. [57] The information and public service component of this programming included news and shows concerned with legal [58] and health [59] issues. Other group owners such as the Tribune also originate some of their own programming. That group owner has established the Independent News Network. [60]

51. The Commission believes that the differences between independent and group-owned stations' programming are important. First, they demonstrate that the availability of more network and group-owned stations might enhance the information and entertainment markets by increasing the amount of local news and public affairs programming. Such additional programs, plus the growing number created especially for cable systems, [61] will better meet the programming demands of the public.

52. In a related area, we asked in the *Notice* that commenters discuss "any evidence that either local or national news which is locally originated by group-owned stations represents the group's "monolithic viewpoint." [62] This issue is relevant because any concern with broadcast concentration at the national level will be attenuated to the extent that stations owned by groups provide independent viewpoints. The evidence presented by the networks, which was not controverted, shows that their group-owned stations take editorial positions and make basic reporting and coverage decisions on an autonomous basis, frequently through the mechanism of a station's editorial board. [63] The essence of the comments addressed to this question is contained in the citation by the National Association of Broadcasters to a study which showed that decision-making appeared to be most solidly under the local control of group-owned stations in the news, public affairs, and editorial areas. [64] The fact that such diversity of viewpoint in local news reporting and in editoralizing on local issues exists alongside a group or network ownership structure means that it is indeed possible to have greater viewpoint diversity than there is ownership diversity. This, combined with the fact that commenters presented evidence indicating that network and group-owned stations are *more* likely than independents to editoralize, is important evidence that allowing increased group ownership will aid in providing consumers with the variety of information they want. [65]

[51] *Comments of the National Association of Broadcasters* at 20.

[52] *NBC Comments* at 133, citing FCC Television Broadcast Programming Data, 1979. These figures are suggestive but it would have been more useful to have controlled for network affiliation and VHF status as well.

[53] *Id.* at 131.

[54] *CBS Comments* at 50.

[55] *Id.* at 51.

[56] *Id.* For their local news alone, the CBS owned television stations received a total of at least 65 awards from professional associations in 1983," including "the prestigious Columbia-Dupont and George Foster Peabody awards . . . as well as a combined total of 26 Emmy Awards." CBS notes in addition that regularly-scheduled local issues programming—including interview broadcasts such as WCBS-TV's PUBLIC HEARING, a broadcast designed primarily to provide New York-area viewers with an opportunity to learn the views of area Congressmen and other political leaders; documentary broadcasts such as KMOX-TV's EYE ON ST. LOUIS; youth-oriented religious broadcasts such as WBBM-TV's DIFFERENT DRUMMER; and discussion broadcasts such as WCAU-TV's UPDATE and KNXT's INTERFACE—generally constitutes from 7½ to 17 hours of each station's weekly program schedule. In addition to these regularly-scheduled broadcasts, each station presents numerous locally produced "special" broadcasts, very often of a documentary or hard news nature—broadcasts such as WCAU-TV's prime-time political documentary, "Last Campaign of Lady Jane," and KNXT's special prime time news report, "Mexico in Crisis." *Id.* at 52.

[57] *Comments of Metromedia, Inc.* at 22–23.

[58] "Millers Court", *Id.* at 24.

[59] "Healthbeat" *Id.* at 24.

[60] *Id.* at 33.

[61] *See Comments of National Broadcasting Company, Inc.* at 25–42. The *Comments* detail the dramatic growth of cable and the enormous quantity and variety of cable programming.

[62] *Notice*, 48 FR 49449.

[63] *See Comments of CBS, Inc.* at 55, *National Broadcasting Company* at 132.

[64] Patrick, Lawrence W. and Howard, Herbert H., "Decision Making by Group Broadcasters," *Journal of Broadcasting*, 18:4 (Fall, 1974), pp. 465–71, cited in *Comments of National Association of Broadcasters at 21.*

[65] The following evidence is presented in the *Comments of CBS, Inc.* at 55–57:

[E]ach of the CBS Owned television stations regularly presents station editorials and editorial replies on issues of vital concern to its service area. While each of the stations has its own particular pattern, for the most part they present five, and sometimes as many as seven, separate editorial opinions or replies in a week. . . . A full-time editorial staff is maintained by each of the five stations.

The editorial positions of each station are established on an *entirely* autonomous basis by the individual station's editorial department (the operations of which are completely divorced from the operations of the station's news department). The fact that each station reaches its editorial positions completely independently (and that the monolithic "CBS Inc. position" assumed by much diversity analysis simply does not exist) is demonstrated by the considerable frequency with which a CBS Owned radio station in a particular market takes an editorial position directly opposed to one taken by the CBS Owned television station in the same market. For example, in 45 percent of the instances during the last four years in which a CBS Owned television station and a CBS Owned radio Station serving the same market have both made endorsements in a particular electoral race, they have endorsed opposing candidates. . . . It is

Continued

53. We also note that no evidence has been presented to the Commission by any commenter of examples of group owners suppressing independent viewpoints despite a specific request in the *Notice* for examples of such conduct. Equally, the Commission has been given no evidence indicating that stations which are not group-owned better respond to community needs, or expend proportionately more of their revenues on local programming, or editorialize more frequently on subjects of local interest, or produce more news, investigative journalism, or issue-oriented programming.

54. The Supreme Court has instructed that the public interest standard that governs the Commission's policies invites reference to First Amendment principles. *CBS, Inc.* v. *DNC*, 412 U.S. 94, 122 (1973). A cherished First Amendment principle crowns speech that addresses political or public affairs with maximum constitutional protection because of its centrality to efficacious democratic government. *Buckley* v. *Valeo*, 424 U.S. 1, 14 (1976). The record in this proceeding demonstrates that network and group owners offer the electorate more.

55. Accordingly, fidelity to First Amendment values and the public interest counsels the Commission against rules or policies that could artificially restrict group ownership of broadcast stations, thereby reducing the amount of the news or public affairs programming that fosters an informed electorate. The record assembled by the Commission supports the conclusion that our fundamental concern for a well-informed citizenry is better served by removing rather than retaining government barriers to group ownership of broadcast stations.

56. This recognition by the Court of the central role played by broadcasters in furthering First Amendment concerns, and of the importance of programming initiatives and judgements by those broadcasters, places a special burden upon the Commission as it seeks to regulate in the public interest in a manner consistent with these First Amendment principles. As it applies to this proceeding, we are compelled to give special weight to evidence showing a greater quantity of public affairs and news programming, as it is this programming which best advances First Amendment interests.

57. In this connection, some commenters also claim that the Rule of Sevens hinders the development of independent programming, and that raising the number of stations which a group may own could have a significant positive effect on the development of new programming. This claim is detailed in the Metromedia comments.[67] Metromedia asserts that it has invested significant resources in an attempt to "create new non-network programs to provide product for independent stations and to provide viewing alternatives for the American consumers" but the commenter claims that "the Commission's ownership rules have seriously impeded Metromedia's efforts." [68]

58. The argument made is that the

> Commission's dogged pursuit of the widest possible dispersion of station owners has had a perverse effect of assuring that no group owner can become strong enough to establish an independent voice separate and distinct from the networks.[69]

This is so because "[t]he creation of original television programming is an enormously expensive process. The existing affiliate structure provides each of the networks with more than 200 outlets against which it can amortize program costs. Under the numerical proscription rules, the group owner can be assured of only *seven* outlets for its product." [70] The result of this disadvantage is that the national advertising market takes on a high degree of importance for group owners: by obtaining national advertiser support for their independent programming, they can afford the production costs and compete with the networks. However, "[n]ational advertisers require clearance in at least 75 percent of the nations' television homes before they will commit to a program." [71] Metromedia states that it is unable itself to own enough stations to reach 75 percent of the market, and frequently is unable to obtain clearance for its programs from enough small owners to guarantee a 75 percent market reach. Metromedia further argues that the existence of several group owners with substantial market shares would enable them, singularly or in combination, to produce independent programming and challenge the networks in the national advertising market:

> Repeal or relaxation of the seven station ownership limitation would enable Metromedia, and other licensees, to build a base of stations in key markets sufficient to support the development of innovative new programs. Stronger station groups could then mount more effective competition to the dominant national networks and provide the American public with greater television program diversity.[72]

59. It is appropriate to note here that the Commission has reviewed with a critical eye the comments of the network and group owners on the subject of diversity of programming. However, the Commission may properly rely on the information contained in these Comments in reaching a determination in this rulemaking, as the Court of Appeals for the District of Columbia Circuit recently held in *National Association of Regulatory Utility Commissioners* v. *F.C.C.*[73] Thus, while the network and group owners' information concerning diversity of programming is not the only factor which has influenced our determination herein, we believe it places before the Commission important facts unavailable when the rule was adopted in 1953.

5. Conclusion

60. Within the United States, the most important idea markets are local. For an individual member of the audience, the richness of ideas to which he is exposed turns on how many diverse views are available within his local broadcast market. For that individual, whether or not some of those views are also disseminated in other local broadcast markets does not affect the diversity to which he is exposed. Accordingly, national broadcast ownership limits, as opposed to local ownership limits, ordinarily are not pertinent to assuring a diversity of views to the constituent elements of the American public.

61. It is true, however, that ideas can migrate from one local market to another. Thus it might be argued that there is First Amendment utility in preventing duplication of viewpoints amongst local markets to increase the likelihood that edifying ideas will

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notable that a distinct minority—and likely a very small minority—of television stations regularly editorialize. A 1982 survey on editorializing by the National Broadcast Editorialists Association and the National Association of Broadcasters drew responses from only 420 of America's roughly 900 commercial television stations, of which only 294 stated that they editorialize at all and only 103 stated that they editorialize more than once a week. Fifteen of those 103 stations are owned by network companies. Thus, while all stations owned by network companies editorialize at least twice a week, it would appear that a very modest fraction of the country's other commercial television stations editorialize with significant frequency—or at all. Newletter of the National Boradcast Editorialists Association, March-April, 1983, p. 2.

See also the *Comments of the National Broadcasting Company* at 131–132.

[67] *Comments of Metromedia, Inc.* at 25–27.

[68] *Id.* at 24–25.

[69] *Id.* at 21.

[70] *Id.*

[71] *Id.* at 25.

[72] *Id.* at 26. Also, see para. 98–99, 105–107 *infra*, for an explanation of why this mechanism will not be thwarted by network acquisition of stations.

[73] *National Association of Regulatory Utility Commissioners* v. *F.C.C.*, No 83–1225, slip. op. at 51–63 (D.C. Cir., June 12, 1984).

blossom and spread nationwide. It could be argued that national ownership rules might address this concern for the emergence of good ideas by preventing a single owner from echoing an identical voice in a large number of local markets. However, our concern for this theoretical benefit of the multiple ownership rules is answered by at least three factors. First, the record demonstrates that group owners do not impose monolithic viewpoints on local media outlets; indeed, the record demonstrates the opposite. Therefore, ownership by an entity of a number of broadcast stations located in different markets does not result in fewer viewpoints nationwide. Second, there is such an abundance of idea sources in the aggregate nationwide—more than 10,000 broadcast stations and more than 12,000 newspapers and periodicals—that eliminating the Rule of Sevens would at worst occasion an inconsequential decrease in idea sources nationwide. And even this decrease assumes that group owners will express identical viewpoints in the local markets where they own stations, an assumption contrary to the record.

62. Third, group ownership likely has offsetting advantages in enriching the variety of information available in the local community. Group owners may be able to devote more resources to news-gathering and other activities which improve the quality of programming presented. There is no evidence in this record suggesting that the hypothetical benefits from promoting many sources of ideas outweigh the benefits from new and more expensive programming made possible by allowing broadcasters and other mass media to choose the organizational structures they believe make them most efficient.

63. In light of the evidence presented by commenters on the irrelevance of national broadcast ownership levels to viewpoint diversity, the discussion above of such factors as the dramatic increase in the number of radio (especially FM) and TV stations since the Rule of Sevens was adopted, the inhibiting effects of the rule in the development of new programming, and the efforts of network and group owners in public affairs programming, the Commission concludes that the public interest, insofar as it relates to encouraging a diversity of viewpoints, would be well served by eliminating the restriction on the number of stations that a single entity may own nationwide.

B. Economic Competition

64. The other primary concern of the Commission when it adopted the Rule of Sevens was the prevention of anti-competitive activities. The Commission believed there was a danger that several owners would come to dominate the television and radio markets and wield power to the detriment of small owners, advertisers, and the public interest. Therefore, any review of the efficacy of retaining the Rule of Sevens must carefully examine, first, the advertising marketplace in which television and radio stations compete to determine whether altering the Seven Station Rules would present any danger of competitive harm, and, second, whether repeal of the rules might promote the more efficient operation of broadcast stations.

65. Regarding the possibility of competitive harm, the Commission notes the conclusion of the Department of Justice that "elimination of the Seven Station Rules will raise little risk of adverse competitive effects in any market," and that "license transfers involve no significant competitive risk merely because they result in common ownership of more than seven stations in a broadcast service."[74] The Department of Justice, which is the executive agency responsible for enforcing the antitrust laws and promoting competition,[75] reached this conclusion by defining and analyzing the relevant product and geographic markets.

1. The Relevant Product and Geographic Markets

66. Since the Department of Justice saw almost no chance of a lessening of competition by increased national ownership of radio stations, it focused its market analysis on television.[76] In defining that relevant product market, the Department noted that

> [t]he product supplied by conventional over-the-air and advertiser supported cable television presents unusual problems in market definition because viewers, the apparent consumers of television, are actually the "product" sold to advertisers, the real purchasers in the television marketplace. Programming, the apparent product of television, is merely an input into generating audiences. Broadcasters compete to obtain programming that will produce the largest audiences with the demographic characteristics most highly valued by advertisers.[77]

67. The Department's comments examine the possibility that the relevant economic product market should also include advertising available through newspapers, magazines and radio as well as television. The Department states that "[t]he threshold issue is the degree of substitutability between television advertising and advertising through other media . . . . [If] advertisers would readily respond to a price increase in television advertising rates by shifting to advertising on other media, then these other media are in the same market."[78] The Department found, though, that this substitutability does not exist to any great degree, largely because of "the greater impact on audiences of visual commercial messages than print or aural messages," and the fact that television "reaches a higher percentage of the population than any other media form."[79] However, the Department did note that "[t]his is a worst-case analysis. To the degree that advertising on other media is in the same market as television advertising, possible competitive effects of elimination of the rule would diminish."[80] Other commenters disagree with the exclusion of newspaper and radio advertising from the calculus.[81] While we question whether the product market should exclude all other advertising media as the Department proposes, for purposes of analyzing the effects of eliminating the Seven Station Rule we will use this worst case analysis and treat the TV and radio advertising markets as separate product markets.

68. We note that this discussion of advertising markets, however, is fundamentally different from our earlier discussion of the appropriate markets for judging viewpoint diversity.[82] Advertisers are concerned with numbers of viewers and readers, as well as the relative characteristics of print, audio and visual mediums to convey a commercial image, and these factors are properly considered under the rubric of "substitutability" in economic and antitrust analysis. Different considerations are involved, however, in determining the local availability of a variety of ideas, the question with which we concern ourselves when judging the viewpoint diversity necessary for rich public or political discussion.

69. Within the television advertising product market the Department of

[74] *Comments of the United States Department of Justice* (DOJ) at 2–3.

[75] *Id.* at 2.

[76] *Id.* at 8, 26.

[77] *Id.* at 10.

[78] *Id.* at 11.

[79] *Id.* at 12.

[80] *Id.* at 13.

[81] *Comments of CBS, Inc.* at 22–25.

[82] *See* paras. 24 to 63, *infra*.

Justice concluded that there are two separate product markets: that for network advertising, and that for spot advertising. It defines the former as "advertising that is displayed over nationally distributed television programs" and the latter as "advertising that is broadcast by local stations and sold by the stations or their representatives."[83] The Department explains that "[f]irms that market nationally are not likely to find spot to be an effective substitute for network advertising in achieving nationwide coverage. Networks give advertisers access to a substantial portion of all television households at a specific time and day. Acquiring such advertising coverage through spot contracts would involve substantially higher . . . costs. Firms that sell in limited geographic areas, on the other hand, would not substitute network advertising for spot advertising. It would not be cost effective for such firms to pay to reach large numbers of viewers outside of the area in which they operate."[84]

70. The Department of Justice defines the relevant geographic markets as being nationwide for the network advertising market and local for the spot advertising market. It explains that "[a]lthough the major networks sell some regional advertising, the overwhelming amount of their advertising has national coverage. Thus, network advertising is, by its very nature, national."[85] For spot advertising, however, the advertiser seeks to reach specific local markets. If the price is too high, the amount of advertising may be lowered, but it will not be switched to another market.

71. Having defined the relevant product and geographic markets for television, the Department of Justice assesses the likelihood of competitive harm. It notes that the national advertising market is "dominated by the three national networks," as they are virtually the only nationwide television distribution services. Nonetheless, the Department concludes that elemination of the Rule of Sevens will not increase concentration in the national network market, because each network has already achieved access to almost every local market through its affiliation agreements.[86] In the local spot market, the Department concludes that "[s]ince spot advertising is sold in local geographic markets, and the rule does not address concentration in those markets, a rule change should not affect competition in spot advertising."[87]

72. The competitive analysis for radio is similar. Using the worst case approach, radio advertising is a separate product market. The geographic market for determining whether a radio station operates in a competitive market is the local market in which its signal can be received.[88] A report to the NAB by Professor Michael Wirth concluded, "The primary issues regarding concentration are not with respect to national concentration."[89] Support for defining the radio market as a local one can be drawn from the nature of the market itself. To argue that two radio stations are in competition if their transmitters are in different areas of the country and they cannot therefore be heard by the same audience is inherently illogical. "Radio is a quintessentially local medium. Most radio programming, for example, is developed locally for local broadcast. Radio stations rely to a large degree on music, news and talk formats, all of which are oriented to local production and distribution."[90] Further indications of the importance of the local market may be drawn from the fact that 74.5 percent of advertising on radio comes from local sales, a figure which has risen steadily over the last twenty-five years[91] As commenters note, it is the characteristics of the broadcast market—station ratings, degree of competition in the listening area, demographics—that determine the advertising market, and these characteristics are all local.

73. Under these circumstances, the fact that local competitors may share common ownership with stations in other markets is unimportant in terms of competitive harm. The important consideration is instead the Commission's local rules, which restrict common ownership in local markets. These rules, as we have stated elsewhere in this *Report and Order*, are not changed by this proceeding. In sum, we believe that the prohibition against common ownership of two competing stations in the same market and service makes the Rule of Sevens unnecessary as a guarantee against competitive harm.

2. Measuring Concentration in a Hypothetical National Market

a. Current Concentration Levels

74. The preceding analysis, which relies on a worst case scenario, provides ample reason for concluding that elimination of the rule could result in no competitive harm. The rules simply do not affect competitive performance in the relevant local markets. Moreover, even considering a hypothetical national market and even putting to one side the alternative video and other mass media, it is clear that there is no undue economic concentration for TV alone. The revenue concentration ratios for the top three, six, and twelve group owners of television stations, that is, the percentage they earn of total industry revenues, are 14.2 percent, 23.0 percent and 34.9 percent, respectively.[92] Our staff's calculation, using the Department of Justice's preferred concentration index[93], yielded a value of 229 for the hypothetical national television market. The Department generally considers an index of 1,000 to be the minimum level at which antitrust concerns are raised.[94] One commenter has calculated these measures based upon audience rather than revenue shares, and states that no single owner's share of the potential audience exceeds 3.8 percent, and that the top three, six, and twelve groups have combined shares of only 11.2, 19.7, and 30.1 percent, respectively. This calculation also shows a concentration index for all continental U.S. television stations, based on audience-share figures, of only 115.[95] These relatively

[83] *DOJ Comments* at 13.

[84] *Id.* at 14.

[85] *Id.* at 17.

[86] *See Id.* at 20–23. We note that the Department is not sanguine that eliminating the rules will stimulate rivals to the network dominance of the national advertising market. *Id.* Some commenters believe, however, that relaxing the rule will promote the production of attractive new programming. *Comments of Metromedia, Inc.* at 20–28. If this happened, then national advertising prices might be affected.

[87] *DOJ Comments* at 22. But see the discussion at para. 102 *infra*.

[88] *Measurement of Concentration in Home Video Markets, supra* note 23, at 53–54.

[89] M.O. Wirth, "The FCC's Multiple Ownership Rule and National Concentration in the Commercial Radio Industry," (NAB 1981) (hereinafter *Wirth Report*) at note 153.

[90] *Joint Comments of Broad Street Communications Corp., Cox Communications Inc., and Plough Broadcasting Co., Inc.* at 20.

[91] Bureau of the Census, 1982–1983 *Statistical Abstract of the United States* at 558. In 1960, local sales constituted 61.3 percent of radio station revenues; in 1970 they were 67.9 percent and in 1980 they were 74.5 percent.

[92] *Notice*, 48 FR 49447.

[93] The Herfindahl-Hirschman Index (HHI) is used as a measure of relative market concentration. This is an index designed to quantify the threat of anticompetitive practices and undue economic power based upon the structure of an industry.

[94] See *U.S. Department of Justice Merger Guidelines*, issued June 14, 1982. The HHI calculation by our staff is actually an upper bound. When the market shares of all the smaller forms are not known, an upper bound value for the index may be calculated based on "worst-case" assumptions about the size distribution of these shares. See *Notice* at 36–37. One commenter states that comparable HHI figures for other industries are 755 for steel, 925 for semiconductors, 2308 for cigarettes, 2325 for aluminum and 3504 for domestic automobiles. *Comments of CBS, Inc.* at 20, citing unpublished study of John Kwoka, Associate Professor of Economics, George Washington University.

[95] *Comments of CBS, Inc.* at 21.

low levels of concentration are explained by the fact that "those group owners with the largest potential audiences generally operate in the markets with the largest number of competing television stations."[96]

75. The radio market has now developed to the point where it is considered to be extraordinarily unconcentrated. Our staff's calculation of the Herfindahl-Hirschman Index (HHI) for the radio industry is 77 on a scale on which 1000 is considered the minimum level for generating antitrust concerns.[97] The Wirth Report states that ". . . the radio industry is essentially unconcentrated at the national level. Since nearly 74 percent of this country's radio stations are non group-owned, competition at the national level would appear to be more than adequate."[98] We find it hard to imagine that this conclusion will change. The Wirth Report notes that group ownership has increased, but at such a slow pace that "if the number of radio stations on the air stayed fixed at its 1980 level, and group ownership continued to increase at this pace, it would take 149 years for all of the commercial radio stations in the United States to come under some form of group ownership."[99]

b. A Media Concentration Index

76. Consideration of a national TV and radio market raises the issue of the desirability of developing a mass media concentration index. Initially the Commission seriously considered the concept of an index. Having considered the comments filed in this and the cable network proceeding, including a study of the issue by the Commission's Office of Plans and Policy, we now believe an index of the appropriate media is neither feasible nor necessary. Although some commenters suggested that it is appropriate for the Commission to establish criteria by which media concentration can be judged, no commenter in this proceeding or in the related cable-network crossownership docket proposed a mechanism for creating a media concentration index. Moreover, several convincing arguments against such an index were advanced.

77. First, some commenters asserted that the relevant market is a local one, so that national concentration indices are irrelevant. NTIA, for example, urges the Commission to develop guidelines for a more sophisticated application of our local market rules, while eliminating the national Seven Station Rule.

78. Second, some commenters suggest that the Commission can safely defer to the Department of Justice or the Federal Trade Commission to guard against anticompetitive behavior. They note that there exists an elaborate structure of antitrust law, and an effective system of enforcement.[100]

79. The third point, one on which there is wide agreement, is that developing an index would be enormously complicated. Commenters cite differing standards for economic competition and diversity, problems of product market definition (how to aggregate single channel and multichannel video media and how to aggregate print, audio, and video media), the necessity to revise the index as technology changes, problems or aggregating subscriber and advertiser supported media, and problems of measuring market share (revenues versus availability versus viewership or subscribership) systems and many of these problems can be illustrated by trying to fit cable systems and broadcast outlets into one index. The Commission would have to decide whether a cable system represented one independent viewpoint or whether each channel not affected by the Commission's must carry rules or by local access channel requirements consititutes an additional viewpoint. Likewise, there is no clear basis for measuring market share between the two media. If revenues are used, it would likely overstate the significance of the pay services. If availability to viewers were used, cable passby rates would have to be lumped together with estimates of the population residing within various broadcast contours. Lastly, if a subscribership approach were used, paid subscriptions would have to be compared with net weekly circulation figures.[101]

80. Fourth, many commenters argued that the market, however defined, is so unconcentrated now that it is unlikely to become concentrated quickly in the absence of the rule. These parties differed on the question of whether the Commission should develop "merger guidelines" of its own, but even those who advocate such a course suggest that there is plenty of time to develop guidelines if necessary after the rule has been repealed.

81. The fifth proposition is that combinations should be handled on a case by case basis. This was supported by a wide range of commenters, those advocating guidelines and those opposing them. Because we are persuaded by the above arguments, we believe that it is unnecessary to develop and employ a media concentration index at this point.

3. The Potential Efficiency Gains from Repeal

82. Elimination of the rule may allow group owned television and radio stations to exploit important efficiencies. First, in Section III.A.3 above, we described the record evidence that supports the proposition that group ownership can foster news gathering, editorializing and public affairs programming, and the development of independent programming by regional or national *ad hoc* networks. Besides advancing the Commission's diversity goal by providing alternatives to the three television networks, such improvements would generate both programming preferred by consumers and more efficient use of the broadcast spectrum. Second, some buyers of stations may have superior skills. Those with superior managerial abilities may be able to do a better job of matching programming to local tastes and thus garner larger audiences. In these cases, the owners who do a better job of satisfying consumer demands earn more from the station and hence value it more highly. Society is well-served by such acquisitions. Third, some group owners may have cost advantages derived from economies of scale. These economies may mean that the cost of operating an additional station is less for a group owner than would be the cost of running a single station for a new owner. These economies of scale may stem from the ability to spread the services of management, bookkeeping, secretarial, sales, and programming personnel over a number of stations, and the potential for group advertising sales and program purchases.

83. While these and other kinds of efficiencies are plausible, indeed probable, the current seven station limit makes it difficult to assess how significant they might be. The probable effect on station trading prices may give some indication of their existence and size. Owners and prospective owners of broadcast stations are business people who are interested in obtaining maximum profits from their holdings. As such, all of them—networks, group owners, and individual owners—use the same general procedure to calculate how much they are willing to pay for a broadcast station. Each estimates the stream of net revenues the station would

[96] *Id.*

[97] *Notice*, 48 FR 49447.

[98] *Wirth Report* at 11.

[99] *Id.* at 73.

[100] *Comments of the National Association of Broadcasters* at 15–16.

[101] For a more detailed discussion see *Measurement of Concentration in Home Video Markets, supra* note 23, at 67–99.

yield over the time it will be owned, and then determines how much it is willing to pay to purchase that yield, plus the potential for an increase in market value.[102] When there are several bidders for a station, the winner will normally be the one to whom the station is worth the most. As noted, the station to be purchased might be worth different amounts to different buyers, depending on the stream of net revenues the station would provide to each.

84. There are two alternative reasons why a station might be more valuable to group buyers no longer constrained by the Seven Station Rule. The first possibility is that the acquisition would permit the group owner to act in an anticompetitive manner. That possibility was analyzed and found to be highly unlikely by the Department of Justice and by this Commission.[103]

85. The second possibility is that there are untapped efficiencies of group ownership, which would make additional stations more valuable to group owners. If that were the case, station prices would rise because the efficiencies will increase their value to group buyers. After their review of several studies concerned with the correlation between group ownership and trading price, Besen and Johnson,[104] two Rand corporation economists, conclude that these efficiencies are limited and that station prices are accordingly unlikely to rise significantly. The fact that few groups are at the current ceilings in a very competitive station acquisition market is consistent with this conclusion. However, it is possible that greater efficiencies of size may exist at some level above seven stations, which would explain why an owner unwilling to purchase a total of seven stations might still find it advantageous to own ten or fourteen. This theory would be consistent with the argument commenters made that larger group owners could more easily form ad hoc networks.

86. In sum, given that we see little possibility that repeal of the rule could cause competitive or diversity harm, we believe licensees should be afforded the opportunity to exploit any possible efficiency from group ownership. While the empirical record on their magnitude is weak, the efficiencies posited by the commenters are plausible. Furthermore, given that efficiencies could really only be proven if the rule were eliminated, ironclad proof of their existence should not be a requirement to justify repeal.

C. Additional Issues

1. The Impact On Minorities

87. Several commenters have suggested that relaxation of the Rule of Sevens may have a deleterious effect on minorities. In the course of many years of study, hearings, and Commission actions, however, it has not before been suggested that the Rule of Sevens does, or was intended to, play a vital role in the development of minority ownership or of minority-oriented programming. Before examining this issue in detail, it is important to note that the Commission has long been dedicated to expanding minority participation in broadcasting.

88. The Commission has taken many actions to stimulate minority ownership. In 1978, the Commission instituted its tax certificate and distress sale policies for broadcast properties.[105] These policies have facilitated the acquisition of at least 71 broadcast stations.[106] In 1982, in response to recommendations by the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications, the Commission extended the tax certificate policy to cable television, more liberally defined minority owned limited partnerships, and extended tax certificates to individuals selling their limited partnership interest to a minority general partner.[107]

89. The Advisory Committee also made recommendations for legislative changes. The Commission sent two of them on to Congress. These recommended amendment of the Internal Revenue Code to 1) allow the grant of tax certificates on sales of nonbroadcast properties and 2) increase from $125,000 to $5 million the maximum value of used equipment that can be used for calculating the investment tax credit.[108] Both recommendations target the financial constraint facing would-be minority broadcasters.

90. Our recent relaxation of the ownership attribution rules [109] (which had also been urged by the Advisory Committee) will also act directly to relieve the financial constraints facing minorities. By raising significantly the level at which ownership is attributed, the Commission has made it possible for entities such as venture capital firms and institutional investors to provide financing to a wider range of stations. This will facilitate, for example, arrangements in which a minority general partner raises money from a series of limited partners to finance a station. Indeed, relaxation of the Seven Station Rule will enhance this effect. Finally, in response to a Congressional mandate, we have instituted significant minority preferences in lotteries used to select licensees in mass media where the licensee controls the content.[110]

91. Some commenters suggest that any changes the Commission makes in the Rule of Sevens will likely damage the interests of minorities. Their concern appears to center on the possibility that altering the rule will lead to higher station prices, thereby raising the cost of entering the broadcast market, and that this will particularly disadvantage minority entrants.

a. The Significance of Station Prices

92. A number of commenters have suggested that any increase in the number of stations that may be owned by a single entry will lead ineluctably to a general increase in station prices.[111] Indeed, some commenters' primary objection to changes in the rule is bottomed on this perception and on the concomitant suggestion that such a general price rise would make it more difficult for minorities to purchase stations.[112] While we have no hard evidence that station prices will rise as a result of repeal of the Rule, we nonetheless consider the effect on minorities if they were to rise. We must note that the Seven Station Rule was not intended as a mechanism for artificially

[102] The economic value of a station can be determined by estimating the net revenue stream over the period of ownership and the expected resale price at the end of that period, and discounting them to current dollars.

[103] See para. 66–75 above.

[104] S.M. Besen and L.L. Johnson, "An Analysis of the Federal Communications Commission's Group Ownership Rules." Rand Corporation, January 1984, at 24–32. Submitted in Gen. Docket 83–1009. For a discussion of the "present value" technique of valuing investments, see E.M. Mansfield, *Microeconomic Theory and Applications*. 3rd ed. (New York, W.W. Norton, 1975), pp. 505–11.

[105] *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 (1978).

[106] *See* Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications "Strategies for Advancing Minority Ownership Opportunities in Telecommunications" (May 1982) at 4, 7.

[107] *See* "FCC Acts to Increase Minority Participation in Telecommunications Field," FCC News Release, Report No. 5112, December 3, 1982.

[108] *Id.*

[109] *See Report and Order* in MM Docket 83–46, 49 FR 19482 (May 8, 1984).

[110] *Second Report and Order* in Gen. Docket 81–768, 48 FR 27182 (June 13, 1983).

[111] *See*, for instance, *Comments of Black Citizens for a Fair Media; League of United Latin American Citizens; National Association for the Advancement of Colored People; National Association for Better Broadcasting, and National Conference of Black Lawyers Communications Task Force* at 56; *Comments of National Association of Black-Owned Broadcasters* at 2; *Comments of Monetta K. Anderson* at 10; *Comments of the National Black Media Coalition* at 9; and *Comments of Karen R. Osborne* at 10.

[112] *See, Id.*

deflating the prices of stations. Indeed, as explained in para. 82–86 above, the record persuades us that if station trading prices increase it will be because the new group-owned stations can operate more efficiently. And such increases in station prices would be commensurate with the benefit to the general public. These findings place a heavy burden on those commenters seeking to use the rule as a mechanism for deflating station prices by impeding the achievement of business efficiencies and thereby promote minority ownership. We do not believe they have met that burden.

93. Furthermore, the Commission has determined, primarily through the Advisory Committee, that the major barrier to increased minority ownership is the unavailability of adequate financing. This being the case, the possibility that a relaxation in the Rule of Sevens may lead to higher station prices does not, in itself, disadvantage minorities. The argument is made by several commenters that minorities will be injured by higher station prices because they will be less able to pay them.[113] In this regard we note the following three points. First, the Seven Station Rule was not designed to foster minority ownership in the broadcasting industry and has not yielded such an effect. Second, the current limit of seven has not ensured that stations are priced today within economic reach of minorities, especially in major markets. In such markets, broadcast station prices are already extremely high. While large cities are not the only markets of interest to minority owners, the concentration of minority group members (in particular, Blacks, Hispanics, and Asian-Americans) in the urban markets suggest that these are markets of particular interest. Those with limited financing are already precluded from these markets. It is precisely this situation which has led to Commission concerns about minority ownership. Third, should station prices indeed rise, this event would only indicate that additional stations are of economic value to group owners, a fact which would be of equal significance to minority and non-minority owners in making station ownership decisions, and in justifying financing for those decisions.

94. In conclusion, we believe it is the availability of adequate financing for station acquistion that is of crucial importance to prospective minority owners. Therefore, the appropriate focus of our efforts is to promote the availability of financing to minorities on equal terms with all other owners. If it is, then minorities will be on an even footing with others in bidding for stations at market prices. If such financing is not made available to minorities, then will remain largely unable to purchase stations, either at yesterday's prices, today's high prices, or the hypothetically even higher prices following relaxation of the Rule of Sevens. Minorities *per se* are no more disdavantaged by marketplace prices than any other small would-be owners; if financing can be made available through Commission actions, then marketplace prices can be paid. If financing is unavailable, then it makes little difference how high marketplace prices go. It would be inappropriate for the Commission to retain or adopt rules in order to deflate market prices artificially so as to assist any particular group.

b. The Effect on Minority Programming

95. Finally, some commenters suggest that altering the Rule of Sevens may threaten programming diversity because existing minority owners may sell their stations to other, non-minority, owners should the value of those stations rise as a result of greater demand for stations.

96. There is no evidence in the comments presented to the Commission that minority owners would sell their stations in disproportionate numbers or not acquire new ones, or that among wholly new entrants there would not be some minority owned entities. It is, moreover, wholly inappropriate for the Commission to "protect" minority owners from the opportunity to sell their stations at a profit if they so choose. Such action would constitute a form of paternalism that is neither necessary nor appropriate.

2. The Special Case of the Three TV Networks

97. We do not believe that the three broadcast networks when they function as group owners should be treated differently from other groups. While a few commenters[114] have raised the possibility of anticompetitive effects from network ownership of additional stations, we find the arguments unpersuasive. The Department of Justice has characterized network operation of broadcast stations as a form of vertical integration, and we concur. Networks produce programming, sell advertising, and own broadcast outlets. The question is whether the market would be harmed by allowing networks to extend their activities at one level of this vertically integrated structure by purchasing more outlets. The major potential harm from vertical integration is foreclosure of access of independent producers to audiences. Should it occur, foreclosure would have adverse consequences for both competition and diversity. We discuss the issue of foreclosure below, then consider diversity concerns, and examine allegations concerning advertising markets. Finally, we review the networks' arguments for nondiscriminatory treatment.

a. Foreclosure

98. The acquisition of a local station by a broadcast network is essentially a vertical combination. Vertical integration may improve the efficiency of broadcast operations. It has the potential for anticompetitive consequences only when most or all outlets in a significant area are commonly controlled. In that situation, rival networks or other sources of programming may be foreclosed from access to the public.[115] The Commission's various local ownership rules would generally prevent a network from controlling more than one broadcast outlet, radio or TV, in a local market.[116]

99. Given that safeguard, we do not believe that network acquisition of affiliates[117] would have a significant effect on rival programming networks. The Network Inquiry Special Staff, in recommending reconsideration of the multiple ownership rules concludes that a ban or limitation on the networks' ability to own broadcast stations cannot be justified on

[113] *See*, for instance, *Comments of Black Citizens for a Fair Media; League of United Latin American Citizens; National Association for the Advancement of Colored People; National Association for Better Broadcasting, and National Conference of Black Lawyers Communications Task Force* at 56; *Comments of National Association of Black-Owned Broadcasters* at 2; and *Comments of the National Black Media Coalition* at 9.

[114] *See, e.g., Comments of Turner Broadcasting System, Inc.*

[115] For a discussion of the potential efficiencies of vertical integration and the low likelihood of foreclosure see K. Gordon, J. D. Levy and R. S. Preece *FCC Policy on Cable Ownership*, Office of Plans and Policy, Federal Communications Commission 1981, at 108–15, 183–93. See also Network Inquiry Special Staff, Federal Communications Commission. *New Television Networks: Entry, Jurisdiction, Ownership and Regulation* (October 1980). Vol I at 394–400 for similar conclusions based on a specific analysis of the broadcast networks.

[116] *See* Note 6, *supra*.

[117] It is possible, but in our view unlikely, that networks would seek to acquire independent stations and maintain affiliation with other stations in those markets. We, like the Department of Justice, would scrutinize such potential acquisitions carefully. In particular, we would need to determine if they constitute a violation of § 73.658(f) of our rules. Absent compelling circumstances, it is doubtful that we would approve such an acquisition.

the grounds that such vertical integration will injure potential competition in the networking market. Rather it is the horizontal concentration of station ownership at the national and local level to which attention should be turned.[118]

The Department of Justice points out that affiliates have not played a major role in the formation of prime time *ad hoc* network.[119] Network affiliates already clear 97 percent of the networks' prime time schedules and 87 percent of the daytime feed.[120] Even if those percentages rose to 100, the marginal effect on time available to non-network programmers would be small. In other time periods, including non-network feed time periods, owned and operated stations presumably want to obtain the most popular programming. We do not believe that network ownership would result in stations' refusing to transmit programming of intense local interest in order to clear a less desirable part of the network feed. Network ownership of additional affiliated stations is thus unlikely to hamper the formation of additional part-time networks.

b. Diversity

100. Some commenters [121] allege that network ownership will reduce diversity. We find their arguments unconinvcing. INTV claims that the network and its affiliates have different editorial voices, and that diversity would therefore the reduced by a combination. The networks reply that they are organized in a decentralized fashion, and that their local owned and operated stations are editorially independent. As discussed previously, we believe that, in general, decisions concerning local coverage are made by individual stations, whether affiliated or network owned.[122] Furthermore, much of the national and international component of news programming comes from the networks now. Thus, it appears that any loss in editorial viewpoint diversity would be minimal. In any event, the number of alternative viewpoints available to any viewer in a local market would be unaffected by network ownership of a station currently affiliated with it.

101. The Motion Picture Association of America charges that owned and operated stations carry less "independently-produced" programming than affiliates, and that this situation would be exacerbated by increased network ownership of stations.[123] CBS counters that owned and operated stations carry less "Hollywood" programming because they do more locally produced public affairs and news.[124] We have observed, above, that the danger of the networks adopting a foreclosure strategy is slight. In this context, we must give deference to the programming judgment of station managers. If owned and operated stations choose to carry more locally produced or station group produced programming than, say, the average affiliate, we have no basis for assuming that this is an anticompetitive or diversity-reducing result.

c. Advertising Markets

102. A few commenters raised the possibility that network ownership of additional stations might facilitate collusion or tie-in transactions in the advertising market place. We are persuaded by the analysis of the Department of Justice that these allegations are without merit.[125] Whatever degree of coordination exists among the networks is due to their comprehensive and parallel groups of affiliates. The Department of Justice points out that the structure of the market for national advertising will be unchanged by network acquisitions.[126] Justice concludes that the spot market is a separate one, so that network acquisitions would not affect the national market. Thus, we conclude that the networks' dominant position in the national advertising market would not be affected by additional owned stations. Indeed, if anything, advertising markets will become more competitive after the Rule is relaxed. Justice pointed out that spot rates provide a loose constraint on network rates, but that the greater transaction costs put them in a separate market. Thus, if larger non-network groups do form, this could reduce the transactions costs of assembling wide area coverage via the spot market, and actually put more pressure on network rates.

103. The allegations that network ownership of additional stations might allow networks to exploit tie-in arrangements between network and spot advertising or between network and syndicated programming are unsupported by evidence or logic. The networks have each owned five large market stations for many years and no evidence of this behavior has surfaced. Furthermore, no explanation is presented of why competition among networks and with independent stations would not prevent these alleged abuses.

104. These considerations suggest to us that the networks have little opportunity for acquiring market power or facilitating collusion by purchasing additional stations. Thus, as the Department of Justice concludes, they will be unwilling to pay more than the market price for any station. To the extent that there are *bona fide* efficiencies associated with group owership, certain stations will be worth more to the networks as groups than to other buyers. Hence, the networks will likely be able to acquire some stations. However, contrary to the contention of TRAC, networks will have no special incentive or ability to acquire affiliates in order to gain total programming control without paying a fee to the affiliate. Nor will networks have any special power (or incentive) to force affiliates to sell by threatening them with loss of affiliation. The one alleged example of this behavior occurred thirty years ago and was stopped by judicial action.[127]

d. The Case for Equal Treatment

105. Although network ownership of additional stations would not have the advantage of stimulating additional nationwide programming (since the networks already provide a full schedule), the networks offer other reasons for not treating them differently. First, they claim that their stations are particularly well-managed and provide an unusually large amount of local programming.[128] Thus, they imply that it would be beneficial if their superior management skills and organization were spread over more stations. It is

[118] Network Inquiry Special Staff, Federal Communications Commission. *New Television Networks: Entry, Jurisdiction, Ownership and Regulation* (October 1980). Vol. I at 399.

[119] *DOJ Comments* at 24–25.

[120] *See* Network Inquiry Special Staff, Federal Communications Commission. *New Television Networks: Entry, Jurisdiction, Ownership and Regulation* (October 1980). Vol. II at 262.

[121] *See, e.g. Comments of the Association of Independent Television Stations, Inc.* in Gen. Docket No. 83–1009 at 7–8; and *Reply Comments of Turner Broadcasting System, Inc.*, in Gen. Docket No. 83–1009 at 7–10.

[122] *See* para. 52–53, *supra*, and accompanying notes.

[123] *Comments of the Motion Picture Association of America, Inc.* in Gen. Docket No. 83–1009 at 2–6.

[124] *Reply Comments of CBS, Inc.* in Gen. Docket No. 83–1009 at 6–9.

[125] *See DOJ Comments* at 19–26 and *Reply Comments*, of the United States Department of Justice in Gen. Docket 83–1009 (February 21, 1984) at 3–10.

[126] *DOJ Comments* at 19–23.

[127] *See National Broadcasting Co., Inc.*, 37 FCC 427 (1964), which chronicles a dispute dating from 1954.

[128] *See, e.g., Comments of National Broadcasting Company, Inc.* in Gen. Docket No. 83–1009, January 19, 1984, at 130–133 and *Comments of CBS Inc.* in Gen. Docket 83–1009, January 19, at 49–60. The owned and operated stations also produce some programming of general interest, but our syndication and financial interest rules limit their incentives to do this. The consent decrees entered into by the three networks with the Department of Justice provide additional limitations.

clear that network-owned stations have rendered meritorious service to their local communities, and it is possible that this service is tied to the management and support resources provided by the parent company. It is possible that network owned stations are able to attract particularly talented management personnel due to the possibilities for advancement to the network.

106. Second, the networks assert that it is unfair and unwise to discriminate against them *vis a vis* other program packagers. Cable network companies, for example, are not limited in vertically integrating by owning cable systems. Broadcast networks are not only limited in their ownership of television stations but are currently prohibited from owning cable systems, [129] although cable network companies are not prohibited from owning television stations. The networks point out that currently they account for only 55 percent of programming expenditures.[130] They assert that they are in stiff competition for programming with the non-broadcast media now [131] and are entitled to equal treatment.

107. Together with these potential benefits we add our earlier conclusions: 1) that the case for repeal of the rule has been made, and 2) that the case for treating the networks differently has not been made. There has been no demonstration that the benefits we perceive from increasing group ownership will be adversely affected by allowing networks to increase their station ownership.[132] Equally, we have not been convinced of the alleged dangers of increased network ownership. In short, we have no basis for imposing additional restraints upon the networks. To place such a cap on the networks might, therefore, be construed as arbitrary and capricious, unsupported by the record before us.

IV. Conclusion

108. We believe the record in this proceeding convincingly establishes that the appropriate market for ideas is primarily local, and includes a broad variety of means of communication, especially cablecasting, newspapers, and opinion magazines, in addition to radio and television; that, to the extent the idea market is a national one, it is sufficiently diverse so as to be unaffected by a change in the Seven Station Rule; and that network and group owners contribute to viewpoint diversity through the quality and quantity of their public-affairs programming. Further, the record establishes that there is no danger of excessive economic concentration in the relevant competitive markets, and that there are potential efficiency gains from repeal of the rule. Finally, we believe the record shows that repeal of the rule will not have an adverse effect on minorities, that there are other, more appropriate and effective vehicles for achieving minority objectives, and that separate restrictions on the three national networks are neither justified nor wise. Accordingly, we are eliminating the Seven Station Rule, and replacing it with a temporary ownership limitation, in the belief that the public interest will be substantially benefited by this action. However, the Commission will continue to scrutinize each acquisition to assure itself that the acquisition does not contravene any of the Commission's public interest concerns, particularly those related to diversity and competition.

109. We recognize, in addition, that the communications marketplace is undergoing rapid change. Prudence and caution thus call for a transition that provides for monitoring and special scrutiny of sharp departures from the current status of the broadcast industry.

110. Nevertheless, as discussed above, we recognize the concerns of some commenters that, if the rule were repealed immediately and in its entirety, a significant restructuring of the broadcast industry might occur before all ramifications of such a change became apparent. While the record contains no evidence of potential harm from the ownership changes that would be made possible by immediate repeal of the rule, out of an abundance of caution, the Commission is establishing a transitional limitation for a period of six years during which multiple station ownership in each broadcast service will be capped at a numerical limit of 12. We do not encourage waivers of the 12 station limitation during its six year existence.[133]

111. Raising the ceiling to a twelve station transitional limitation is reasonably related to the expansion in the number of broadcast facilities that has occurred since the rule of sevens was adopted; indeed, it is conservative in comparison to the industry's growth. Accordingly, we believe that this modification is fully justifed as a cautious first step while we look toward eventual elimination of this transitional limitation. Also, by raising the existing numerical cap, the Commission will provide all group owners with some flexibility to acquire new properties. This approach will give the Commission a better opportunity to examine the dynamics of a less regulated marketplace than would an approach that constrained growth among the larger group owners.

112. The telecommunications marketplace is undergoing rapid growth. Undue regulatory intervention can be one of the most significant hindrances to assuring that the public receives the best possible service from the telecommunications scheme adopted by Congress. It is the Commission's belief that this transitional approach will permit immediate implementation of the benefits of increased group ownership as supported by the record. The next six years will permit detailed scrutiny of the demand for, and effects of, increased group ownership as well as permit time for further development of some of the alternative telecommunications media discussed in the Order. While this decision may be criticized as unduly conservative in light of the Commission's conclusion that the national ownership ceiling is no longer warranted, we believe that this approach sufficiently meets the needs of the present, while permitting the agency to take a second look to ensure that total elimination of the rule is fully warranted.

113. Authority for the rule changes adopted herein is contained in Sections 4 (i) and (j), and 301, 303, 308 and 309 of the Communications Act of 1934, as amended.

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[129] This rule is under reexamination. *See Notice of Proposed Rulemaking* in CT Docket 82–434, 91 FCC 2d 76 (1982).

[130] *Reply Comments of CBS Inc.* in Gen. Docket 83–1009 February 21, 1984 at 12.

[131] *Reply Comments of American Broadcasting Companies, Inc.* In Gen. Docket No. 83–1009. February 21, 1984 at 10–17.

[132] We believe that there will be ample opportunity for non-network groups to expand and realize these benefits, including an increase in diversity of programming, even though they may have to bid against the networks for stations. While those groups might prefer to be insulated from network competition in the bidding, we are not in the business of subsidizing non-network groups, or for that matter, network groups. Our presumption is that broadcasting firms should be free to structure themselves in the most productively efficient manner in response to marketplace demands, provided that our diversity goals are met. In view of our conclusions on the importance of the local market for diversity, the large number of outlets nationwide, the likely expansion of non-network groups, and the *bona fide* efficiencies of network ownership, we see no danger that equal treatment for the networks will thwart the diversity benefits of increased non-network group ownership.

[133] By law, however, we cannot preclude consideration of waiver requests. However, a waiver applicant during this transition would face a "high hurdle." *WAIT Radio* v. *FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

114. Accordingly, it is ordered, that effective 30 days from the date this Report and Order is published in the **Federal Register**, Part 73 of the Commission's Rules and Regulations is amended as set forth in the attached Appendix.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 73—[AMENDED]

Part 73 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

§ 73.3555 [Amended]

1. In Subpart H, § 73.3555, paragraph (d) is deleted.

2. In Subpart H, a new § 73.4285 is added to read as follows:

§ 73.4285 National multiple ownership of broadcast stations.

See Report and Order in Docket No. 83–1009, FCC 84–350, adopted July 26, 1984, —— FCC 2d ——, —— FR ——, August 9, 1984.

July 26, 1984.

Statement of Mark S. Fowler, Chairman

Re: Elimination of Seven-Station Rule

One of my major objectives as Chairman has been to make the rules governing the broadcast industry more rational. Today's decision is a sensible, and sizeable, step in that direction.

The seven-seven-seven rule was a wholly artificial principle. It took a snapshot of the broadcast industry's structure as it was in 1953 and then left the industry in freeze frame for over 30 years.

Based on the many comments we received, and in particular the views of the Department of Justice, today we put the industry back in motion. We have removed the artificial seven-station restriction. This will give those who wish to grow in broadcasting the opportunity to do so. At the same time, in an abundance of caution, we have adopted a transitional limitation of 12, which will apply for the next six years.

During that time period, we will be able to watch the growth of the industries. At the end of this period, unles we find there is undue concentration the 12-station transitional limitation will disappear. Broadcasting will then be able to rejoin the family of American businesses under the general laws that regulate competition, no longer arbitrarily singled out for straight-jacket treatment.

I want to address two points raised in Commissioner Dawson's dissent that I think unfairly attack this decision. Let me say, first, that Commissioner Dawson and I appear to agree on the major points: that the seven-station rule was arbitrary and that, eventually, all rules that limit station ownership on a nationwide basis should be eliminated. Our disagreement relates to the transitional mechanism to reach the point of eliminating the rule, and how long that transition should take.

Commissioner Dawson criticizes the decision for adopting a fixed number—12—as a ceiling instead of a percentage of TV households (25% for VHF ownership, 30% overall ownership). She argues that while 12 is as arbitrary as 7, a percentage is a more intellectually rigorous test. But what I find unpersuasive in this argument is that her proposed percentage test measures only TV households. It excludes without justification video competitors to over-the-air television such as cable, SMATV, MDS, and video cassette. More significant, it excludes all competitors to broadcast television for the relevant national and local advertising dollar without a reasoned explanation. Her percentage test is an arbitrary numerator in search of an undefined denominator. Short of a flat-out elimination, which we will get to in six years, the rule of 12 was viewed by the rest of the Commission as a sensible guidepost. Any limit in this area is bound to be somewhat arbitrary; but simply adding "%" to a limit does not make it more scientific.

Similarly we found that six rather than three was an appropriate time for a transitional limitation. The extra time we felt was more appropriate in light of the sunset that will occur at the transitional period's end.

In addition, Commissioner Dawson faults the decision for not distinguishing among different players, in particular, the three commercial networks, in proposing limits for new growth. As we make clear in our analysis, there was no basis for treating these licensees differently. As to the networks' "reach" into the overall TV households because of the affiliate structure, bear in mind that the vast majority is due to the stations they do not own; clearance rates for network shows do not vary substantially as between network owned and nonowned stations. In light of these facts, I must ask why we are so concerned about trying to somehow control "reach" and why some would have this Commission "grab" the usual, network, suspects and treating them differently without basis.

More to the point, and on this Commissioner Dawson agrees, the relaxation and eventual elimination of these rules will allow more competition to the three networks. New combines can form new production centers to offer more programming for television. Strong group ownership is generally acknowledged as the predicate for more program competition, on a local and national basis. While there is no magic in group ownership that insures better service, the sharing of costs that can go on among more stations is likely to permit larger scale program undertakings. Local coverage of political conventions this year is an example of undertakings that become more realistic when costs for common expenses among group-owned stations are shared.

It is commonplace in Washington to remind one another that bigness is not necessarily badness. Today we bring that maxim to the broadcast ownership context. Bigness is not necessarily badness, sometimes it is goodness, sometimes it is just bigness and nothing more. But without a good reason to forbid growth, this Commission should not just utter the magic word "Television" and treat the industry differently. By today's order we stop doing exactly that.

Separate Statement of Commissioner Patrick

Re: Amendment of Commission's Seven Stations Rule.

I endorse the Commission's decision in this proceeding to increase the seven station limit to twelve on an interim basis and, in six years' time, to sunset the rule assuming no adverse impact upon the national broadcasting market is observed in the interim period.

The voluminous record in this matter provides ample support for the Commission's conclusion that there is no basis for imposing a national ceiling on broadcast ownership based on our public interest concerns and criteria, especially diversity, economic concentration and the impact on minorities. I will briefly touch on each of these in turn.

On the issue of diversity, it is my belief that this is more properly a *local* ownership issue. Diversity involves the number of different perspectives any individual hears or sees. For any given individual, that is a function of how many different voices are available in his or her local market. Diversity is, therefore, unaffected by whether station owners also own stations in other markets. It is our duopoly and one-to-a-market rules that foster local diversity,

and not our national ownership restrictions.

Even if we assume *arguendo* that there is a national diversity issue, the evidence strongly suggests that our action today will not threaten that diversity. First, the television and radio markets are diversity rich. Since the time the rules were adopted in 1954, the number of licensed stations has increased 561% for FM, 92% for AM and 466% for TV. Because of this increase, owning 12 stations today still represents a lower percentage of the total number of television or radio stations than owning 7 stations did in 1954.

The influx of new, competitive media into the marketplace underscores the conclusion that the market is diversity rich—and becoming more so every day.

Finally on the issue of diversity, I note that there is little evidence to support the assertion by some that increased group ownership is inimical to diversity. The evidence shows, instead, that stations owned by group owners are run on a largely autonomous basis as to editorial policy and non-entertainment programming generally. Thus, group ownership does not lead to the spread of a monolithic perspective. The evidence also demonstrates that group owners frequently have the financial resources to do greater amounts of news and public affairs programming than do smaller owners. Indeed, the evidence shows that group owners on average spend up to 7% more of their time each broadcast day on non-entertainment programming. I am not suggesting that group owners should be preferred over smaller owners, only that group ownership is not necessarily inconsistent with diversity and, in fact, may foster increased diversity.

The second major public interest concern that the record in this proceeding lays to rest is economic concentration. In general, the broadcast market is a very unconcentrated market. The Department of Justice (DOJ) applied its Herfindal-Hirschman Index (HHI) to the television and radio markets and found that each was well below the minimum level at which concentration becomes a potential antitrust concern. On a scale of near zero to 10,000, DOJ considers 1000 to constitute that minimum level of concern. DOJ calculated the concentration rating for the top 12 television owners to be 229 and for radio to be 77. These figures demonstrate just how unconcentrated the industry is.

The Department of Justice also specifically concluded that abolishing the 7 Stations Rule would cause no adverse competitive impact in either the local spot or national advertising markets. Indeed, one of the principal advantages of our action in this proceeding is that, by removing an artificial barrier to expansion, we provide opportunities for *increased competition.* By allowing independent group owners room for additional growth, they can begin to compete with the networks in the national advertising and program markets.

The third area of concern examined in the Report & Order is the impact of this rule on minorities. The record demonstrates that the 7 Station Rule was never intended nor has it had the effect of deflating the market such that minorities who might not otherwise have sufficient funds can purchase stations. I believe the Report & Order appropriately concludes that it is not the Commission's role to artificially deflate market prices through regulation. Instead, our efforts should be focused on assisting minorities to obtain the necessary financing to enter into the broadcasting industry.

In concluding that lifting the rule will not harm any of these public interest concerns, we can take comfort in the fact that both executive agencies that commented in this proceeding—the National Telecommunications and Information Administration and DOJ—concluded that abolishing the rules will pose no threat to our paramount public interest concerns.

Even with a record supporting complete abolition of a national ownership ceiling, the Commission has determined to proceed in a modest and cautious manner. Rather than abolishing the rules outright, we have established a six-year, interim period during which we moderately raise the ceiling. Doing so will allow us to evaluate the ensuing pattern of purchases and impact on the market. Importantly, our choice of a numerical station limit will allow *all* players in the market—networks, large group owners and small independents—to purchase stations. In turn, we will have the opportunity to observe the patterns and effects, thereby acquiring the data that will be necessary for evaluating the impact of our decision before sunsetting the interim limit.

A ceiling of 12 stations might be called arbitrary. All ceilings are somewhat arbitrary. If, however, the 12 station limitation is seen for what it is intended to be, *viz.*, an interim device to permit sufficient station acquisitions to allow the Commission to analyze the effects of lifting the rules, then it is not an arbitrary measure, but a reasonably prudent and cautious interim step to a deregulated marketplace. By adopting a sunset of six years, moreover, the Commission has allotted itself a sufficient length of time for acquisitions to occur so that we may conduct a meaningful evaluation of the effect of relaxing the rules before the sunset occurs. It that evaluation leads us to a different conclusion than we reach today, we will be able to take corrective action.

I also take comfort from the fact that it remains a Commission obligation to evaluate every acquisition pursuant to our public interest criteria, which include diversity and competition. Thus, what we are doing today is not "abandoning ship" or indicating a willingness to close our eyes to diversity and concentration concerns. What we are doing here is raising and then eliminating a ceiling that has functioned as an arbitrary barrier to competition.

Finally, I would like to comment on the use of reach to set an interim limit, which the dissent to our decision would adopt as a preferable method. Although, at first blush the concept of reach has a certain amount of appeal, after careful analysis I have concluded that it is not preferable to an interim station cap.

First, reach is no less arbitrary than a station cap. Why 25%? Why not 35%? It still sets an arbitrary limit over which we prohibit acquisitions without reference to particular circumstances. I am also not sure that reach is any more relevant to our public interest concerns. With respect to diversity, the local market is of paramount concern. National reach is irrelevant to that concern. With respect to economic concentration the relevant factor would seem to be not reach but audience *share*. Economic concentration is only relevant to the extent that it reflects market power. If a station has a 75% reach but 0% share, surely no concentration concern is raised.

Another problem with reach concerns the very goal the dissent seems determined to further: slowing or capping the networks while allowing independent group owners to grow. A 25% reach ceiling would, however, also limit those large independent group owners who are in the best position to compete with the networks with further growth.

Second, and more fundamentally, it is inappropriate as a matter of public policy for the government to limit the growth of one group, while allowing another to grow, unless there is evidence that growth by the former group is harmful to the public interest. There is no such evidence here. The networks' dominance in the national market is a function of their *affiliate* arrangements. Allowing the networks to own additional stations will have no

material impact on the affiliate structure and the strong market position resulting therefrom.[1]

Third, by effectively limiting network acquisitions to one or very few stations by using reach, the interim period cannot be used to monitor and evaluate the effects of relaxing the rule prior to sunset—because the rule would only be significantly relaxed as to some of the players. For those who fear network power, therefore, the dissent's proposal is a riskier course, in that it gives the Commission little if any opportunity to evaluate the impact on the market of additional purchases by the networks before setting them free of all restraints—which would occur, under the dissent's proposal, in a short 3 years.

I am thus confident that the Commission's decision to establish a transitional 12 station limit for six years presents a better transition eliminating the rule. The evidence in this proceeding supports the conclusion that there is no continued justification for the rule. Nevertheless, the Commission has decided to proceed in a prudent manner that will permit us to monitor and evaluate the impact of permitting all players to increase their acquisitions before the rule sunsets. Our prediction is that there will be no adverse impact. On the contrary, we hope and expect our decision to foster increased competition. For these reasons, I applaud and support the Commission's decision.

Dissenting Statement of Commissioner Mimi Weyforth Dawson

Re: Report and Order in Amendment of §§ 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations (Seven-Year Rule) July 26, 1984

By today's action,[2] the Commission has lost an important opportunity to correct inequities created by previous Commission intrusion into the broadcast market. Equally important, the Commission has lost the opportunity to create a sound record on which to base the ultimate elimination of the Commission's national ownership restrictions.

Unfortunately, the Report and Order, the twelve-station rule, does not depart from the arbitrary, irrational restrictions of the past. A twelve-station rule continues to equate a TV station in New York City, the nation's largest market, with a TV station in Glendive, Montana, the nation's smallest. A twelve-station rule continues needless restriction on the radio industry which the record shows to be both diverse and competitive.[3] The Rule of twelve is too limiting for some and too liberal for others. Seven was and twelve will continue to be unfair to non-network group owners and will, therefore, limit hoped-for incentives for greater diversity in news, informational and entertainment programming as well as the benefits which rigorous competition could provide to the American people.

A central theme that has permeated the Commission's ownership rules—and, ironically, a theme that permeates the majority's opinion—is that group ownership facilitates and is necessary to the establishment and growth of permanent or ad hoc networks. As Metromedia, Inc. said in its comments in this proceeding:

> A broader base of owned stations would permit Metromedia and other group owners to invest in new program initiatives and to mount more effective competition against the dominant national networks. Additional sources of programming would be of particular benefit to independent stations which, after prospering through the use of off-network re-runs, now face an era of growing program scarcity.

Comments of Metromedia, Inc. at 3.

This analysis was even articulated by the Commission in the Notice in this proceeding. The Commission noted that the seven-station rule "may actually limit the 'diversification of program and service viewpoints' that it was intended to advance." *NPRM* at para. 38. This was so, the Commission said, because the numerical limitation "may in some instances preclude the possibility of realizing the benefits inherent in program production or acquisition for large audiences":

> Ownership of a sufficient number of stations to generate a base for quality program production might well facilitate development of a new over-the-air television network in the future. It is likely in any case to lead to expanded production of programming, including non-entertainment programming, for national, regional, and group presentation to the viewing and listening publics. The access to a larger potential audience which a group owner enjoys reduces the level of difficulty involved in getting initial distribution of an unproven first-run show or series, cuts marketing expenses, and assists in generating revenues that could be used to finance even more attractive, higher quality programming. Cooperative production or distribution by larger groups is another possible vehicle by which enhanced programming options can be provided.

Id. (footnotes omitted).

In the past, the Commission has been criticized for making precipitous major policy shifts. An appropriate transition mechanism can serve to develop a record which meets this criticism. However, the use of an inappropriate measurement can only exacerbate this criticism and may lengthen the Commission's regulatory intrusion into this area.

What would be an appropriate measurement to develop this record? The Justice Department in its comments has suggested such a measurement based on audience:

> The product supplied by conventional over-the-air and advertiser supported cable television presents unusual problems in market definition because viewers, the apparent consumers of television, are actually the "product" sold to advertisers, the real purchasers in the television marketplace. Programming, the apparent product of television, is merely an input into generating audiences. Broadcasters compete to obtain programming that will produce the largest audiences with the demographic advertisers.

Department of Justice Comments at 10.

The Justice Department also states that "[t]he threshold issue is the degree of substitutability between television advertising and advertising through other media . . . If advertisers would readily respond to a price increase in television advertising rates by shifting to advertising on other media, then these other media are in the same market."[4] *Id.* at 11. My colleagues and I grappled with various approaches. Certainly reasonable people can differ but I have come to the reluctant conclusion that the majority's failure—by measuring the number of stations rather than audience—to follow the Justice Department's description of the relevant measurement is a fatal flaw in the majority's approach. I must therefore

[1] Interestingly, the dissent does not include the networks' affiliates in its reach computations. If reach is the relevant measure, it would seem difficult to ignore affiliate stations, given that they provide networks with 97% prime time and 87% daytime programming clearance.

[2] Amendment of §§ 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, —— F.C.C.2d —— (1984) [hereinafter *Majority Decision*]. The decision terminates a rulemaking proceeding instituted by the Commission last year. Amendment of §§ 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, 48 FR 49438 (1983) [hereinafter *NPRM*].

[3] My comments herein are limited almost entirely to television. After a review of the comments in this proceeding—and, indeed, a review of the *Majority Decision*—I can find no credible justification for retaining a limit for radio ownerships, much less the same numerical limit as imposed on television. *See infra* at 14–15.

[4] The Department found, though, that this substitutability does not exist to any great degree, largely because of "the greater impact on audiences of visual commercial messages than print or aural messages," and the fact that television "reaches a higher percentage of the population than any other media form." *Id.* at 12.

respectfully dissent to the Report and Order.

Rather than an approach which counts the number of stations, I would formulate an interim approach which would look at the potential television audience. This approach would:

(1) Allow television station ownership in any combination of stations up to 30 percent of the nation's television households. No more than 25 percent of this reach could be through VHF television stations.[5]

Licensee	Current VHF reach (percent)	Current UHF reach (percent)
ABC	20.75	0
CBS	20.57	0
NBC	19.85	0
Metromedia	16.96	6.93
RKO	13.53	0
Westinghouse	10.08	.77
Chris Craft	8.10	0
Gannett	5.44	2.30
Cox Communications	5.15	3.53
Taft	4.43	4.77
Scripps-Howard	4.15	.85
Capital Cities	4.08	.45

Thus, under my proposal, group owners could additionally acquire television stations—in whatever number—with the following reach:

As indicated, I would maintain a revised VHF/UHF distinction, not only to encourage UHF ownership but also as recognition of the business reality that, even though the gap has narrowed considerably, UHF continues to operate at a technical and economic disadvantage.

Licensee	Available VHF reach (percent)	Available UHF reach (percent)
ABC	4.25	5
CBS	4.43	5
NBC	5.15	5
Metromedia	*6.11	0
RKO	13.35	5
Westinghouse	14.92	4.23
Chris Craft	18.90	5
Gannett	19.56	2.70
Cox Communications	19.85	1.47
Taft	20.57	.23
Scripps-Howard	20.85	4.15
Capital Cities	20.92	4.55

*The Metromedia VHF figure assumes current UHF ownership; if the UHF holdings were reduced to five percent or below, Metromedia could acquire VHF stations totalling 8.04 percent.

(2) Impose no limitation on the ownership of radio stations.

(3) Expire at the end of three years unless specifically extended by the Commission.

(4) Require the Mass Media Bureau to monitor radio and television acquisition and report within two and a half years to the Commission and to Congress on the effect of the rule on media concentration, minority ownership and UHF ownership.[6]

I believe such a transition mechanism would more readily meet the goals of competition and diversity than majority's substitution of a twelve-station rule for a seven-station rule.

1. Correcting Commission-Created Inequities

The reach approach avoids the inherent unfairness of a numerical limit based on the number of stations owned, an unfairness perpetuated by the majority. The numerical approach has restrained, and will continue to restrain, the growth of group owners vis-a-vis the major networks. This growth has been restrained, not because of any collusive or anticompetitive behavior on the part of the networks, but because of the ownership patterns established very early in the history of broadcasting together with the Commission's own policies.

In the early 1950s, fewer than 100 television stations were licensed and on the air in this country. Of these, the networks, which had pioneered the development of television, already owned attributable interests in 15 television stations, in the largest television markets—virtually the same stations the networks own today.[7] Through these facilities, each network was able to reach, through owned-and-operated stations, substantial segments of the nascent, but growing television audience.

Two FCC policy decisions at about this same time virtually assured that no non-network group owner would be able to reach the level of the audience base available to the networks. The first of these, as identified by the Commission's network inquiry staff, was the 1952 table of allocations.[8] As the Commission's network inquiry staff noted, the allocation plan "seriously handicaps a fourth and additional networks by limiting their coverage and forcing them to affiliate with UHF stations in markets with many viewers." *Federal Communications Comm'n, Network Inquiry Special Staff, New Television Networks; Entry, Jurisdiction, Ownership and Regulation* (vol. 1) 139 (1980) [hereinafter *Network Inquiry*].

The second of these decisions was the seven-station rule which, of course, limited the number of VHF television outlets any entity could own—no matter what the size of the market in which the station was located—to five.[9] The effect on non-network group owners' ability to accumulate an audience base comparable to the networks was devastating. As the Commission's own network inquiry staff concluded, the rule "without apparent justification" permitted:

> certain firms to acquire substantially more powerful and profitable facilities while owners of other, less powerful, outlets [were] constrained in their ability to expand. As currently constructed, the set of rules often may serve only to impair the realization of efficiencies in the use of television outlets.

Network Inquiry at 362.

A dual handicap was thus imposed on non-network group owners with national programming ambitions. They were foreclosed from obtaining VHF outlets (because of the Commission's allocation policies) in most of the major markets, and they were restrained by a numerical limitation imposed by the Commission which prevented them from accumulating a comparable audience base by acquiring more than 5 VHF stations in smaller markets. From 1953 to 1984 the Commission's numerical limitation has failed to realize the Commission's goals: to encourage competition and diverse points of view.[10] *NPRM* at para. 38. And yet, this Commission by its action today again relies on a number of stations ceiling when we have clear evidence that such a scheme has proven to be ineffective in the past.[11]

[5] This measurement could be accomplished through various easily obtainable sources: Arbitron ADI figures for television households; similar data from A.C. Neilsen; Grade B population data; or net weekly circulation figures. For convenience, I have used Arbitron ADI television household data for the calculations contained in this statement. According to this ADI data, for example, ABC's owned and operated VHF stations in New York, Los Angeles, Chicago, San Francisco and Detroit reach 17,430,700 television households, or 20.75 percent of the 83,971,800 television households in the United States. *1983–84 ADI Market Guide* XIII. This represents the highest VHF reach of any group owner. Major group owners' current reach, as calculated from information in the *1983–84 ADI Market Guide* and from the 1984 *Broadcasting Yearbook* is as follows:

[6] Just as the majority's 12-station rule does not seek somehow to quantify and include alternative video delivery mechanisms, the reach concept I have proposed is limited to the reach of commercial terrestrial television stations and does not—and need not—seek to measure and include cable, SMATVs, MDS, DBS, video discs and video cassette recorders. See Department of Justice Comments at 12.

[7] NBC and ABC owned the same television facilities as they now own. CBS owned the stations it presently owns in New York, Chicago and Los Angeles, but owned attributable interests in what is now WDVM(TV), Washington, and WCCO-TV, Minneapolis, rather than its current television properties in Philadelphia and St. Louis.

[8] Amendment of Section 3.606 of the Commission's Rules and Regulations, 41 F.C.C. 148 (1952).

[9] Amendment of §§ 3.35, 3.240 and 3.636 of the Commission's Rules and Regulations, 18 F.C.C. 288 (1953).

[10] This double handicap was largely blamed for the failure of the DuMont Television Network. *See, e.g., Bochin. The Rise and Fall of the DuMont Network*, in *L. Lichty and M. Topping, eds., American Broadcasting* 190–92 (1975).

[11] This dual handicap also helps to explain the fact that no group owner has been able to approach, through VHF station ownership, the audience coverage of the network owned-and-operated stations. For example, even though Westinghouse currently owns five VHF stations, those five stations reach only 10.08 per cent of ADI television

Continued

The majority today has simply reaffirmed the fundamental unfairness of numerical limitations and set the stage to allow some group owners to get comparatively larger while condemning other small group owners to remain comparatively small. This is not to say that the majority networks could not acquire more stations under the reach approach. But measuring reach does not perpetuate the unfair proportional constant established by earlier Commission policy.

2. Arbitrariness and Irrelevance of Numerical Limitations

A numerical limitation is not only arbitrary, it is irrelevant. The absolute number of radio and television stations owned by a given entity is of substantial interest only to the FCC. Network and station advertising rates are set not according to an aggregate number of stations but according to the size of the audience reached by stations or networks. Thus, the number of stations any entity owns is wholly irrelevant to the production of competitive programming on a national level. As Metromedia, Inc. indicated in its comments in this proceeding,

> National advertisers require clearance in at least 75% of the nation's television homes before they will commit to a program. Because Metromedia is prohibited from owning stations in more than seven key national markets, it is *totally* dependent upon the views and preferences of other licensees in its effort to launch a national program.

Comments of Metromedia, Inc. at 25 (emphasis in original).

Thus, the key to increased production of competitive programs lies not in the number of stations owned but in the size of the potential audience of the stations owned.

The Department of Justice, whose comments are so heavily relied upon by the majority, recognizes that the television business is concerned not with the number of stations but with the number of viewers:

> Programming, the apparent product of television, is merely an input into generating audiences. Broadcasters compete to obtain programming that will produce the largest audiences with the demographic characteristics most highly valued by advertisers. Advertisers acquire time on program to deliver commercial messages to audiences. The price of audiences is measured in terms of dollars per thousand viewers per unit of time.

Comments of the Department of Justice at 10 (footnote omitted).

Thus, it is not surprising that, based on the number of stations owned, limits have been consistently criticized as arbitrary and meaningless. For example, twice the United States Senate has considered legislation to substitute population percentage for numerical limits.[12] A variety of commenters has spoken of the arbitrariness of a numerical limitation.[13] The Commission's own network inquiry staff was highly critical of numerical limits on station ownership.[14] The 1953 Commission, in adopting a seven-station limitation, was aware of the fundamental arbitrariness of picking a number.[15]

Perhaps most remarkable, this Commission, in the notice adopted in this proceeding, criticized the arbitrariness of numerical limits on broadcast station ownership. Indeed, the notice said that the:

> effect of population disparities can . . . be depicted by noting that one station in New York City can potentially reach more people than one station in each of the seven markets between 14 and 20. To equal the potential reach of a New York City station, one would need to own one station in each of the bottom 86 markets. While an owner of stations in each of the top seven markets can reach 27.5 per cent of the U.S. population, stations in each of the bottom seven markets collectively reach less than one-half of one per cent of the population. This data makes clear the arbitrary nature of the "seven station" rule.

NPRM at Paragraph 36 (footnote ommitted).

Yet, the Report and Order now chooses to ignore the preponderance of criticism—including its own—of numerical limits and substitute a "twelve-station" rule for a "seven-station" rule.

The majority does not explain why or how it has arrived at the number twelve. It says only that the new numerical limit "is reasonably related to the expansion in the number of broadcast facilities that has occurred since the rule of seven was adopted." *Majority Decision* at para. 111.[16]

However, as the Second Circuit reminded the Commission in *Office of Communications of the United Church of Christ v. Federal Communications Commission*, 560 F.2d 529 (2nd Cir. 1977), there is a limit to which an administrative agency can simply pick a number out of thin air without explanation.[17] There, the Commission had sought to raise the employee cutoff for the requirement of filing annual equal employment reports from five employees to ten. However, the Court of Appeals reversed the Commission and suggested that when an administrative agency attempted to change an initial arbitrary limitation, it must articulate reasons for doing so. As the court said, "[w]hen initial cut-off or threshold

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households. Similarly, Taft's five VHF stations reach only 4.43 per cent of ADI television households. Even the four VHF stations owned by Metromedia, the largest of the non-network group owners, reach only 16.96 per cent of ADI television households. *See supra* note 3.

[12] In 1947, the Chairman of the Senate Commerce Committee, Wallace White, introduced a bill to bar the Commission's use of numerical limits and substitute instead a rule that no entity could own or control stations "which in the aggregate provide a primary service . . . for more than 25 percentum of the population of the continental United States as determined in the last preceding decennial census." S. 1333, 80th Cong., 1st Sess. (1947). In 1956, in the wake of the demise of the Dumont Network, Senator John Bricker of Ohio introduced a population coverage limitation for television similar to that proposed by Senator White in 1947. S. 3859, 84th Cong., 2d Sess. (1956). Senator Bricker intended the substitution of a percentage limitation for the "sterile abstraction" of a seven station limit "entirely unrelated to factors of population and markets covered" in order to encourage competition for the networks by independent station groups. It is important to note that this approach was dismissed largely because of the difficulty of applying the concept of then-preeminent AM radio stations which operate under widely varying powers and conditions. This difficulty is not true of television, which is now the Commission's primary concern, because of the similarity of television station coverage patterns and the available of a variety of audience measurement devices. *See supra* note 4.

[13] For example, one commenter has noted that "[t]here is no real basis for the number five or seven, and it makes little sense to equate a station in Butte with one in New York City." Geller, *FCC Media Ownership Rules: The Case for Regulation*, 32 *J. of Comm.* 148, 155 (1982).

[14] The network staff found that: the Commission's group ownership rule, by its reliance on number of stations rather than market share implicitly views the group ownership of commercial broadcast stations located in New York City, Los Angeles and Chicago as posing the same threat of monopoly behavior in the national market as the group ownership of stations in Hazard, Kentucky, Hibbing, Michigan and Clovis, New Mexico.

Federal Communications Comm'n, Network Inquiry Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation (vol. 1) 362 (1980).

[15] The Commission, concerned primarily with what it considered the impracticality of applying a reach standard to the then-preeminent AM service, concluded that a number was the "only sound and workable one because of the history and present development of the broadcast industry." Amendment of §§ 73.35, 73.240 and 73.636 of the Rules and Regulations to Multiple Ownership of AM, FM and Television Broadcast Stations, 18 F.C.C. 288, 292 (1953).

[16] If the Commission is concerned about maintaining a numerical limit based on the relative growth of stations, then the correct number for television stations would be 14 and the correct number for radio would total 36. *See* Comments of Storer Communications, Inc. at 3; Comments of the National Radio Broadcasters Ass'n at 5.

[17] Even the 1953 Commission was not without its reasons for choosing the number seven. Indeed, seven had been a tacit limitation for AM since 1945 when the Commission disallowed CBS' acquisition of an eighth AM facility. Moreover, only minimal divestiture of other facilities was required. *See* Howard, *Multiple Broadcast Ownership: Regulatory History*, 27 *Fed. Comm. B.J.* 1, 12–15 (1974).

criteria for determining the applicability of particular regulations are involved, the agency's reasoning need at times consist only of 'practical considerations of administration,' * * * since there are times when arbitrariness is inevitable." 560 F.2d at 532 (citations omitted). However, the court determined that when an agency seeks to change even an arbitrary policy, "such changes in policy must be rationally and explicitly justified in order to assure 'that the standard is being changed and not ignored * * * and that [the agency] is faithful and not indifferent to the rule of law." *Id.* (citation omitted). Thus, the court concluded:

> the FCC did not have the leeway that may be given an agency in the initial promulgation of cut-off criteria for the applicability of regulations. We deal here with a change in such criteria, and hence we must find that the FCC had a rational, articulated explanation for its action in order to uphold its decision.

Id. at 532–33.

Similarly, in the instant case, the majority has given no reason for choosing twelve as opposed to any of the other numbers suggested by commenting parties.[18]

3. Perpetuation of needless regulation

The majority's decision perpetuates rather than diminishes regulation—not just with regard to the length of the sunset provision,[19] but with regard to radio. The situation with regard to radio is markedly different from television, and, thus, I believe deserves different treatment or at least an explanation of why it is being treated the same as television. As the Department of Justice pointed out in its comments:

> Since the radio industry is much less concentrated than the television industry, both in terms of the number of stations and the number of networks, it is even less likely that elimination of the seven station rule will result in adverse competitive effects in the radio industry . . . . Unlike television, . . . network radio advertising is not dominated by only three sellers. In radio, there are over 90 national and regional radio networks . . . . [B]ecause there are so many more radio stations than television stations, and because radio stations typically affiliate with more than one radio network, potential new radio networks are not faced with a limited number of non-network stations from which to form a network.

Department of Justice Comments at 26–27.

In light of such arguments, I can find no persuasive reason to impose an arbitrary, numerical limitation on radio ownership, much less that radio be saddled with the same restrictions as television, and no such reason is offered in the majority's decision. Accordingly, I would impose no restriction on multiple ownership of radio stations.

In sum, while I applaud my colleagues for ending the seven-station rule, I see little benefit in the substitution of a twelve-station rule, which continues the policy of the Commission's 1953 decision. I believe this policy has proven to be irrelevant, arbitrary and inherently unfair. The twelve-station rule remains remarkably regulatory with regard to radio, and the length of the interim rule. And, accordingly, I respectfully dissent.

Commissioner Henry M. Rivera Partially Concurs, Partially Dissents in Report and Order Adopted in Docket 83–1009

Today, Commissioner Henry M. Rivera concurred in part and dissented in part with regard to the FCC's *Report and Order* in the Broadcast Multiple Ownership Proceeding. Commissioner Rivera will issue the full text of his statement at a later date. However, he said:

"I dissented from the Notice of Proposed Rulemaking in this proceeding not because I objected to reviewing and revising the "seven station rule." I was not, and am not, completely opposed to change. Instead, I objected to initiating this review because the philosophy espoused by the Commission majority represented a profound and dangerous reversal of the FCC's long-held emphasis on media ownership diversification, and because the Notice of Proposed Rulemaking appeared to make repeal of these rules a foregone conclusion. Frankly, I also believed that, by taking the unusually strong stand of dissenting from a rulemaking proposal, I might successfully inject moderation into an enterprise whose candid aim was "to reduce our national broadcast ownership restrictions . . . to the maximum extent feasible."

"Although I disagree in several fundamental respects with this *Report and Order*, I believe today's action, insofar as it maintains a national multiple ownership rule and cap, is a moderate response. Undeniably, this moderation is the byproduct of political considerations. Undeniably, the new transitional rule lacks the elegance of some proposals made in this proceeding. Nonetheless, I can concur in this *Report and Order* to the extent it embodies a continued and *firm*—albeit imperfect—restraint on national multiple ownership. Such restraint is absolutely essential to preserve our bedrock federal commitment to media diversity, and I lend my support to that part of this order.

"On the other hand, I must register my strong disagreement with the philosophical underpinnings of this decision. First, contrary to the *Report and Order*, I believe there is considerable public value in policies which promote national media ownership diversity, and a multiple ownership rule is one way of doing that. As this Commission once said: "Diversification of control is a public good in a free society, and is additionally desirable where a government licensing system limits access by the public to the use of radio and television facilities." I subscribe to that philosophy.

"Second, this public good cannot be safeguarded absent responsible FCC regulation and oversight. Therefore, it is essential that a reasonable limitation be retained until all groups in our society are broadly represented in the ownership structure of the media. For this reason, I dissent from the decision to sunset the new rule in 1990. We have no way of knowing now if all groups will be represented in our ownership structure in a meaningful way by that time.

"Third, a policy which emphasizes the programming contributions of group owners at the expense of small broadcasters, as this *Report and Order* does, sets a dangerous First Amendment precedent because it suggests that the only diversity worth having is that of the large media conglomerates. As the D.C. Circuit recently was forced to remind this Commission, "a small 'new voice' may do more to further the First Amendment than a loud or large 'old voice'." I second that conviction wholeheartedly.

"These deficiencies nothwithstanding, there has been undeniable growth in the number of outlets and owners competing in the nation's marketplace of ideas—especially in radio—since the seven station rule was adopted in 1953. It does not seem unreasonable, therefore, or inimical to the public interest goals to which I subscribe, to permit some upward adjustment of the rule. A liberalized rule, if firmly adhered to, may create a proving ground for some of the theories expounded in this *Report and Order*. My colleagues have specified in the item itself, and to me personally, that they are willing to adhere to this cap. I am satisfied that the cap is a real one.

"The more difficult issue, of course, is where and how to redraw the line limiting multiple ownership. In this regard, the rule adopted today has two significant defects: the failure to impose a ceiling on television ownership

[18] For example, various commenting parties suggested numerical limits of 10, 14, and 36. *See supra* note 13.

[19] *See supra*

penetration; and the failure to carry forward the UHF/VHF formula of the present seven station rule. I am, therefore, forced to dissent on these two failings. With regard to the first issue, I believe a penetration ceiling is warranted in television above and beyond the flat numerical limitation approved by the Commission. Television is the dominant information medium in this country. Therefore, in revising the ground rules governing television station ownership, our actions must be marked by extreme caution. In a system in which television access to the public remains limited, there is no sound reason to permit one entity to own stations reaching more than 25 percent of the country, regardless of how few stations are involved.

"I also object to the decision to abandon our policy of encouraging UHF television ownership. That policy was promulgated to enhance diversity in the video arena. Its abandonment at this time can only slow the development of UHF and, as a result, reduce future diversity. Finally, I have already stated, I dissent from the decision to sunset this new rule in 1990. I hope the Commission sees fit to revisit these matters on reconsideration."

[FR Doc. 84-21154 Filed 8-8-84; 8:45 am]
BILLING CODE 6712-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Part 713

[AIDAR Notice 85-1]

Small Purchase and Other Simplified Purchase Procedures

AGENCY: Agency for International Development (AID).

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to state that transportation and other accessorial cost are excluded from the $25,000 small purchase ceiling for small purchases delivered outside of the United States. Because of the high cost of packing, shipping and overseas travel and transportation, including such cost in the small purchase ceiling would be inequitable.

EFFECTIVE DATE: July 27, 1984.

FOR FURTHER INFORMATION CONTACT: M/SER/CM/SD/POL, Mr. J.M. Kelly, Telephone (703) 235-9107.

SUPPLEMENTARY INFORMATION: This AIDAR Notice is not considered a "significant" regulation under OFPP Policy Letter 83-2 (48 FR 56806), or FAR 1.303(b) and 1.501; therefore, public comments have not been solicited.

This AIDAR Notice does not establish or modify any collection of information requirements subject to the Paperwork Reduction Act.

The AIDAR is a procurement regulation, and has been exempted by the Director, OMB, from the requirements of Executive Order 12291 (2/17/81) by memorandum dated 4/8/81, as subsequently amended 12/15/83.

As required by the Regulatory Flexibility Act, it is hereby certified that this AIDAR Notice 85-1 will not have a significant economic impact on a substantial mumber of small entities.

List of Subjects in 48 CFR Part 713

Government procurement.

Chapter 7 of Title 48 is hereby amended to add a new Part 713, as follows:

PART 713—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

§ 713.000 Scope of part.

The $25,000 ceiling applies to the cost of supplies and services, exclusive of the cost of transportation and other accessorial costs if their destination is outside the United States.

(Sec. 621.75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, September 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435)

Dated: July 27, 1984.

John F. Owens,

AID Procurement Executive.

[FR Doc. 84-21119 Filed 8-8-84; 8:45 am]
BILLING CODE 6116-01-M

Proposed Rules

Federal Register
Vol. 49, No. 155
Thursday, August 9, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 129

Management Assistance

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: SBA proposes to amend its regulations to include Professional and Trade Associations as an identified volunteer program authorized under section 8(b)(1)(B) of the Small Business Act, as amended (15 U.S.C. 637(b)(1)(B)). These changes are necessary in order to qualify those Professional and Trade Association members for reimbursement of out-of-pocket expenses when providing counseling and training assistance to small business owner/operators as a service through the SBA.

DATE: Written comments must be submitted on or before September 24, 1984.

ADDRESS: Submit written comments to John J. Sweeney, Deputy Associate Administrator for Management Assistance, Small Business Administration, 1441 L Street, N.W., Room 317, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Jackson, Program Manager, Office of Management Assistance, (202) 653-6287.

SUPPLEMENTARY INFORMATION: In order to assist the public in understanding the proposed changes to Part 129 of Title 13, CFR (Management Assistance), SBA is republishing Part 129 in its entirety. Several of the sections are proposed with no change or only minor or technical changes. The single major substantive proposed change is contained in new subsection 129.2(c) entitled "Professional and Trade Associations."

This new subsection is intended to replace the current subsection entitled "Professional Consulting Services," which relates to services currently offered by SBA through its Office of Minority Small Business and Capital Ownership Development, pursuant to Pub. L. 95-507. New § 129.2(c) would allow volunteers from authorized professional and trade associations to be reimbursed for out-of-pocket expenses incurred while providing management and technical assistance through SBA. SBA provides this assistance to individuals who are engaged in or who intend to engage in a small business in accordance with the provisions contained in section 8(b)(1) of the Small Business Act, 15 U.S.C. 637(b)(1). These services are provided through local SBA field offices at no cost to the individual. Resources for the provisions of these services include the Service Corps of Retired Executives (SCORE), Active Corps of Executives (ACE), and the Small Business Institute (SBI) program. In addition to these resources, for years SBA has called upon professional and trade associations to help the Agency provide assistance through their members.

SBA has drafted a cooperative agreement which stipulates the conditions under which association members are to provide their services. Although, at the national level, associations have been willing to enter the cooperative agreement with SBA, local participation has been difficult to achieve. The primary reason for the difficulty is SBA's inability to reimburse members of the local associations for their expenses related to providing assistance, as it does SCORE, ACE and SBI volunteers. SBA reimbursement of all necessary out-of-pocket expenses of volunteers who are part of an established program is authorized by section 8(b)(1)(C)(ii) of the Small Business Act, 15 U.S.C. 637(b)(1)(C)(ii), which recognizes such volunteers as employees for such purposes. This revision of the existing regulation is necessary in order to permit the Agency to offer such reimbursement of expenses to participating associations. This incentive is needed to enlist this important private sector resource in the assistance of small businesses with management problems.

SBA is republishing existent sections 129.1 and 129.3 without change. All references to sections 7(i) and 7(j) of the Small Business Act, as amended, 15 U.S.C. 636(i) and (j); to section 302(c)(2) of the Domestic Volunteer Service Act, Pub. L. 93-113, 87 Stat. 404, and to Executive Order 11871, dated July 18, 1975, have been deleted as no longer applicable to programs offered through SBA's Office of Management Assistance.

SBA proposes to amend § 129.4, Publications, to state that SBA publishes three rather than four management publications, namely "Management Aids," "Small Business Bibliographies," and "Starting Out Series." Other minor changes are proposed to be included in this section to clarify the exact nature of the publications.

The title section prior to § 129.6, § 129.6 itself and § 129.9 are proposed to be amended to clarify that §§ 129.6 through 129.9 deal with the payment of expenses to all authorized volunteers, not merely to SCORE and ACE volunteers.

SBA proposes to delete current § 129.5, "International Trade," because it describes a program which is currently under the jurisdiction of the Office of the Administrator and which is fully and accurately described in the subsection entitled, "Office of International Trade," found at 13 CFR 101.2-9. Accordingly, this proposed regulation would delete § 129.5 and renumber §§ 129.6, 129.7, 129.8, and 129.9 as 129.5, 129.7, and 129.8, respectively.

SBA hereby certifies that these regulations do not constitute a major rule for the purpose of Executive Order 12291. In addition, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, SBA certifies that these regulations, if promulgated in final form, would not have a significant impact on a substantial number of small entities. Any reporting requirements contained in these proposed regulations are not subject to the Paperwork Reduction Act, because those individuals who would be subject to these regulations, if adopted in final form, would be statutorily deemed employees for these purposes, and, as such, would not be within the scope of the Paperwork Reduction Act.

List of Subjects in 13 CFR Part 129

Management assistance, Volunteers.

Accordingly, pursuant to the authority contained in sections 5(b) and 8(b)(1) of the Small Business Act (15 U.S.C. 634(b) and 637(b)(1)), Part 129, Title 13 of the Code of Federal Regulations is proposed to be revised as follows:

PART 129—MANAGEMENT ASSISTANCE

General

Sec.
129.1 Management Assistance programs.
129.2 Counseling.
129.3 Training.
129.4 Publications.

Payment of Out-of-Pocket Expenses to Volunteers

129.5 Introduction.
129.6 Reimbursement for expenses within a 50-mile radius of home.
129.7 Reimbursement for expenses for services beyond 50 miles.
129.8 Meetings, conferences, and workshops.

Authority: Secs. 2 and 8, Small Business Act, as amended (15 U.S.C. 631, 637(b).

Soruce: 423 FR 5801, Feb. 10, 1978, unless otherwise noted.

General

§ 129.1 Management Assistance Programs.

The need for assistance in starting, managing, and operating a business is heightened by the number of failures that continue to increase every year in the small business community. It is estimated that managerial deficiencies cause 9 out of 10 business failures. A major objective of the Small Business Administration is to remedy this situation. Through the programs of the Office of Management Assistance, SBA works to improve and strengthen the management capabilities of small business.

§ 129.2 Counseling.

Individualized management and technical assistance is provided to small businesspersons and those who are considering starting a business, through the various resources of the Management Assistance Counseling Programs at no charge. Management Assistance Counseling Programs are based primarily on private secton resoruces, as follows:

(a) SCORE and ACE. The Service Corps of Retired Executives (SCORE), is a group of experienced retired executives who volunteer their services and offer a wide range of management and technical counseling to the small business community. Many were owners of small business concerns. The Active Corps of Executive (ACE) is an important auxiliary to SCORE. ACE is composed of executives who are still active in the business world. Members of ACE frequently furnish needed special talents which may not be represented among the SCORE volunteers of a specific locality.

(b) Small Business Institute. This program is a three-way cooperative among collegiate schools of business administration, members of the nation's small business community, and the Small Business Administration. Graduate and upper division level students of business administration, under faculty supervision, provide counseling assistance to small business owner/managers. The program operates under formal contracts or voluntary agreements between SBA and the schools.

(c) Professional and Trade Associations. SBA enters into formal cooperative agreements with Professional and Trade Associations who provide extended management assistance of a specialized nature to the small business community through their local members. Thus, a wider spectrum of expertise has been made available to a greater number of small businesses. Services provided under this program may include accounting services, production, engineering and technical advice, feasibility studies, marketing analyses, etc.

§ 129.3 Training.

(a) Training provided by the Small Business Administration is designed to impart the principles and skills of small business management to those persons who own or manage a business, or to those who intend to try. To meet these needs, four types of classroom training are offered—courses, conferences, and problem clinics for those already in business, and prebusiness workshops for those who intend to go into business. Except for prebusiness workshops, which are structured to provide a basic—"going into business" orientation, this training is designed to meet local small business needs. To provide a wide variety of management subjects in hundreds of locations throughout the Nation, SBA cosponsors training with educational institutions, local business organizations, chambers of commerce, professional or trade associations, business groups, and other government agencies.

(b) Cosponsorship of training activities is enhanced by the availability of films and other training materials produced for SBA. Information about specific training schedules on cosponsorship procedures may be obtained from any SBA Field Office.

§ 129.4 Publication.

SBA produces a series of business management publications which provide small business owner/managers, or those persons considering going into business, with information about modern management techniques. The publications are practical and easy to read. There are three series of free publications: Management Aids, Small Business Bibliographies, and Starting Out Series. These 6–8 page leaflets covering marketing and manufacturing business information, as well as bibliographical information on specific industries, and business functions are available free of charge from SBA, P.O. Box 15434, Ft. Worth, TX 76119. A series of management publications explaining business subjects like "cash planning" in considerable detail, are available at nominal prices through the Superintendent of Documents, Washington, D.C. 20402

Payment of Out-of-Pocket Expenses to Volunteers

§ 129.5 Introduction.

The Small Business Act, as amended, authorizes the reimbursement of volunteers for certain out-of-pocket and travel expenses. These volunteers include: (1) SCORE and ACE Members and (2) Members of Professional and Trade Associations that have national and/or local cooperative agreements with SBA. The out-of-pocket expenses must be incident to their provision of services under this Act. Travel expenses are authorized while the volunteers are providing services away from their home or regular place of business. Travel expenses include per diem in lieu of subsistence.

§ 129.6 Reimbursement for Expenses Within a 50-mile Radius of Home.

A volunteer will be reimbursed while performing services within a 50-mile radius of his home or regular place of business for the following expenses: Local phone calls, parking fees, public transportation, bus and train fares, local taxis, personal automobile mileage charges authorized by the Standardized Government Travel Regulations, highway tools, and related expenses necessary to the provision of volunteer services approved by the appropriate district or regional office.

§ 129.7 Reimbursement of expenses for services beyond 50 miles.

A volunteer may provide services beyond a radius of 50 miles from his home or regular place of business only with the prior approval of the appropriate SBA regional or district office. Upon receipt of such approval, he will be reimbursed only for the following expenses:

(a) Automobile travel, including personal automobile mileage charges authorized by Standardized Government

Travel Regulations, highway and related tolls, and parking fees.

(b) Other travel, including bus and rail, airplane (where specifically authorized by the appropriate SBA district or regional office official), local taxis, and public transportation.

(c) Per diem expenses in lieu of subsistence as authorized by the Standardized Government Travel Regulations.

(d) Miscellaneous related expenses including local phone calls, approved by the appropriate SBA district or regional office.

§ 129.8 Meetings, Conferences, and Workshops.

With prior approval of the appropriate SBA District or regional office, volunteers may be authorized travel expenses and per diem to attend national, regional, or district meetings, conferences or workshops relative to the provision of services under §§ 129.2 and 129.3.

Date: May 31, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-21193 Filed 8-8-84; 8:45 am]

BILLING CODE 8025-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 842 3009]

Hospital and Health Services Credit Union; 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 an Ann Arbor, Michigan credit union to cease failing to disclose, when rejecting a credit application or increasing the cost of credit, that such action is based wholly or in part on information contained in a consumer report; and providing the name and address of the agency that prepared the report. Further, if derogatory information was received from someone other than a credit bureau, the credit union would be required to tell consumers that they have a right under federal law to learn the nature of the information upon written request. The order would also require the credit union to send to consumers who had been denied credit between Jan. 1, 1983 and the date of this order, a letter containing the disclosures described above.

DATE: Comments must be received on or before October 9, 1984.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: David G. Grimes, Jr., FTC, I-528-B, Washington, D.C. 20580. (202) 724-1156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 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

Credit, Credit bureau, Trade practices.

Before Federal Trade Commission

[File No. 842 3009]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Hospital and Health Services Credit Union, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Hospital and Health Services Credit Union, a corporation, and it now appearing that Hospital and Health Services Credit Union, a corporation, hereinafter sometimes referred to as proposed respondent, is 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 Hospital and Health Services Credit Union by its duly authorized officer, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Hospital and Health Services Credit Union is a corporation, a state chartered, Federally insured credit union, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 959 Maiden Lane, in the City of Ann Arbor, State of Michigan.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the proposed respondent, and the proceeding is in the public interest.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondent waives:

(a) Any further procedural steps;

(b) All rights to seek judicial review or otherwise to settle or contest the validity of the order entered pursuant to this agreement; and

(c) Any claim it may have under the Equal Access to Justice Act, 5 U.S.C. 50 *et seq.*

5. This agreement shall not become part of the public record of the proceedings 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 respondent, 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.

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 respondent, (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 proceeding 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. The order shall become final upon service. Delivery by the U.S. Postal 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 respondent waives any right it 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 or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions: For the purpose of this order the following definitions are applicable:

A. The terms "consumer", "consumer report", "consumer reporting agency" and "person" shall be defined as provided in Section 603 of the Fair Credit Reporting Act, 15 U.S.C. § 1681a.

B. The term "no file response" shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given credit applicant indicating that the consumer reporting agency has no credit history information in its files under the name and other identifiers supplied by respondent.

C. The term "derogatory information" shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency reflecting slowly paid or delinquent credit obligations, garnishment, attachment, foreclosure, repossession, bankruptcy, or suits or judgments.

D. The term "non-derogatory information" shall be defined as information in a consumer report, furnished to respondent by a consumer reporting agency, consisting of an insufficient number of accounts reported, the absence or presence of certain types of credit accounts, the presence of new credit accounts with credit histories too short to meet the respondent's criteria for granting credit, or insufficient positive information to meet such criteria.

I

It is hereby ordered that respondent, Hospital and Health Service Credit Union, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any application by a consumer for credit that is primarily for personal, family or household purposes, do forthwith cease and desist from:

1. Failing, whenever credit for personal, family or household purposes involving a consumer is denied wholly or partly or the charge for such credit is increased wholly or partly because of any derogatory or non-derogatory information contained in a consumer report from a consumer reporting agency (including insufficient positive information or a "no-file response"), to disclose to the applicant at the time the adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a consumer report and (b) the name and address of the consumer reporting agency that made the report.

2. Failing, whenever credit for personal, family, or household purposes involving a consumer is denied wholly or partly or the charge for such credit is increased wholly or partly because of information obtained from a third person other than a consumer reporting agency bearing upon the applicant's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, to disclose to the applicant at the time the adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information obtained from a third person other than a consumer reporting agency and (b) either the nature of such information or the fact that the applicant has a right to learn the nature of such information, upon written request, in accordance with the provisions of Section 615(b) of the FCRA.

3. Failing to review each application for consumer credit for which it took adverse action between January 1, 1983, and the date of issuance of this Order, to identify each of those applications for which such adverse action was taken based wholly or partly upon information obtained from a consumer reporting agency or information obtained from a third person other than a consumer reporting agency bearing upon the applicant's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

4. Failing, within sixty (60) days of the date of issuance herein of this Order, for each application identified according to paragraph 3 above, to send the applicant, as specified herein, copy of the letter and notice attached hereto as appendices A and B and described herein. The letter shall bear the name and address of the applicant as shown on the application, the date of mailing, and the name Hospital and Health Services Credit Union. No information other than that required by this paragraph shall be included in the letter or in the notice, nor shall any other material be sent to the applicant with the letter and notice. The letter and notice shall disclose.

(a) If the application that is the subject of the letter was denied wholly or partly because of information obtained from a consumer reporting agency, the name and address of that consumer reporting agency, together with the specific, principal reason(s) for the adverse action based on this information; and,

(b) if the application that is the subject of the letter was denied wholly or partly because of information obtained from any third party source(s) the type of the source(s) (*e.g.*, employer, bank, landlord), together with the specific, principal reasons(s) for the adverse action based on this information from each source.

A letter and notice need not be sent to any applicant whose application was identified pursuant to paragraph 3 above, if the application file clearly shows that respondent Hospital and Health Services Credit Union has previously sent the applicant an adverse action notification in response to the application that complied in all respects with the provisions of paragraphs 1 and 2 of this Order.

II

It is further ordered that respondent shall maintain for at least three (3) years and upon request make available to the Federal Trade Commission for inspection and copying documents that will demonstrate compliance with the requirements of this Order. Such documents shall include, but are not limited to, all credit evaluation criteria instructions given to employees regarding compliance with the provisions of this Order, any notices provided to consumers pursuant to any provisions of this Order and the complete application file to which they relate.

III

It is further ordered that respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

IV

It is further ordered that respondent shall deliver a copy of this Order to cease and desist to all present and future employees engaged in reviewing or evaluating consumer reports or other third party information in connection with applications for credit to be used for personal, family or household purposes, or engaged in preparing or furnishing notices to consumers as required by this Order.

It is further ordered that respondent shall, within ninety (90) days after service upon it of this Order, file with the Commission a report, in writing setting forth in detail a full and complete description of how it has complied and is complying with the requirements of paragraphs 1, 2, 3 and 4 of this Order. Such report shall include, but is not limited to, a copy of each document used to instruct employees or agents of respondent regarding the requirements of these paragraphs, as well as a copy of each form letter used by respondent to comply with the requirements of these paragraphs and the number of applicants to whom the letter and notice required by paragraph 4 were mailed.

Appendix A

Dear————:

According to our records, Hospital and Health Services Credit Union denied a credit application you submitted sometime after January 1, 1983. When we denied your application, we may not have told you the sources of information we relied upon, as federal law requires.[1]

Under a Consent Order with the Federal Trade Commission, we have agreed to review your application file and give you this information now. Our review shows that we obtained information relating to your creditworthiness from a consumer reporting agency or from one or more third party sources. Each source we relied upon is noted on the attached notice, along with our principal reason(s) for declining your application based on the information each one provided.

Sincerely,

————,

Hospital and Health Services Credit Union.

Appendix B

Notice

I. If, in declining your application, we relied upon information obtained from a consumer reporting agency, the consumer reporting agency is identified below:

Name ————————

Address ————————

You have the right to contact the agency listed above to obtain complete information concerning your credit bureau file.

Based on the information obtained from this agency, we declined your application for the following reason(s):

————————

————————

II. If, in declining your application, we relied upon informaton obtained from some third party source(s) other than a consumer reporting agency, we indicate below the source(s) of the information and the reason(s) it provides:

Source(s)	Reason(s) for denial
[ ] Your employer	————
[ ] Your bank	————
[ ] Your landlord	————
[ ] Other ————	————

[1] Whenever a creditor rejects a credit application, the Equal Credit Opportunity Act requires the creditor to tell the applicant the specific, principal reasons for its decision. the Fair Credit Reporting Act requires the creditor to tell the applicant whenever the reasons for its decision are based on information obtained from a credit reporting agency (such as a credit bureau) or from another third party (such as an employer). The Fair Credit Reporting Act also entitles the applicant to learn from the credit bureau what information is contained in his or her credit file and to learn from the creditor the nature of other third party information that the creditor relied on in rejecting the application.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Hospital and Health Services Credit Union.

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 consent order.

The proposed complaint alleges that Hospital and Health Services Credit Union violated the Fair Credit Reporting Act (FCRA), by:

- Not telling consumers the names and addresses of credit bureaus when reports from these credit bureaus were used in the decisions to deny the consumers' applications for credit.
- Not telling consumers their right to obtain the nature of information obtained from persons other than credit bureaus when that information was used in the decisions to deny the consumers' applications for credit.

The proposed order prohibits Hospital and Health Services Credit Union from:

- Failing to advise consumers of the names and addresses of credit bureaus providing reports on the consumers which was used in evaluating the consumers' applications for credit.
- Failing to advise consumers, when credit is denied on the basis of information from someone other than a credit bureau, that the credit denial was based on information from such a person and that the consumer has the rights to learn the nature of such information on written request.
- Failing to identify consumers who should have received the legally required notifications noted above between January 1, 1983 and the date of issuance of this order, and sending each such person a notice which includes the disclosures which should have been given to them at the time credit was denied.

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.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 84-21155 Filed 8-8-84; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[File No. 812 3232]

Charles E. Weller; 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 Charles E. Weller, among other things, to cease misrepresenting the value of oil and gas lease rights or any other mineral right or investment; the degree of risk involved; and the past or likely future success of anyone gaining anything of value from it. Mr. Weller would also be required to possess competent and reliable evidence to substantiate any representation or claim concerning the value or potential earning of any investment; make prescribed written and oral disclosures advising customers that oil and gas lease rights are very high risk investments; and pay to the

Commission, $60,000 to be used for consumer redress.

DATE: Comments must be received on or before October 9, 1984.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: David Federbush, FTC, H-272, Washington, D.C. 20580 (202) 523-3812.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 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

Oil and gas leases, Investments, Trade practices.

Before Federal Trade Commission

[Docket No.]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Charles E. Weller, individually and as a former officer of Alaska Land Leasing, Inc., and Federal Lease Filing Corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Charles E. Weller, individually and as a former officer of Alaska Land Leasing, Incorporated ("ALL") and Federal Lease Filing Corporation ("FLFC"), and it now appearing that Charles E. Weller, individually and as a former officer of said corporations, hereinafter sometimes referred to as proposed respondent, is 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 Charles E. Weller, individually and as a former officer of ALL and FLFC, and his attorney, and counsel for the Federal Trade Commission that:

(1) Proposed respondent was a Director and President of ALL until April 1983, and Executive Vice President and General Counsel of FLPC until April 1983. As such he formulated, directed and controlled policies, acts and practices of said corporations. His address is 516 Ophir, P.O. Box 8739, Incline Village, Nevada 89450. ALL is an Alaska corporation having its principal place of business at 11726 San Vincente Boulevard, Los Angeles, California 90049. FLFC is a California corporation having its principal place of business at 28990 Pacific Coast Highway, Malibu, California 90265.

(2) Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

(3) Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

(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 respondent, 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 respondent 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 respondent, (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 proceeding 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. The Order shall become final upon service. Delivery by the U.S. Postal 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 respondent waives any right he 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 or the agreement may be used to vary or contradict the terms of the Order.

(7) Proposed respondent has read the proposed complaint and Order contemplated hereby. He understands that once the Order has been issued, he will be required to file one or more compliance reports showing the extent to which he has complied with the Order. Proposed respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

(8) The Commission waives its right to seek from proposed respondent pursuant to 15 U.S.C. 57b consumer redress. If the Commission decides not to issue its decision containing the following Order, the $60,000 deposited by proposed respondent with the U.S. Treasury shall be promptly refunded to him.

ORDER

I

It is hereby ordered that respondent Charles E. Weller, his successors and assigns, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or promotion of any mineral right, including any oil and gas lease right, or other investment offering in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Misrepresenting, directly or by implication,

(a) The value, or potential for increases in value, of any mineral right or other investment offering, including, but not limited to, the potential for oil or gas discovery or production on any property, the proximity of any property to a proven oil or gas reserve, the geologic structure of any property, or the

existence of, or access to, any pipeline to transport oil or gas from any property;

(b) The past or likely future success of anyone in realizing profits, obtaining income, or gaining anything of value from any mineral right or other investment offering, including, but not limited to, the resale value of any oil and gas lease right or the royalty income from any oil and gas lease right;

(c) The degree of risk in any investment offering or in the acquisition of any mineral right;

(d) The findings, conclusions or substance of any report, analysis, recommendation or other advice by defendant or anyone else, including a geologist, concerning the geologic potential, value or potential for increase in value of any mineral right or other investment offering;

(e) Any purchase, offer to purchase or bid by anyone, including an oil company, for any mineral right or other investment offering;

(f) Any mineral exploration, discovery or production, including drilling, on any property or the production status of any dry, capped, suspended or abandoned oil or gas well;

(2) Representing, directly or by implication, the value or potential for increase in value of any mineral right or other investment offering either by reference to any land or fixtures thereon, by reference to any earnings, profits or income anyone has made or may make, or by any other reference, or representing, directly or by implication, any other of the matters referred to in part (1)(a)–(f) above, unless at the time such representation is made respondent or his successors and assigns possess and rely upon competent and reliable evidence that substantiates the representation.

(3) Failing to disclose clearly and conspicuously (as set forth below) in every sales brochure given or shown to any prospective purchaser (other than one of the top 200 oil and gas producing companies as ranked by total assets in the then current U.S.A. Oil Industry Directory published by the PennWell Publishing Company of Tulsa, Oklahoma) of any mineral right or other investment offering statements (a)–(e) below, and failing to disclose clearly and conspicuously (as set forth below) in every sales contract and sales or service agreement given or shown to any of those prospective purchasers statements (a)–(f) below:

(a) "The [partnerships in (where applicable)] oil and gas leases we offer are extremely speculative and very high risk investments. Do not invest unless you can afford and are prepared to lose all the money invested."

(b) When any geologist has reported to respondent that respondent's lease property or the area in which that lease property is located has little or no potential for oil or gas reserves,

"(A) [g]eologist(s) report(s) to us that this area has little or no potential to contain oil or gas. A copy of (all) the geologist report(s) on this area is (are) available upon request."

(c) When offering lease rights to 640 or fewer contiguous acres of property that contain no proven oil or gas reserves,

"Even if oil or gas were located on our lease property, a lease property size in this area of 640 of fewer acres will make it unlikely that oil or gas drilling will occur."

(d) When making any reference to oil company ownership of, bidding for or attempts to purchase leases to property that is nearby, or in the same leasing block as, respondent's lease property,

"Oil company ownership of or attempts to acquire other leases in this area don't mean that oil or gas is likely to be found on or anywhere near our lease property. In fact, no oil company attempted to acquire the lease(s) we're offering to you" (when such is the case).

(e) When making any reference to any oil or gas discovery, production or exploration on property that is nearby or in the same leasing block as respondent's lease property,

"Oil or gas found nearby, or in the same leasing block as, our lease property doesn't assure that oil or gas is located on our lease property. The likelihood of reserves depends on geologic structure, which can be different even for adjoining areas."

(f) "This agreement [or contract] shall not be deemed valid or complete unless the customer has signed and dated the required declaration of understanding printed herein."

The statements required above shall be disclosed in sales or service agreements and sales contracts in print at least as large as the capitalized corporate name within the text of the contract or agreement, but in no event smaller than 10 point type. Such statement shall be printed in 100% black ink against a white background, and boxed. The copy of the foregoing statements included on each sales or service agreement or sales contract shall also include a signature line for the customer preceded by a declaration that the customer has read and understands the statement. The statement required by part 3(a) above shall also be disclosed, in the size and format described above, on the front cover of every sales brochure. The statements required by parts 3(b)–(e) shall be disclosed in sales brochures in the same size and format described above on the first page of the brochure.

(4) Failing to disclose orally in every oral sales presentation given to any prospective purchaser (other than one of the top 200 oil and gas producing companies as ranked by total assets in the then current U.S.A. Oil Industry Directory published by the PennWell Publishing Company of Tulsa, Oklahoma) of any mineral right or other investment offering the statements required by parts (3)(a)–(e) above.

II

It is further ordered that respondent Charles E. Weller shall deposit, no later than five (5) days after his attorney is served with a copy of a notice of the acceptance of the Consent Agreement containing this Order by the Commission pursuant to section 2.34(1) of its Rules of Practice, a certified check for $60,000 into an escrow account established and managed by the United States Treasury for the Federal Trade Commission, such funds to be used for such consumer redress purposes as the Commission shall decide upon after final disposition of the action now being contemplated against Alaska Land Leasing, Incorporated and Federal Lease Filing Corporation and other officers, directors and salesmen of those corporations; provided, however, that if no such action is commended within six months after the date of service of this Order, these funds shall be used for such consumer redress purposes as the Commission shall then decide.

III

It is further ordered that respondent shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Charles E. Weller, former Director and President of Alaska Land Leasing, Incorporated ("ALL"), then of Malibu, California, and former executive vice president and general counsel of Federal Lease Filing Corporation ("FLFC"), also then of Malibu, California.

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 alleges that ALL and FLFC beginning around August 1982, have maintained a substantial course of trade in the purchase and resale to consumers across the United States of oil and gas leases to federal and state lands in Alaska, which they have promoted through written materials and telephone sale presentations. It alleges that Weller, personally or through the actions of ALL and FLFC, has violated the Federal Trade Commission Act by falsely respresenting to consumers that (1) leases to federal lands in the Minchumina and Denali leasing blocks of Alaska, and to state lands in the Kemik and Kavik areas of the Prudhoe Bay Uplands, have good or high potential for oil and gas production; (2) that leases in those areas were recommended for purchase for such potential by ALL's and FLFC's geologist or team of geologists or experts; and (3) that leases in those areas are low-risk investments that are likely to produce substantial income. The complaint also alleges violation of the Act through failure to disclose that subdivision of lease interests by ALL and FLFC into 640 or fewer acres in itself makes it unlikely that the lease property will be developed for oil and gas production.

The proposed order requires that Weller cease and desist from misrepresenting, for any mineral right or other investment offering, (a) its value; (b) the past or likely future success of anyone in realizing income from it; (c) the degree of risk in its acquisition; (d) the substance of any report concerning its value by anyone, including a geologist; (e) any offer to purchase it; and (f) any mineral exploration or production on any property. It also prohibits any representations concerning value of such right or offering absent possession and reliance on reliable and competent substantiating evidence. The order further requires the affirmative disclosure, in written and oral sales presentations concerning such rights or offerings, that oil and gas leases are extremely high risk investments. Additional cautionary disclosures must be made if a negative geologic report on the offering has been received, if oil and gas leases to 640 or fewer acres are offered, or if reference is made to oil company interest in nearby property.

Finally, the order provides that Weller deliver to the Commission $60,000 for consumer redress, to be used together with such redress as is recovered from the Commission's recently filed district court action against ALL, FLFC, and other officers and salesmen thereof.

It is anticipated that the proposed order will help to reduce deception in the sale to the public of oil and gas leases as well as provide relief to injured consumers.

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.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 84-21156 Filed 8-8-84; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 460

Trade Regulation Rule; Labeling and Advertising of Home Insulation

AGENCY: Federal Trade Commission.

ACTION: Denial of petition for partial exemption.

SUMMARY: The Federal Trade Commission denies a petition for a partial exemption for manufacturers of loose-fill cellulose insulation products from the requirement in § 460.5(a)(2) of its trade regulation rule concerning the labeling and advertising of home insulation (16 CFR Part 460). The petition requested an exemption from the test procedure required by § 460.5(a)(2) to allow use of an alternative procedure. Under the alternative procedure, a loose-fill cellulose insulation manufacturer could have determined settled density by applying a multiplier correction factor to the results of the cyclone shaker test procedure contained in the General Services Administration's ("GSA") Federal Specification HH-I-515D, Amendment-1 (Oct. 11, 1979).

DATE: Effective date: August 9, 1984.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, 202-376-2893, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

Mono-Therm Industries, Inc. ("petitioner" or "Mono-Therm"), a manufacturer of cellulose insulation, petitioned the Commission for a partial exemption from § 460.5(a)(2) of the Trade Regulation rule Concerning the Labeling and Advertising of Home Insulation, 16 CFR Part 460 (the "Rule").[1] The petitioner requested permission to use a .91 multiplier factor in conjunction with "cyclone shaker" test procedure results to determine the settled density of loose-fill cellulose insulation under the Rule.

Section 460.5(a)(2) of the Rule requires that tests to determine the R-value of loose-fill cellulose insulation be conducted at the product's "settled density", *i.e.*, the density to which a product can be expected to settle over time. Coverage chart information and R-values on product labels and fact sheets must relate to the product at its settled density. The Commission requires manufacturers to determine the settled density of loose-fill cellulose insulation according to the Canadian "drop box" test procedure or the "cyclone shaker" test procedure.[2] Both test procedures attempt to replicate actual *in situ* ("on site") measurements of settled density in a laboratory setting.

Under the drop box test procedure, settled density is determined by comparing the product's density as originally installed (or "blown") and product settlement resulting from dropping tests and climatic cycling over a 28 day period. Under the cyclone shaker test procedure, settled density is determined by measuring the volumetric difference of a measured sample after applying concentrated vibration for approximately five minutes. Many manufacturers prefer the cyclone shaker test procedure over the drop box test procedure because the former is much simpler to conduct and gives a result faster.

The petitioner argues that the cyclone shaker test procedure significantly overstates the settled density of loose-fill cellulose insulation products. Petitioner believes this places sellers of loose-fill cellulose insulation at a distinct competitive disadvantage

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[1] The petition, plus attachments, has been placed on the public record as Doc. No. X-21 in FTC File No. 215-59.

[2] Section 460.5(a)(2) of the Rule requires that a product's settled density be determined in accordance with test procedures contained in the General Services Administration's ("GSA") Federal Specification HH-I-515(D) (June 15, 1978), which specifies use of the drop box test. After the Rule was promulgated, GSA amended this specification by replacing the drop box test with the cyclone shaker test, which had been adopted by the Consumer Product Safety Commission ("CPSC") as part of its standard for cellulose insulation. GSA Federal Specification HH-I-515(D), Amendment-1 (October 11, 1979). In a September 25, 1980, advisory opinion issued to Mono-Therm Industries, Inc. (the petitioner in this proceeding), the Commission announced that it would permit but would not require the use of the cyclone shaker test procedure contained in the amended GSA specification for compliance with § 460.5(a)(2) of the Rule.

compared to sellers of other insulation products. Therefore, petitioner requests a partial exemption from § 460.5(a)(2) of the Rule, conditioned on the alternative use of a .91 multiplier factor applied to cyclone shaker test results in order to correct the alleged overstatement of settled density.

Previously, Mono-Therm had requested a partial exemption from the settled density testing requirement of § 460.5(a)(2) of the Rule conditioned on the alternative use of a procedure known as the Canadian Government Specification Board's Method B, Specification 51-GP-60M, which provides for calculation of settled density by multiplying a product's blown density result by 1.27. After publishing the petition for comment the Commission ultimately rejected Method B as an alternative test procedure for measuring settled density because of insufficient evidence of accuracy, uniformity and repeatability.[3]

In support of the current petition, Mono-Therm relied primarily on data provided by interested industry members and cited an interim report from ongoing field research involving attic insulation measurements being conducted by the Oak Ridge National Laboratory. However, the Commission decided that the materials and data submitted were too limited and inconclusive to support a tentative decision.

To determine whether additional evidence existed concerning the partial exemption request, the Commission published in the **Federal Register** an invitation to comment on the requested conditional partial exemption.[4]

II. Discussion of the Comments

The Commission received twelve comments concerning the correction factor petition.[5] Six commenters recommended adoption of the .91 multiplier, three commenters recommended against adoption, one commenter (an author of a report on current field studies) suggested that further field testing is necessary but made no specific recommendation concerning the proposed correction factor, and one additional commenter expressed no recommendation, but rather was concerned with ancillary issues. Lastly, the Consumer Product Safety Commission ("CPSC") requested that the Commission, if it granted the exemption, use the term "Thermal Density" to avoid any possible confusion concerning CPSC's test for smoldering—combustion.

Of the six comments in favor of adoption of the multiplier,[6] five contained no data or analysis pertinent to the issue, but simply stated support for the correction factor,[7] or a belief that adoption of the correction factor is adequately supported by research or round robin testing results.[8]

Five commenters expressed concern about the mineral fiber industry's purported ability to sell products without testing for settled density.[9] Cellulose insulation industry members have argued for several years that members of the mineral fiber industry are unfairly allowed to market their products based on coverage parameters determined immediately after a product is blown into the enclosure which it insulates. This might not account for any change in product density between its installation and its final settlement. Therefore, according to members of the cellulose industry, the mineral fiber industry enjoys a competitive and financial advantage due to an overstatement of product R-value per application and an overstatement of product coverage, thereby resulting in a lower cost per unit of represented insulating ability.

These complaints, however, misstate the requirements of the Rule. The Rule requires all loose-fill insulation manufacturers to test their products to approximate *in situ* settled density. While cellulose insulation manufacturers are required to use specified test procedures, the Rule does not specify a particular test procedure to be used by loose-fill mineral wool insulation manufacturers. As the Commission pointed out in the Rule's Statement of Basis and Purpose, at that time no final settled density testing procedure had been developed and accepted for loose-fill mineral wool.[10] Nevertheless, § 460.5(a)(3) of the Rule states that once a settled density test procedure for loose-fill mineral wool becomes part of a final GSA specification, R-value tests for that product must be conducted at the settled density as determined under the GSA specification.[11] In the meantime, § 460.5(a)(3) of the Rule requires that manufacturers of loose-fill mineral wool insulation conduct R-value tests on samples of their products that fully reflect the effect of settling on the products' R-values.[12] The Commission also will consider any other recognized test procedure to determine the settled density of loose-fill mineral wool products. Although the Commission's staff has been in contact with the American Society of Testing and Materials ("ASTM") committee responsible for establishing uniform test procedures for insulation products, the issue has not yet been resolved.

The only comment in favor of the multiplier which included data was submitted by Cellin Manufacturing, Inc., a licensee of the petitioner.[13] The data submitted by Cellin were contained in a draft of an interim continuing report on field research involving actual attic insulation measurements being conducted by the Oak Ridge National Laboratory ("ORNL"). Petitioner referred to an earlier phase of this research and submitted an interim

[3] Denial of petition for partial exemption, 47 FR 40156 (Sept. 13, 1982).

[4] Invitation to comment on requested conditional partial exemption, 48 FR 35661 (August 5, 1983).

[5] Two of the comments were submitted after the comment deadline. However, because one of these comments was from one of the authors of the major report offered in support of the proposed exemption (Comment of D.L. McElroy, Oak Ridge National Laboratory ("ORNL"), Oak Ridge, TN, Oct. 10, 1983, Doc. No. Y-94), and because the other of these comments was from the CPSC, for which the cyclone shaker test procedure originally was developed (Comment of Edgar Morgan, Executive Director, CPSC, Oct. 12, 1983, Doc. No. Y-95), the Commission has decided that both comments should be included in its consideration of Mono-Therm's petition.

[6] Comment of Cellufiber Manufacturing Inc., Spokane, WA, Sept. 22, 1983, Doc. No. Y-84; comment of Fiber Master Inc., Monroe, LA, Sept. 23, 1983, Doc. No. Y-85; comment of Cellin Manufacturing, Inc., Lorton, VA, Sept. 28, 1983, Doc. No. Y-87; comment of Midwest Thermal Products, Inc., Hesston, KS, Sept. 23, 1983, Doc. No. Y-88; comment of Rite-Way Insulation Inc., Burley, ID, Oct. 3, 1983, Doc. No. Y-91; comment of Clayville Insulation, Burley, ID, Oct. 3, 1983, Doc. No. Y-92.

[7] Comment of Fiber Master Inc., Monroe, LA, Sept. 23, 1983, Doc. No. Y-85.

[8] Comment of Cellufiber Manufacturing Inc., Spokane, WA, Sept. 22, 1983, Doc. No. Y-84; comment of Midwest Thermal Products, Inc., Hesston, KS, Sept. 23, 1983, Doc. No. Y-88; comment of Rite-Way Insulation Inc., Burley, ID, Oct. 3, 1983, Doc. No. Y-91; comment of Clayville Insulation, Burley, ID, Oct. 3, 1983, Doc. No. Y-92.

[9] Comment of Cellufiber Manufacturing Inc., Spokane, WA, Sept. 22, 1983, Doc. No. Y-84; comment of Fiber Master, Inc., Monroe, LA, Sept. 22, 1983, Doc. No. Y-85; comment of Cellin Manufacturing Inc., Sept. 28, 1983, Doc. No. Y-87; comment of Midwest Thermal Products, Inc., Sept. 23, 1983, Doc. No. Y-88; comment of Clayville Insulation, Burley, ID, Oct. 3, 1983, Doc. No. Y-92.

[10] Final trade regulation rule, 44 FR 50218, at 50228 (Aug. 27, 1979).

[11] The Commission's staff has been informed that GSA plans to eliminate its insulation specifications as soon as the American Society of Testing and Materials ("ASTM") develops ASTM specifications for each type of insulation product. However, the GSA specification for loose-fill mineral wool insulation is still in effect at this time. GSA Federal Specification, HH-I-1030B. The Commission's staff will continue to monitor developments concerning the development of a specific test procedure to determine the settled density of loose-fill mineral wool insulation products.

[12] *See* note 10, *supra*.

[13] Comment of Cellin Manufacturing, Inc., Lorton, VA, Sept. 28, 1983 (with attached report: McElroy, Yarbrough, and Graves, "Interim Report on Attic Field Test of Loose-fill Cellulose Insulation" [handwritten draft], 1983), Doc. No. Y-87.

report thereon as part of its original petition.[14] However, the researchers responsible for that report stated at that time that the results were inconclusive and that further testing and measurement would be required before any conclusions could be made concerning the application of any correction factor to settled density tests.

One of the authors of the report submitted with Cellin's comment, Mr. D.L. McElroy of ORNL, also submitted a comment which included a copy of the report submitted by Cellin.[15] That report contains the most current update on the ORNL research, which is still under way in Bucyrus, Ohio, and Seattle, Washington. This updated report was prepared for the ASTM C-16 meeting held in Philadelphia in September, 1983. Cellin argues that the new report data suggest that a multiplier between .81 and .91 is appropriate. After review of the data, however, staff disagrees. Cellin refers only to the data favorable to the petitioner's request while ignoring contradictory information from the same report. Thus, Cellin's hypothesis is of extremely limited value and is not persuasive. For example, although the data derived from measuring insulation in attics in Bucyrus, Ohio, indicate that a correction factor in the range of 0.85 to 0.91 would be needed to bring cyclone shaker test results and *in situ* settled density into agreement, the same analysis of the data derived from measurments in attics in Seattle, Washington, indicates an inconsistent and contradictory correction factor of 1.12. Further, the data described in the report show that if the manufacturers' label values for settled density are compared to cyclone shaker test results, then the correction factors needed to bring the cyclone shaker test results into agreement with *in situ* density are 1.15 for Bucyrus and 1.27 for Seattle—a finding that the test understates, not overstates, settled density. The report recommends that manufacturers conduct measurements on their own products in attics to determine what is happening to those products when they are installed, and that manufacturers do additional work on the accuracy of the cyclone shaker test procedure itself, before any changes are made in the cyclone shaker test procedure.

Two commenters affirmatively opposed adoption of the multiplier in association with cyclone shaker testing. One of these, Regal Industries, Inc., stated that no correction factor would be necessary if certain alleged shortcomings in the cyclone shaker test procedure were addressed.[16] The other commenter, the Mineral Insulation Manufacturers Association ("MIMA"), a trade association representing manufacturers of competing mineral wool insulation, also opposed the multiplier, asserting that the ORNL field result data showed such a wide range of *in situ* density measurements both above and below the cyclone shaker results that the ORNL study could not support a common multiplier factor or indeed that one is needed.[17] According to MIMA, a proposal to similarily modify the ASTM standard for cellulose insulations, ASTM C-739, to add a multiplier factor recently was balloted through the ASTM C16.23 task group. MIMA states that the proposal received negative votes based primarily on the position that the data base was inadequate to establish the use of a multiplier factor. The MIMA comment states that the revised cellulose standard is not going to ASTM ballot containing the cyclone shaker test method without inclusion of any multiplier factor. Lastly, according to the MIMA comment, an ASTM task group has been formed to examine the cyclone shaker test method in detail to establish the precision and accuracy of the test method and to develop any modifications that may be required.

Three commenters suggested that FTC approval of a multiplier correction factor at this time based on available data would be premature. Thermoguard Insulation Company stated that it has a very close association with the subject since it is participating with ORNL in ORNL's *in situ* attic studies, as well as ORNL's round robin settled density correlation study.[18] Thermoguard recommends that the Commission table the petition pending industry data and input which presently are in work. A second commenter, Mr. Cavanaugh, President of ASTM, make no direct recommendation in his comment, but pointed out that the precision and accuracy of the cyclone shaker test method is still under evaluation by the C-739 task group, as an ongoing activity of ASTM's C16 Committee.[19] Lastly, Mr. McElroy, of ORNL, stated that further field testing is needed to establish the appropriateness of the cyclone shaker test procedure for loosefill cellulose insulation.[20]

III. Decision

Neither the comments received nor the data submitted support the use of any correction factor. Because there has been no showing that the use of a correction factor is as valid a method of determining settled density as the test procedures currently required, the granting of a partial exemption from the Rule's settled density testing requirements conditioned on the use of a correction factor is not justified. Consequently, based on its review of petitioner's data and the comments submitted, the Commission denies the petition.

List of Subjects in 16 CFR Part 460

Advertising, Insulation, Labeling, Trade practices.

Issued: July 27, 1984.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 84-21156 Filed 8-8-84; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1205

Power Lawn Mowers; Withdrawal of Proposed Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Commission withdraws the outstanding portions of the proposed standard addressing hazards associated with power lawn mowers which was published on May 5, 1977. The Commission has previously issued a final standard based on the portion of the proposal that addressed blade

[14] Letter from Joan Z. Bernstein, Wald, Harkrader & Ross, Counsel for Mono-Therm Industries, Inc., Nov. 3, 1982, Doc. No. X-21, Attachment 8: McElroy, Yarbrough, and Graves, "An In-Situ Study of Attic Loose-fill Thermal Insulation in Residential Application", Sept. 1982.

[15] Comment of D.L. McElroy, ORNL, Oak Ridge, TN, Oct. 10, 1983, Doc. No. Y-94. Mr. McElroy included a typed draft version of the handwritten version of the report submitted by Cellin. *See* note 13, *supra*.

[16] Comment of Regal Industries, Crothersville, IN, Sept. 30, 1983, Doc. No. Y-90.

[17] Comment of Sheldon H. Cady, Executive Vice President, Mineral Insulation Manufacturers Association ("MIMA"), Sept. 30, 1983, Doc. No. Y-89.

[18] Comment of Thermoguard Insulation Company, Seattle, WA, Sept. 27, 1983, Doc. No. Y-86.

[19] Comment of William T. Cavanaugh, President, American Society of Testing & Materials ("ASTM"), Sept. 30, 1983, Doc. No. Y-93. Mr. Cavanaugh states that ASTM both welcomes and encourages active participation and communication with FTC representatives. The Commission's staff has been communicating with and will continue to work with ASTM in an attempt to resolve technical testing issues such as that presented in the Mono-Therm petition.

[20] Comment of D.L. McElroy, ORNL, Oak Ridge, TN, Oct. 10, 1983, Doc. No. Y-94.

contact injuries from walk-behind power lawn mowers. The remaining portions of the proposal, that are now being withdrawn, address the hazards of objects thrown by the blades of rotary mowers, fuel ignition from liquid fuel powered mowers, electric shock from electrically-powered mowers, and the stability, shields, steering, brakes, and controls of riding mowers.

The withdrawal of the thrown objects requirements is based on information showing that the lawn mower industry is developing, and plans to adopt, a voluntary standard similar to the one proposed by the Commission. Furthermore, the voluntary standards that apply to currently produced mowers appear to have reduced the risk of thrown objects injuries by up to 27 percent compared to mowers produced before the Commission proposed its standard.

The requirements for fuel ignition from liquid fuel powered mowers and electric shock from electrically-powered mowers are withdrawn because the Commission cannot now conclude that these risks are unreasonable or that the proposed requirements would adequately reduce the risks that do exist.

The requirements for riding mowers are withdrawn because the Commission believes it will be a more efficient use of Commission resources to provide comment and other assistance to the ongoing industry effort to develop improvements to the existing voluntary standard for riding mowers than to continue development of a mandatory standard at this time.

DATES: The Commission extends the date by which it must publish a final standard or withdraw the proposal to September 10, 1984.

The effective date of the withdrawal of the proposal is September 10, 1984.

FOR FURTHER INFORMATION CONTACT: Carl W. Blechschmidt, Program Manager, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492-6554.

Inquires from the media should be directed to Lou Brott, Office of Media Relations, Consumer Product Safety Commission, Washington, D.C. 20207, (202) 634-7780.

SUPPLEMENTARY INFORMATION:

A. Background

On May 5, 1977, the Commission proposed a standard under section 7 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2056, for power lawn mowers (42 FR 23052). A discussion of the background and provisions of the proposal is given in the preamble to the proposal.

The proposed standard for power lawn mowers was a comprehensive standard addressing unreasonable risks of injury associated with both walk-behind and riding mowers. (As used in the proposal, the term "riding mower" includes lawn tractors and lawn and garden tractors with a mowing attachment.) The proposal addressed blade contact injuries; injuries caused by objects propelled by the mower blade (thrown objects); injuries due to lawn mowers rolling, slipping, or overturning, or to failure of lawn mower brakes or steering mechanisms; injuries from fires caused by ignition of liquids used as fuel for power mowers; and injuries caused by electric shock from electrically-powered lawn mowers or from electrical ignition systems.

The Commission received more than 100 comments on the proposed standard, which raised numerous and complex issues. In order to resolve these issues and to issue a safety standard for lawn mowers in a more efficient manner, the Commission decided to first issue requirements for walk-behind mowers to reduce the risk of blade contact injuries and then to complete its consideration of whether to issue requirements for riding mowers and other types of hazards.

On June 7, 1978, the Commission published a notice in the **Federal Register** (43 FR 24697) announcing that it would issue separately the requirements addressing injuries due to blade contact with walk-behind mowers and requirements addressing injuries associated with thrown objects, fuel and electrical hazards, and riding mowers. The Commission in issuing that notice determined it would be a more effective and efficient method of addressing the unreasonable risks of injury associated with power lawn mowers to first issue requirements that address the most numerous injuries and then to do the additional work that would be required to issue requirements addressing other risks of injury.

A final standard addressing the hazard of blade contact from walk-behind power lawn mowers was published on February 15, 1979 (44 FR 9990), and went into effect on June 30, 1092.

After the publication of the final blade contact standard for walk-behind power mowers, the Commission continued to evaluate the issues associated with the hazards of objects thrown by the blades of rotary mowers, fuel ignition, electric shock from electrically-powered mowers, and riding mowers. As a result of this further consideration, the Commission preliminarily decided to withdraw its proposed rule addressing these hazards.

Section 9(a)(1)B) of the Consumer Product Safety Act ("the CPSA"), 15 U.S.C. 2058(a)(1)(B), as it existed prior to August 13, 1981, required that this withdrawal be accomplished by rulemaking. Although this aspect of section 9(a)(1)(B) was amended by Pub. L. 97-35, the requirement for proposing the withdrawal of proposed consumer product safety rules still applies for rules proposed before August 13, 1981 (sec. 1212(b), Pub. L. 97-35; 95 Stat. 357).

For the reasons stated below, the Commission, on February 11, 1983, proposed to withdraw the outstanding portions of its proposed safety standard for lawn mowers (48 FR 6343).

B. Specific Provisions of the Proposal

The discussion that follows outlines the provisions of the proposed standard that are being withdrawn and the reasons that the Commission decided to withdraw the proposal. A more detailed discussion of these matters is contained in the proposed withdrawal (48 FR 6343; Feb. 11, 1983).

1. *Thrown objects.* The proposed standard contained a performance test intended to evaluate the manner in which a particular mower would throw objects which contact the blade during mowing operations.

The test apparatus consists of an octagonal target enclosure surrounding an artificial turf surface which supports the mower to be tested. Sixpenny nails are injected from three positions into the blade of the mower while it is operating, and the number and locations of the hits of the nails that are propelled against the walls of the enclosure are recorded and compared to pass/fail criteria. The criteria for walk-behind mowers allow fewer hits in the rear quadrant of the target (compare to riding mowers and to the other quadrants) in order to protect the operator. More hits are allowed in the area facing the usual location of the discharge chute for both riding and walk-behind mowers.

The most significant development that has occurred since the Commission proposed its thrown objects requirements has been an effort by the lawn mower industry to develop a voluntary standard that, it appears, will be similar in many respects to the one proposed by the Commission. This test is intended to replace the thrown objects requirements that are presently in the voluntary standard, ANSI B71.1, which includes several requirements that could have an effect on the thrown objects performance of mowers.

Although the Commission's staff believes that the present requirements have certain disadvantages, an analysis of injury data collected since the existing voluntary requirements were introduced in 1972 shows that mowers certified as meeting the voluntary requirements and produced since 1972 may have an injury rate up to 27 percent lower than that for mowers produced before 1972. *See* Newman R. and B. MacDonald, Special Report: Effectiveness of the ANSI 1972 Voluntary Standard in Reducing Thrown Object Injuries from Walk-Behind Power Lawn Mowers, U.S. Consumer Product Safety Commission, February 1981.

After considering the considerable additional technical work that would be needed before the Commission could issue mandatory thrown objects requirements, the fact that the industry is developing a similar standard, and the nature and extent of the risk of injury from thrown objects, the Commission has decided to withdraw its proposed requirements for thrown objects performance of power mowers.

2. *Fuel ignition.* National Electronic Injury Surveillance System (NEISS) data indicate that fewer than 1000 burn injuries due to ignition of lawn mower fuel are treated in hospital emergency rooms each year. For the 7-year period of 1974–80, the Commission's files contain 14 death certificates accociated with ignition of the fuel of power lawn mowers.

The proposal addressed the hazard of fuel ignition by requirements designed to reduce the amount of spilled or leaked fuel and to control the ignition sources of sparks and exhaust heat.

The proposal included a requirement that high tension cables on mowers be fully insulated. A test was also provided to determine that the spark plug connector will not spark against grounded metal if the operator attempts to start the mower while the connector is disconnected. In addition, grounding switches would not be permitted in the high tension (secondary) part of the ignition system.

The proposal also prohibited leakage from the fuel system during any reasonably foreseeable condition of use. In addition, a test was provided to insure that fuel will not contact certain parts of the mower and that not more than 0.95 gm. (.033 fl. oz.) of fuel will collect in any single pool when the fuel tank is overfilled.

From the standpoint of logic and engineering judgment, it would appear that a mower that met the proposed requirements concerning fuel ignition would certainly be safer than one that did not. However, the Commission is unable at this time to determine how many currently available mowers already comply with such requirements or the extent to which such requirements would decrease the already relatively low incidence of fuel burn injuries associated with these mowers. Without an estimate of the potential benefits of these requirements, the Commission is unable to determine if the costs that would be involved to comply with the requirements would be justified. Moreover, the Commission is barred by statute from issuing requirements of these types without demonstrating that the costs of the requirements bear a reasonable relationship to the benefits to be obtained. 15 U.S.C. 2058; *Southland Mower Co.* v. *CPSC,* 619 F.2d 499 (5th Cir. 1980). Since the Commission is unable to do this, it has decided to withdraw these requirements. If in the future sufficient data become available to show that mowers being produced at that time are unreasonably dangerous because of a lack of the features meeting these requirements, the Commission can propose to issue the requirements based on the new data.

3. *Electrically-powered mowers.* From NEISS data, it is estimated that approximately 800 injuries of any type associated with electrically-powered mowers are treated in hospital emergency rooms. These injuries include those caused by blade contact and thrown objects. The Commission has no data from which it could determine how many of these injuries may be related to shock. The Commission's death certificate files indicate about one death per year associated with electrically-powered mowers. However, some of these may be associated with damaged extension cords rather than with the mower itself.

In order to reduce the hazard of electric shock associated with electrically-powered mowers, the proposal included a performance test to insure that the parts of the electrically-powered lawn mowers which are normally contacted by the operator are covered with insulation having a resistance of at least 250,000 ohms.

Another proposed requirement was that folding or pivoting handles on electrically-powered mowers shall not entrap electrical cords used with the mower.

A plug blade shielding test was also provided to insure that the plug blades for electrically-powered lawn mowers are shielded so that they cannot be contacted by a probe while they are still energized by the extension cord.

A switch that disconnects both sides of the power supply to the mower when it is in the OFF position would also be required.

As with the fuel ignition requirements, the Commission lacks sufficient data to determine how many currently available mowers already comply with these requirements or how many shock injuries could be prevented if such requirements were issued. This is especially true since the effectiveness of these requirements could be reduced over time as insulation and shielding becomes damaged or deteriorates. Therefore, due to the small number of injuries and the lack of the required data showing that these requirements are reasonably necessary, the Commission has decided to withdraw these proposed requirements.

4. *Riding mowers.* Unlike the hazards discussed above, the injuries associated with riding mowers are numerous and often serious.

In the incidents involving riding mower fatalities, three main hazard patterns accounted for 80 percent of the accidents: the mower tipped over, the victim fell under or was run over by the mower, or the victim fell or was thrown from the mower. These hazards also appeared in the data concerning injuries, as did the hazards of blade contact, body contact with another object, entrapment in moving parts of the mower, thrown objects, contact burns, fuel ignition, and starter-related problems.

In order to deal with the identified hazards concerning riding mowers, the proposal included the following provisions.

Riding mower stability and shield requirements. In order to reduce injuries caused by the turning over of a riding mower, the proposal included static stability requirements that the mower's upper wheels shall not lift when it rests on a slope inclined 30° from the horizontal when the mower is facing uphill or downhill or on a slope inclined 20° from the horizontal when the mower is facing in either direction across the slope.

The proposal also required shields for riding mowers that would prevent a foot probe from entering the blade path or contacting any moving mower part driven by the power source that is within 125 cm. (49.2 in.) of a seat reference point of the mower.

Riding mower steering requirements. This proposal would not permit tiller bar steering for riding mowers, since a tiller bar requires the operator's body to be in an unstable position during sharp turns. If a mower is steered by dual hand-lever controls, to turn a forward-traveling vehicle to the right, the left control

would have to move in a forward direction relative to the right control or the right control would have to move rearward relative to the left control, and vice versa for left turns. All other types of steering controls shall move to the right, or in a clockwise direction, to turn a forward traveling mower to the right, and vice versa.

A structural integrity test of the steering system was also included. The system would be required to withstand a force of 222 newtons (50-lb.) applied to the steering mechanism while the steerable wheels are held in each of three positions.

Riding mower brakes. The proposed standard includes requirements for stopping distances for riding mowers in both the forward and backward directions. In order that the operator shall be able to control the mower, the proposal included a test to ensure that the service brake is capable of holding the mower stationary on a 17° slope when a 50 lb. (222 newton) force is applied to the brake control. The proposal would also require the service braking system to function independently of engine operation or the position of the transmission or clutch controls.

A structural integrity test for braking controls was proposed which would require foot brakes to be able to withstand a force of 1,670 newtons (375.5 lb.) and hand brakes to be able to withstand a force of 710 newtons (159.7 lb.).

A test for parking brakes was provided to ensure that they will limit the amount of roll when the mower is parked on an inclined surface, both with the power source running or off.

A leg probe test was proposed to determine that the brake pedal is located close enough to the seat that smaller operators can apply the necessary force to the pedal.

In order that brakes be reliable to use, the proposal would require brake pedals to have slip resistant contact surfaces, and a barrier would be required to prevent the foot from sliding off a right-side control surface toward the right and from sliding off a left-side control surface toward the left.

Riding mower blade controls. Under the proposal, a riding mower would be required to have an "operator present" or "deadman" type of blade control system which will prevent operation of the blade unless a control is actuated by the operator, and the operator would have to be in continuous contact with the control in order for the blade to continue to be driven. The mower would also have a second control which must be actuated before a stopped blade can be restarted. To prevent inadvertent engagement of the blade control, this second control (which must be actuated before the stopped blade can be restarted) would require a force of at least 110 newtons (24.8 lb.) in order to be actuated.

In order to reduce injuries connected with backover accidents, the proposal would require the blade of a riding mower to come to a stop when the transmission or traction drive is positioned for reverse travel.

Riding mowers would be required to have a control so that the blade can be rendered inoperative while the mower is traveling forward. This enables the operator to reduce the hazard from a moving blade when it is not needed for mowing and also to reduce the hazard of thrown objects when the mower is driven across an area covered with gravel or debris.

Again, based on engineering judgment, riding mowers meeting these requirements should be safer than those that do not. In fact, the current ANSI standard contains requirements similar to some of these proposals. However, many of the proposed requirements address accident modes that can be affected by dynamic factors that are not accounted for in the proposed tests. In addition, the riding mowers currently on the market would have to be evaluated to see the extent to which they currently fail to comply with the proposed requirements, in order to help determine if the requirements are reasonably necessary. For these reasons, much work would need to be done before the Commission could draw the statutorily required conclusion that the cost of incorporating the features needed to comply with the proposed requirements would be justified by any benefits to be obtained.

The industry trade association, the Outdoor Power Equipment Institute (OPEI), is working toward the development of improvements to the existing ANSI B71.1 standard for riding mowers that could be followed on a voluntary basis by the manufacturers of these mowers. In the past, voluntary standards approved by OPEI have been met by a high percentage of the industry. Therefore, in view of the extensive work that would have to be done by the Commission to complete the development of a mandatory standard, the Commission has concluded that it would be a more efficient use of Commission resources to monitor OPEI's development of improvements for this voluntary standard. In this way, the Commission staff's views and comments could be taken into account during the development of the improved voluntary standard.

Therefore, the Commission has decided to instruct its staff to monitor the development of the voluntary standard and is withdrawing its proposal of a mandatory standard for riding mowers. If in the future the effort to develop an adequate voluntary standard proves unsuccessful, the Commission can consider at that time whether to take additional steps that might lead to the development of a mandatory standard.

C. Comment on the Proposed Withdrawal

The Commission received one comment on the proposal to withdraw the remaining portions of the proposed safety standard for power lawn mowers. That comment was from a Professional Engineer who questioned the ability of the lawn mower industry to develop a meaningful safety standard.

While it is true that the lawn mower industry did not agree to adopt voluntarily all the provisions of the safety standard addressing blade contact injuries from walk-behind power mowers that the Commission has previously issued, that situation differs from the present case. To the extent that the Commission is relying on the anticipated development of voluntary standards to address some of the hazards that are addressed by the proposed standard's requirements, these present standards development activities are being actively pursued by the industry. Furthermore, it appears that the types of requirements to be developed by the industry to address these hazards are similar to those in the standard that was proposed by the Commission. As noted above, in this particular industry there is usually a high degree of conformance to this type of voluntary standard.

Therefore, the Commission does not view the situation with regard to these remaining hazards as analogous to the situation that existed when the Commission issued its earlier mandatory standard. Furthermore, in view of the substantial additional technical work that would be required in order to issue any of the proposed requirements, it is likely that further public comment would have to be obtained before the requirements could be issued. Therefore, even if mandatory requirements addressing these hazards ultimately prove to be necessary, there is little advantage to be gained by leaving the previous proposal outstanding, compared to withdrawing these requirements now and starting a

new proceeding if the need for mandatory requirements becomes apparent in the future.

The commenter also inquired about whether there is a mechanism for public input into the development of this voluntary standard. Members of the public may forward their views on the ANSI B71.1 standard to ANSI. ANSI's address is:

American National Standards Institute, 1430 Broadway, New York, NY 10018.

In addition, views that are brought to the attention of the Commission's staff will be considered in the context of the staff's input to ANSI and OPEI concerning the development of more effective voluntary standards.

D. Effect on Small Business and Other Small Entities

In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Commission certifies that this rule, withdrawing the outstanding portions of the proposed standard for power lawn mowers, will not have a significant economic impact on a substantial number of small entities (small businesses, small organizations, and small governmental jurisdictions). In contrast to a final regulation having enforceable requirements, the proposed standard which is withdrawn at this time is not binding, creates no obligations, and has no legal impact. Thus, withdrawal of the proposed standard also will not have a significant impact on small entities.

E. Environmental Impact

Since the action being proposed is merely to withdraw a previous proposal, it will have little or no potential for affecting the human environment. As a result, the withdrawal does not require either an environmental assessment or an environmental impact statement. See 16 CFR 1021.5(c)(1) (categorical exclusion of safety standards under the National Environmental Policy Act, 15 U.S.C. 4321–4347).

F. Conclusion and Extension of Time

Section 9(a)(1) of the Consumer Product Safety Act, 15 U.S.C. 2058(a)(1), as it existed prior to August 13, 1981, requires that within 60 days after the publication of a proposed consumer product safety rule, the Commission shall either (1) promulgate a rule respecting the risk of injury associated with such product or (2) withdraw the applicable notice of proceeding, unless the Commission extends the 60-day period for good cause shown and publishes its reasons in the **Federal Register**. Although section 9 was amended by Pub. L. 97–35 to remove this requirement, the requirement still applies for rules proposed before August 13, 1981 (Sec. 1212(b), Pub. L. 97–35; 95 Stat. 357).

The Commission determines that providing time for considering the issue of whether to withdraw the proposal and for accomplishing that action is good cause for further extending the 60-day period. Therefore, the Commission extends the date by which it must either publish a final standard or withdraw the proposal until September 10, 1984.

Accordingly, for the reasons given above, and under section 9(a)(1) of the Consumer Product Safety Act, the Commission withdraws the portions of the proposed standard for power lawn mowers that was published in the **Federal Register** on May 5, 1977 (42 FR 23052), that were not included in the safety standard published on February 15, 1979 (44 FR 9990), effective September 10, 1984.

List of Subjects in 16 CFR Part 1205

Consumer protection, Labeling, Lawn mowers, Reporting and recordkeeping requirements.

Dated: August 6, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84–21179 Filed 8–8–84; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Ohio Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments submitted by Ohio as amendments to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments submitted consist of proposed changes to the Ohio regulations concerning use of explosives and rules of procedure for the Ohio Reclamation Board of Review.

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

DATES: Written comments from the public not received by 4:30 p.m., September 10, 1984 will not necessarily be considered in the decision on whether the proposed amendments should be approved and incorporated into the Ohio regulatory program. A public hearing on the proposed amendments has been scheduled for August 30, 1984. Any person interested in speaking at the hearing should contact Ms. Nina Rose Hatfield at the address or telephone number listed below by August 23, 1984. If no person has contacted Ms. Hatfield by that date to express an interest in the hearing, the hearing will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing is scheduled for 1:00 p.m. in Room 202, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43227.

Written comments and requests for an opportunity to speak at the hearing should be directed to Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus Ohio 43227; Telephone: (614) 866–0578.

Copies of the Ohio program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining, Room 5124, 1100 "L" Street, NW., Washington, D.C.

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio.

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 34688). 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, 1983 **Federal Register**.

II. Submission of Revisions

By letters dated July 11 and 23, 1984, Ohio submitted program amendments consisting of:

(1) Revision of rule 1501:13-9-06 concerning performance standards for use of explosives. The revision is intended to parallel the revised Federal regulations at 30 CFR 816.61-.68 and 817.61-.68; and

(2) Proposed rules of procedure for the Ohio Reclamation Board of Review, contained in Rules 1513-3-01 through 1513-3-22. These rules included provisions for appeals, intervention, temporary relief, discovery, hearings, decisions, and award of costs.

The full text of the proposed program amendments submitted by Ohio is available for public inspection at the addresses listed above. Upon request to OSM'S Field Office Director, each person may receive, free of charge, one single copy of the proposed amendments. The Director now seeks public comment on whether the proposed amendments are no less effective than the federal regulations. If approved, the amendments will become part of the Ohio program.

III. Procedural Matters

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

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

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

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

List of Subjects in 30 CFR Part 935

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

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

[FR Doc. 84-21133 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 938

Permanent State Regulatory Program of Pennsylvania

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is considering modifying the deadline for Pennsylvania to meet conditions (d) and (k) of its approved State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Condition (d) relates to prime farmland requirements for a permit applicant who proposed to mine coal in the anthracite region. Condition (k) pertains to Pennsylvania's hearings provision for bond release. Pennsylvania is requesting the extension to accommodate its rule making process.

DATE: Comments must be received by September 10, 1984, at the address below, no later than 4:00 p.m.

ADDRESS: Written comments must be mailed or hand-delivered to: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101, (717) 782-4036.

SUPPLEMENTARY INFORMATION: Under 30 CFR 732.13(i), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval. The curing of each deficiency is a condition of the approval. Steps to terminate the conditional approval must be taken if the conditions are not met according to the schedule. The dates are established in consultation with the State, based on the regulatory and administrative needs of the State's permanent program and SMCRA and the time required for changes to be adopted under State procedures or legislative schedules.

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of that proposed program as outlined in 30 CFR Part 732, the Secretary of the Interior disapproved the program. The State resubmitted its program on January 25, 1982, and, subsequently the Secretary approved the program conditioned on the correction of minor deficiencies. Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanations of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** (47 FR 33050).

Pennsylvania agreed at the time of conditional approval to correct condition (d) by August 1, 1983. However, in a letter dated April 25, 1983, it requested an extension of time to correct condition (d) until February 1, 1984. In the **Federal Register** dated September 12, 1983 (48 FR 40888), OSM granted Pennsylvania the extension.

Additionally, on April 20, 1983, the United States District Court for the Middle District of Pennsylvania in *Pennsylvania Coal Mining Association* v. *Watt*, Civil No. 82-1129, remanded to the Secretary with instructions to rectify the corresponding provision in the Pennsylvania program concerning the timing of the bond release hearing and the decision. Pursuant to 30 CFR 732.17(e), the Secretary notified Pennsylvania by a letter dated June 7, 1983, that a State program amendment

was required to rectify the matter. In the **Federal Register** (48 FR 27102) dated June 13, 1983, OSM announced its intention to impose a new condition (k) on the approval of the Pennsylvania program to comply with the District court decision. The State responded to OSM's June 7, 1983 letter on July 27, 1983 and advised OSM that it would amend its regulations (PA 86.171) to rectify the matter. In the **Federal Register** dated September 6, 1983 (48 FR 40223) OSM imposed condition (k) and required that Pennsylvania correct its program by August 1, 1984.

In a letter dated February 3, 1984, Pennsylvania asked to extend the time until August 31, 1984 to satisfy condition (d) and (k). Pennsylvania attached a copy of its proposed regulations intended to satisfy conditions (d) and (k), but can not formally submit these regulations until its rulemaking process can be completed. The Environmental Quality Board (EQB) adopted the regulations on December 20, 1983, and Pennsylvania anticipated completion of the process by August 31, 1984. The Secretary found the State's request reasonable and in the **Federal Register** dated April 20, 1984, granted the extension until August 31, 1984, to meet condition (d) pertaining to certain coal mine permit requirements with respect to prime farmland in the anthracite region and condition (k) pertaining to bond release procedures.

By a letter dated July 18, 1984, Pennsylvania asked to extend the August 31, 1984 deadline to satisfy conditions (d) and (k) until November 30, 1984. In its letter, Pennsylvania explains that due to the timing of the review of the proposed regulations by the EQB and associated public comment period it anticipates that the EQB will not consider the regulations for final rulemaking until its November, 1984 meeting. Therefore, Pennsylvania is unable to meet the August 31, 1984 schedule to satisfy these conditions and requests an extension until November 30, 1984.

The Secretary is continuing to review with the State all of the outstanding program conditions. A final rule implementing this proposed extension may, in response to public comment, be different than the one proposed in this notice.

Additional Determinations

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 section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

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

List of Subjects in 30 CFR Part 938

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

Dated: August 3, 1984.

J. Lisle Reed,

Director, Office of Surface Mining.

The following are proposed amendments to 30 CFR, Chapter VII, Subchapter T, Part 938:

PART 938—PENNSYLVANIA

§ 938.11 [Amended]

30 CFR 938.11(d) (1), (2), and (3) are proposed to be amended by substituting "November 30, 1984," for August 31, 1984 each time it appears.

30 CFR 938.11(k) is proposed to be amended by substituting "November 30, 1984," for August 31, 1984 each time it appears.

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

[FR Doc. 84-21132 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF EDUCATION

34 CFR Part 200

Chapter 1 of the Education Consolidation and Improvement Act of 1981; Financial Assistance to Local Educational Agencies To Meet Special Educational Needs of Disadvantaged Children

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under Chapter 1 of the Education Consolidation and Improvement Act of 1981, the Department provides financial assistance to State and local educational agencies to meet the special educational needs of educationally deprived children on the basis of allocations calculated under Title I of the Elementary and Secondary Education Act of 1965, as amended. The Secretary proposes to amend the regulations for the portion of Chapter 1 that provides financial assistance to local educational agencies (LEAs) to meet the special educational needs of disadvantaged children in school attendance areas with high concentrations of children from low-income families. These proposed regulations implement changes made to Chapter 1 by the Education Consolidation and Improvement Act of 1981 Technical Amendments, Pub. L. 98-211.

DATE: Comments must be received on or before September 24, 1984.

ADDRESS: Comments should be addressed to Dr. John F. Staehle, Acting Director, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW (Room 3616, ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas W. Fagan, Chief, Program Policy and Support Branch, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW (Room 3616-ROB-3), Washington, D.C. 20202. Telephone (202) 245-9877.

SUPPLEMENTARY INFORMATION:

A. Overview of Chapter 1

Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). Chapter 1 supersedes Title I of the Elementary and Secondary Education act of 1965, as amended (Title I). The purpose of Chapter 1 is to continue to provide financial assistance to State and local educational agencies to meet the special educational needs of educationally deprived children on the basis of allocations calculated under Title I, but to do so in a manner which will eliminate burdensome, unnecessary, and unproductive paperwork and free the schools of unnecessary Federal supervision, direction, and control. Final regulations implementing that part of Chapter 1 that provides financial assistance to LEAs to meet the special

educational needs of educationally deprived children in school attendance areas with high concentrations of children from low-income families were published on November 19, 1982 at 47 FR 52340 as 34 CFR Part 200.

On December 3, 1982, a notice of proposed rulemaking (NPRM) was published at 47 FR 54728. This notice proposed adding a new Part 204 containing general definitions and administrative, fiscal, and due process requirements for all Chapter 1 programs—that is, programs operated by LEAs for educationally deprived children, programs operated by SEAs for migratory children, and programs operated by State agencies for children in institutions for neglected or delinquent children and for handicapped children. In the December 3 notice, the Secretary proposed to transfer many of the provisions contained in the final regulations for Part 200 to the new Part 204, because these provisions would apply to all Chapter 1 programs, not just to the LEA program. These provisions are:

200.4 Acronyms that are frequently used.
200.51 Sufficient size, scope, and quality of project.
200.53 Consultation with parents and teachers.
200.54 Evaluation.
200.55 Allowable costs.
200.56 Recordkeeping requirement.
200.57 Audits and access to records.
200.58 Compromise of audit claims.
200.59 SEA rulemaking and other responsibilities.
200.60 Maintenance of effort.
200.61 Waiver of the maintenance of effort requirements.
200.62 Supplement, not supplant.
200.64 Availability of funds.
200.90 General.
200.91 Jurisdiction.
200.92 Definitions.
200.93 Eligibility for review.
200.94 Written notice.
200.95 Filing an application for review of a final audit determination or a withholding hearing.
200.96 Review of the written notice.
200.97 Acceptance of the application.
200.98 Rejection of the application.
200.99 Intervention.
200.100 Practice and procedure.
200.101 The Panel's decision.
200.102 Opportunity to comment on the Panel's decision.
200.103 The Secretary's decision.
200.104 Cease and desist hearing.
200.105 Cease and desist written report and order.
200.106 Enforcement of a cease and desist order.

The Secretary will soon issue regulations for Part 204 that respond to comments received on the December 3 NPRM. When the regulations in Part 204 become final, the duplicate provisions in Part 200 listed above, with one exception, will be removed, because those provisions will be contained in Part 204. That exception is § 200.53—Consultation with parents and teachers, which the Secretary has decided to retain in Part 200.

B. Overview of these proposed regulations.

On December 8, 1983, Congress enacted the Education Consolidation and Improvement Act of 1981 Technical Amendments (Pub. L. 98–211) to improve the implementation of the ECIA. These technical amendments necessitate accompanying changes to the Chapter 1 regulations in Part 200. Because the Secretary plans to issue final regulations in Part 204 and remove the duplicate provisions in Part 200, this document proposes to amend only those provisions that will remain in the Part 200 regulations after the final Part 204 is published. Accordingly, these proposed regulations implement the following changes made to Chapter 1 by Pub. L. 98–211.

- Sections 2 (a), (b), and 3 of Pub. L. 98–211 provide for changes in the selection of school attendance areas and are reflected in § 200.50 of these proposed regulations.
- Sections 2 (b), (c), and 3 of Pub. L. 98–211 provide for changes in student identification and selection and are reflected in § 200.51 of these proposed regulations.
- Section 3 of Pub. L. 98–211 provides for schoolwide projects and is reflected in § 200.54 of these proposed regulations.
- Section 7 of Pub. L. 98–211 provides for exclusions in the determination of comparability of services and is reflected in § 200.55 of these proposed regulations.

In addition to the changes required in Part 200 by Pub. L. 98–211, the technical amendments require certain changes to the Chapter 1 regulations in Part 204 proposed on December 3, 1982. As a result, the Secretary is publishing in a separate NPRM those sections in proposed Part 204 affected by the technical amendments. The Secretary is also publishing in that document certain proposed changes in the due process procedures that will be contained in Part 204.

The sections of proposed Part 204 that the Secretary is publishing separately for additional public comment are:

204.13 State rulemaking and other SEA responsibilities.
204.21 Annual meeting of parents.
204.22 Allowable costs.
204.23 Evaluation.
204.30 Maintenance of effort.
204.31 Waiver of the maintenance of effort requirement.
204.32 Supplement, not supplant.
204.43 Eligibility for review.
204.50 Practice and procedure.
204.53 The Secretary's decision.

The Secretary will publish the remaining sections contained in the Part 204 regulations proposed on December 3 as final regulations. These sections are:

204.1 Applicability of regulations in this part.
204.2 Definitions.
204.3 Acronyms that are frequently used.
204.10 Recordkeeping requirements.
204.11 Access to records and audits.
204.12 Audit claims.
204.14 Availability of funds.
204.20 Sufficient size, scope, and quality of project.
204.40 General.
204.41 Jurisdiction.
204.42 Definitions.
204.44 Written notice.
204.45 Filing an application for review of a final audit determination or a witholding hearing.
204.46 Review of the written notice.
204.47 Acceptance of the application.
204.48 Rejection of the application.
204.49 Intervention.
204.51 The Panel's decision.
204.52 Opportunity to comment on the Panel's decision.
204.54 Cease and desist hearing.
204.55 Cease and desist written report and order.
204.56 Enforcement of a cease and desist order.

Executive Order 12291

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

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

Regulatory Flexibility Act

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. To the extent that these regulations affect State and State agencies, they will not have an impact on small entities. States and State agencies are not considered small entities under the Regulatory Flexibility Act. These regulations will affect a substantial number of small

LEAs, which are considered small entities under the Act. However, the regulations will not have a significant economic impact on these entities because the regulations clarify authorized opinions and activities and increase flexibility with regard to program participation. School districts with less than 1,000 children would be exempt from the requirement to select eligible schools or attendance areas.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Comments are particularly invited on §§ 200.50(b)(4) and200.51(a)(2). Section 200.50(b)(4) implements Section 3 of Pub. L. 98–211 and allows LEAs to serve an ineligible school attendance area or school that was selected to receive Chapter 1 services in either of the two preceding fiscal years. A single additional year of eligibility is conferred for each of the two preceding years. Thus, the school attendance area or school can be considered eligible for a total of two additional years. Section 200.51(a)(2) implements section 2(c) of Pub. L. 98–211 and requires an LEA to determine what group of students is in greatest need of special assistance and to serve that group. The proposed regulations allow for exceptions to serving those students most in need of special assistance in § 200.51(b). In addition, the LEA may also serve other educationally deprived children who are not in greatest need of assistance in accordance with Section 2(c) of Pub. L. 98–211.

Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before September 24, 1984 will be considered in developing the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3616, ROB–3, 7th and D Streets SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

List of Subjects in 34 CFR Part 200

Education, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Juvenile delinquency, *Neglected, Private schools.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations. Unless otherwise noted, the citations refer to sections of the Education Consolidation and Improvement Act of 1981.

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children—Local Educational Agencies)

Dated: August 3, 1984.

T. H. Bell,

Secretary of Education.

PART 200—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

The Secretary proposes to amend Part 200 of Title 34 of the Code of Federal Regulations as follows:

§ 200.51 [Removed]

1. Section 200.51 is removed.

2. Sections 200.49 and 200.50 are redesignated as §§ 200.50 and 200.51, respectively, and are revised to read as follows:

§ 200.50 Selection of school attendance areas.

(a) *General rule.* Except as provided in paragraphs (b) and (c) of this section, and LEA that receives Chapter 1 funds shall operate Chapter 1 projects that are—

(1) Conducted in school attendance areas of the LEA having the highest concentrations of low-income children; or

(2) Located in all school attendance areas of the LEA if the LEA has a uniformly high concentration of low-income children.

(b) *Special rules.* The following procedures are among the actions an LEA may take to meet the requirement in paragraph (a) of this section:

(1) Designate as eligible and serve any school attendance area in which at least 25 percent of the children are from low-income families.

(2) Provide Chapter 1 services to educationally deprived children who are in a school which is not located in an eligible school attendance area if the proportion of children from low-income families in average daily attendance in that school is substantially equal to the proportion of those children in an eligible school attendance area of the LEA.

(3)(i) With the approval of the SEA, designate as eligible and serve school attendance aeas or schools with substantially higher numbers or percentages of educationally deprived children before school attendance areas or schools with higher concentrations of children from low-income families, except that the LEA may not serve more school attendance areas or schools than could otherwise be served.

(ii) An SEA shall approve the selection of school attendance areas or schools under paragraph (b)(3)(i) of this section only if the SEA finds that the selection will not substantially impair the delivery of compensatory education services to educationally deprived children from low-income families in project areas served by the LEA.

(4)(i) Continue to provider Chapter 1 services in a school attendance area or school that does not qualify under paragraph (a) of this section if that area or school was selected under the standards in paragraph (a) of this section in either of the two preceding fiscal years.

(ii) A school attendance area or school may receive a single additional year of eligibility for each of the two preceding fiscal years. Thus, the eligibility conferred by paragraph (b)(4)(i) of this section can be valid for a total of two years.

(5) With the approval of the SEA, skip eligible school attendance areas or schools which have higher proportions of children from low-income families if the children in those areas or schools are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under Chapter 1, except that the LEA shall—

(i) Determine the number of children in private schools to receive Chapter 1 services without regard to non-Federal compensatory education funds used to serve eligible children in public elementary and secondary schools; and

(ii) Identify children in private schools to receive Chapter 1 services in accordance with the provisions in paragraph (a) and (b) (1) through (4) of this section.

(c) *Exemption.* An LEA with a total enrollment of fewer than 1,000 children does not have to comply with the requirements in this section but shall comply with the requirements in § 200.51.

(Sec. 556(b)(1), (c), (d)(1)–(5), 20 U.S.C. 3805(b)(1), (c), (d)(1)–(5), as amended by Sec. 2 (a) and (b) and Sec. 3 of Pub. L. 98–211; H.R. Rep. No. 51, 98th Cong., 1st Sess. 2, 4 (1983); S. Rep. No. 166, 98th Cong., 1st Sess. 2, 9 (1983))

§ 200.51 Student identification and selection.

(a) *Annual assessment of educational needs.* An LEA that receives Chapter 1 funds shall base its Chpater 1 project on an annual assessment of educational needs that—

(1) Identifies educationally deprived children in all eligible school attendance areas or schools, including educationally deprived children in private schools;

(2) Requires, among the educationally deprived children selected, inclusion of those children who have the greatest need for special assistance; and

(3) Determines the educational needs of the children selected to participate with sufficient specificity to ensure concentration on those needs.

(b) *Special rules.* (1) An LEA may use Chapter 1 funds to serve, for the current school year, children who, in any previous year, were identified as being in greatest need of assistance, and who continue to be educationally deprived, but who are no longer identified as being in greatest need of assistance.

(2) An LEA may use Chapter 1 funds during the current school year to continue to serve educationally deprived children who begin participation in a Chapter 1 project but who, in the same school year are transferred to a school attendance area or a school not receiving Chapter 1 funds.

(3) An LEA is not required to use Chapter 1 funds to serve educationaly deprived children in greatest need of special assistance if those children are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under Chapter 1.

(Sec. 556 (b)(2), (c), (d)(6)–(8), 20 U.S.C 3805 (b)(2), (c), (d)(6)–(8), as amended by Sec. 2 (b) and (c), and Sec. 3 of Pub. L. 98–211; H.R. Rep. No. 51, 98th Cong., 1st Sess. 2, 4–5 (1983); S. Rep. No. 166, 98th Cong., 1st Sess. 2, 8–9 (1983))

3. Section 200.54 is revised to read as follows:

§ 200.54 Schoolwide projects.

(a) *Eligiblity of a school for a schoolwide project.* An LEA may conduct a Chapter 1 project to upgrade the entire educational program in a school if—

(1) The school serves an eligible school attendance area;

(2) At least 75 percent of the children at the school are from low-income families;

(3) The LEA develops for the school a plan that meets the requirements in paragraph (b) of this section and has been approved by the SEA; and

(4) The LEA meets the financial requirements in paragraph (c) of this section.

(b) *Required plan for each school selected for a schoolwide project.* The plan referred to in paragraph (a)(3) of this section must—

(1) Provide for a comprehensive assessment of the educational needs of all students in the school, particularly the special needs of educationally deprived children;

(2) Provide for an instructional program designed to meet the special needs of all students in the school;

(3) Be developed with the involvement of those individuals who will be engaged in carrying out the plan, including parents, teachers, teacher aides, administrators, and secondary students if the plan relates to a secondary school;

(4) Provide for consultation among the individuals referred to in paragraph (b)(3) of this section concering the educational progress of all students in the school;

(5) Provide for appropriate training for teachers and teacher aides to enable them to carry out the plan effectively;

(6) Include procedures that the LEA will use to evaluate the effectiveness of the schoowide project and that will involve in the evaluation the participation of the individuals referred to in paragraph (b)(3) of this section; and

(7) Include opportunities for periodic improvements in the plan based on the results of the evaluations referred to in paragraph (b)(6) of this section.

(c) *Financial requirements for a schoolwide project.* An LEA that uses Chapter 1 funds to conduct a schoolwide project shall meet the following financial requirements:

(1) In each school selected for a schoolwide project, the LEA shall provide, per educationally deprived child served in that school, an amount of Chapter 1 funds that is at least equal to the amount of Chapter 1 funds that the LEA provides per educationally deprived child served in schools, if any, that serve project areas.

(2) In each school selected for a schoolwide project, the LEA shall provide, per child served by the schoolwide project who is not educationally deprived, an amount of special supplementary State and local funds that is at least equal to the amount of Chapter 1 funds that the LEA provides per educationally deprived child served in that school.

(3) During the fiscal year in which the plan required by paragraph (a)(3) of this section is carried out, the LEA shall, in each school selected for a schoolwide project, spend per child an amount of State and local funds—excluding amounts spent under a State compensatory education program—that is at least equal to the amount of State and local funds that the LEA spent per child in that school during the preceding fiscal year.

(4) In order to meet the requirements in Section 558(b) of Chapter 1, each school that is selected for a schoolwide project must receive all non-Federal funds that it would have received had it not been selected for a schoolwide project.

(d) *Effect of selection of a school for a schoolwide project.* For each school that has been selected for a schoolwide project, the LEA is not required to—

(1) Comply with any requirements under Chapter 1 concerning the commingling of Chapter 1 funds with funds available for regular programs;

(2) Comply with the requirements in § 200.51 concerning identification and selection of children to participate in Chapter 1 programs; or

(3) Demonstrate that the services provided with Chapter 1 funds are supplementary to the services regularly provided in the school. (However, see paragraph (c)(4) of this section, which requires that Chapter 1 funds supplement the amount of non-Federal funds that are provided to the school.)

(Sec. 556(d)(9), 20 U.S.C. 3805(d)(9), as amended by Sec. 3 of Pub. L. 98–211; H.R. Rep. No. 51, 98th Cong., 1st Sess. 2, 4–5 (1983); S. Rep. No. 166, 98th Cong., 1st Sess. 2, 9–10 (1983))

§ 200.55 Removed.

4. Section 200.55 is removed.

5. Section 200.63 is redesignated as § 200.55 and paragraph (d) of § 200.55, as redesignated, is revised to read as follows:

§ 200.55 Comparability of services.

* * * * *

(d) An LEA may exclude, for the purpose of determining compliance with the comparability requirements in paragraphs (a) and (b) of this section, State and local funds spent in carrying out the following types of programs:

(1) Special programs to meet the educational needs of educationally deprived children, including compensatory education programs for educationally deprived children, that meet the following requirements:

(i) All children participating in the program are educationally deprived.

(ii) The program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives.

(iii) The program provides supplementary services designed to meet the special educational needs of the children who are participating.

(iv) The LEA keeps records, and affords access to those records, as are necessary to ensure the correctness and verification of the requirements in paragraph (d)(1) (i)–(iii) of this section.

(v) The SEA monitors performance under the program to ensure that the requirements of paragraph (d)(1) (i)–(iv) of this section are met.

(2) Bilingual education programs for children of limited English proficiency.

(3) Special education programs for handicapped children or children with specific learning disabilities.

(4) State phase-in programs that meet the following requirements:

(i) The program is authorized and governed specifically by the provisions of State law.

(ii) The purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school.

(iii) The program is based on objectives including, but not limited to, performance objectives related to educational achievement, and is evaluated in a manner consistent with those objectives.

(iv) Parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program.

(v) The program will benefit all children in a particular school or grade-span within a school.

(vi) Schools participating in the program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children.

(vii) The phase-in period of the program is not more than six school years.

(viii) At all times during the phase-in period at least 50 percent of the schools participating in the program are the schools serving project areas which have the greatest number or concentrations of educationally deprived children or children from low-income families.

(ix) State funds made available for the phase-in program will supplement, and not supplant, State and local funds which would, in the absence of the phase-in program, have been provided for schools participating in the program.

(x) The LEA is separately accountable, for purposes of compliance with paragraphs (d)(4) (i) through (vi), (viii), and (ix) of this section, to the SEA for any funds expended for the program.

(xi) The LEAs carrying out the program are complying with paragraphs (d)(4) (i) through (vi), (viii), and (ix) and the SEA is complying with paragraph (d)(4)(x) of this section.

(Sec. 558(c), 20 U.S.C. 3807(c); Sec. 558(d), 20 U.S.C. 3807(d), as amended by Sec. 7 of Pub. L. 98–211)

[FR Doc. 84-21152 Filed 8-8-84; 8:45 am]
BILLING CODE 4000-01-M

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34 CFR Part 204

Chapter 1 of the Education Consolidation and Improvement act of 1981; General Definitions and Administrative, fiscal, and Due Process Requirements for Chapter 1 Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: the Secretary proposes to issue regulations for programs operated by State and local educational agencies (SEAs and LEAs) and State agencies under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA). Chapter 1 provides financial assistance to SEAs, LEAs, and State agencies to meet special educational needs. These proposed regulations implement changes made to Chapter 1 by the Education Consolidation and Improvement Act of 1981 Technical Amendments (Pub. L. 98–211). The proposed regulations also make certain changes in the due process procedures applicable to Chapter 1 programs.

DATE: Comments must be received on or before September 24, 1984.

ADDRESS: Comments should be addressed to Dr. John F. Staehle, Acting Director, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3616 ROB 3), Washington, D.D. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas W. Fagan, Chief, Program Policy and Support Branch, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3616, ROB 3), Washington, D.C. 20202. Telephone: (202) 245–9877.

SUPPLEMENTARY INFORMATION:

A. Overview of Chapter 1

Chapter 1 of the Education Consolidation and Improvement Act of 1981 was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). Chapter 1 supersedes Title I of the Elementary and Secondary Education Act of 1965, as amended. The purpose of Chapter 1 is to provide financial assistance to State and local educational agencies and certain State agencies to meet special educational needs. In particular, Chapter 1 provides financial assistance to LEAs to meet the special educational needs of educationally deprived children, to SEAs to meet the special educational needs of children of migratory agricultural workers and migratory fishers, to State agencies to meet the special educational needs of neglected or delinquent children, and to State agencies to meet the special educational needs of handicapped children.

On December 3, 1982, the Department published a notice of proposed rulemaking (NPRM) at 47 FR 54728. This notice proposed adding a new Part 204 containing general definitions and administrative, fiscal, and due process requrements for all Chapter 1 programs.

On December 8, 1983, Congress enacted the Education Consolidation and Improvement Act of 1981 Technical Amendments (Pub. L. 98–211) to imporve the implementation of the ECIA. These technical amendments necessitate certain changes to the Chapter 1 regulations proposed on December 3, 1982. As a result, the Secretary is reproposing in this document those sections in proposed Part 204 (as published December 3, 1982) affected by the technical amemdments. In this document, the Secretary is also proposing certain changes in the due process procedures applicable to Chapter 1.

In a separate document, the Secretary will soon issue final regulations for Part 204 that respond to comments received on the December 3, 1982 NPRM. However, those final regulations will include only sections in proposed Part 204 that are not affected by the technical amendments or the other changes being proposed in this document. The final regulations, therefore, will not duplicate the provisions being proposed in this document.

The sections that will be published as final regulations for Part 204 are:

204.1 Applicability of regulations in this Part.
204.2 Definitions.
204.3 Acronyms that are frequently used.
204.10 Recordkeeping requirements.
204.11 Access to records and audits.
204.12 Audit claims.
204.14 Availability of funds.
204.20 Sufficient size, scope, and quality of project.
204.40 General.
204.41 Jurisdiction.
204.42 Definitions.
204.44 Written notice.
204.45 Filing an application for review of a final audit determination or a withholding hearing.
204.46 Review of the written notice.

204.47 Acceptance of the application.
204.48 Rejection of the application.
204.49 Intervention.
204.51 The Panel's decision.
204.52 Opportunity to comment on the Panel's decision.
204.54 Cease and desist hearing.
204.55 Cease and desist written report and order.
204.56 Enforcement of a cease and desist order.

B. Overview of the Proposed Regulations in This Document

The Secretary is proposing to adopt the following Chapter 1 regulations to be codified in 34 CFR Part 204. Changes to these sections as proposed on December 3, 1982, are described following the section heading.

Section 204.13 State rulemaking and other SEA responsibilities.

Paragraph (b) incorporates the provisions on State rulemaking contained in section 15 of Pub. L. 98–211. This paragraph replaces the prior authority for State rulemaking contained in § 204.13, as proposed on December 3, 1982.

Section 204.21 Annual meeting of parents.

This section implements section 4 of Pub. L. 98–211, which requires an agency that receives Chapter 1 funds to convene annually a public meeting to which all parents of eligible students must be invited.

Section 204.22 Allowable costs.

Paragraph (d) incorporates the provision in section 3 of Pub. L. 98–211, which permits an agency that receives Chapter 1 funds to assign, under certain circumstances, personnel paid entirely with Chapter 1 funds to supervisory duties that do not benefit only the children participating in the Chapter 1 project.

Section 204.23 Evaluation.

This section implements two changes made by Pub. L. 98–211. Paragraph (a) incorporates the provision in section 1(b) of Pub. L. 98–211, which requires an SEA to conduct evaluations and collect data concerning Chapter 1 programs in the State. Paragraph (b)(2) implements section 2(d) of Pub. L. 98–211, which requires an agency that receives Chapter 1 funds to consider evaluation results in the improvement of the agency's Chapter 1 project.

Section 204.30 Maintenance of effort.

This section implements section 19 of Pub. L. 98–211, which makes clear that the maintenance of effort requirement in section 558(a) of Chapter 1 applies to all agencies that receive Chapter 1 funds.

Section 204.31 Waiver of the maintenance of effort requirement.

Section 19 of Pub. L. 98–211 makes the maintenance of effort requirement in section 558(a) of Chapter 1 applicable to all agencies that receive Chapter 1 funds. Section 204.31 of the proposed regulations indicates that an SEA may waive that requirement under certain circumstances.

Section 204.32 Supplement, not supplant.

This section implements two provisions in Pub. L. 98–211. First, paragraph (a) incorporates the provision in section 6 of Pub. L. 98–211, which makes clear that the supplement, not supplant requirement applies to all agencies that receive Chapter 1 funds. Second, paragraph (b) implements the provision in section 7 of Pub. L. 98–211, which permits agencies that receive Chapter 1 funds to exclude, for purposes of determining compliance with the supplement, not supplant requirement, State and local funds spent to carry out certain special educational programs to meet the educational needs of educationally deprived children.

Section 204.43 Eligibility for review.

Section 451(a)(4) of the General Education Provisions Act (GEPA) authorizes the Secretary to designate proceedings to be reviewed by the Education Appeal Board (EAB). Paragraph (a) incorporates this statutory provision into the due process provisions for Chapter 1 programs. Paragraph (b) reflects the requirement in section 455 of GEPA that a recipient who is dissatisfied with a Department action that may be reviewed by the EAB must seek this administrative review before seeking judicial review.

Section 204.50 Practice and procedure.

Section 16 of Pub. L. 98–211 deletes the reference to a hearing "on the record" in section 592(a) of the ECIA. In so doing, Congress made clear that it did not intend the lengthy and time-consuming hearing procedures required by the Administrative Procedure Act to apply to withholding hearings under the ECIA. Therefore, as paragraph (a) of the proposed regulations indicates, practice and procedure before the EAB for withholding hearings under Chapter 1 will be governed by the same rules that govern other proceedings under Chapter 1. These rules include transcribing the proceedings. See 34 CFR 78.48. Paragraph (b) of the proposed regulations implements the provision in section 452(b) of GEPA, which requires an appellant to prove the allowability of the expenditures disallowed in a final audit determination.

Section 204.53 The Secretary's decision.

Section 452(d) of GEPA authorizes the Secretary, for good cause shown, to modify or set aside an EAB Panel's decision in the review of a final audit determination. Under the authority in section 451 (a) and (e) of GEPA to designate cases to be heard by the EAB and to establish appropriate procedures to guide the EAB's review, § 204.53 permits the Secretary to remand a Panel's decision to the Board for further review and consideration. If the Secretary does remand a Panel's decision, no final agency action will have occurred.

C. Application of Other Statutes and Regulations

Pub. L. 98–211 makes several changes in the applicability of other statutes that affect Chapter 1. Section 18(a) of Pub. L. 98–211 amends Section 596 of the ECIA to clarify the applicability of the General Education Provisions Act (GEPA) to Chapter 1. As amended, section 596 provides that, unless a section of GEPA is specifically excluded by section 596, the provisions in GEPA apply to Chapter 1. With two exceptions, the amendment to section 596 coincides with the Department's position on the applicability of GEPA published on November 19, 1982 at 47 FR 52342–52343. The first exception concerns the applicability of section 425 of GEPA, which deals with appeal procedures at the State and Federal level available to an LEA that has been adversely affected by a decision of its SEA. Pub. L. 98–211 makes section 425 applicable to Chapter 1. The second exception concerns the applicability of section 437(b) of GEPA, which authorizes the Secretary and the Comptroller General of the United States to have access to records of recipients' funds for purposes of audit or program compliance.

Section 18(b) of Pub. L. 98–211 repeals a portion of the "State Uses of Federal Funds" report required by section 406A(a) of GEPA. The repealed sections required States to collect and furnish information on the amount of Federal funds received by each LEA, the purposes for which these funds were spent, and the individuals served by these activities, all tabulated with respect to the second preceding year.

According to Section 596 of the ECIA, sections 434, 435, and 436 of GEPA are not applicable to Chapter 1 "except to

the extent that such sections relate to fiscal control and fund accounting procedures . . . ." The Secretary indicated in the preamble of the Chapter 1 regulations that the provision in section 434 that applies to Chapter 1 is subsection (a)(2) pertaining to the Secretary's discretionary authority to request a plan on audits. *See* 47 FR 52342 (Nov. 19, 1982). Upon further consideration in conjunction with the review of GEPA applicability in Pub. L. 98–211, the Secretary has determined that sections 434(b) (2) and (3) relating to SEA suspension and withholding of payments to LEAs that have failed to comply with Federal program requirements also deal with fiscal control and fund accounting procedures and are therefore applicable to Chapter 1.

Intergovernmental Review

The program for financial assistance to State educational agencies to meet the special educational needs of migratory children (34 CFR Part 201) covered by these amendments is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order 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.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Executive Order 12291

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

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

Regulatory Flexibility Act

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. To the extent that these regulations affect States and State agencies, the regulations will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect all small LEAs receiving Federal financial assistance under Chapter 1. However, the regulations will not have a significant economic impact on the small LEAs affected because the regulations implement technical amendments and do not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act

The information collection requirements contained in §§ 204.23 and 204.32(b)(4) of these regulations will be sent to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980.

Comments concerning information collection requirements *only* should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th and Pennsylvania Avenue, NW., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education. All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Comments are particularly invited on four sections. Section 204.21 implements section 4 of Pub. L. 98–211, which requires an agency that receives Chapter 1 funds to convene annually a public meeting to which all parents of eligible students must be invited. The Secretary is interested in receiving comments on how State agency programs, especially the program serving neglected or delinquent children, can meet this requirement. Section 204.23(a) implements Section 1(b) of Pub. L. 98–211, which requires the collection of data on race, age, and gender of children served and on the number of children served by grade level. The Secretary is particularly interested in receiving comments on how to make collection of information on the age and gender of participants manageable and on the burdens that this information collection requirement places on SEAs and other agencies that receive Chapter 1 funds. Sections 204.30 and 204.31 contain provisions concerning maintenance of effort and waiver of the maintenance of effort requirement. These sections were written with particular reference to the Chapter 1 program described in Part 200. The provisions were specifically made applicable to all agencies that receive Chapter 1 funds by Section 19 of Pub. L. 98–211. The Secretary is interested in receiving comments on how these provisions can best be implemented for the Chapter 1 programs serving migrant children, handicapped children, and neglected or delinquent children.

Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before September 24, 1984 will be considered in developing the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3624, ROB–3, 7th & D Streets, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

List of Subjects in 34 CFR Part 204

Education, Education of disadvantaged Education of handicapped, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Migrant labor, Neglected.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations. Unless otherwise noted, the citations refer to sections of the Education Consolidation and Improvement Act of 1981.

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children—Local Educational Agencies; 84.011, Educationally Deprived Children—Migrants; 84.012, Educationally Deprived Children—State Administration; 84.009, Programs for Education of Handicapped Children in State Operated or Supported Schools; 84.013, Educationally Deprived Children in State Administered Institutions Serving Neglected or Delinquent Children)

Dated: August 3, 1984.

T.H. Bell,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 204 to read as follows:

PART 204—GENERAL DEFINITIONS AND ADMINISTRATIVE, FISCAL, AND DUE PROCESS REQUIREMENTS FOR CHAPTER 1 PROGRAMS

Subpart A—General Definitions and Applicability

Sec.

204.1–204.9 [Reserved]

Subpart B—General Administrative Requirements

204.10–204.12 [Reserved]

Sec.
204.13 State rulemaking and other SEA responsibilities.
204.14–204.19 [Reserved]

Subpart C—Project Requirements

204.20 [Reserved]
204.21 Annual meeting of parents.
204.22 Allowable costs.
204.23 Evaluation.
204.24–204.29 [Reserved]

Subpart D—Fiscal Requirements

204.30 Maintenance of effort.
204.31 Waiver of the maintenance of effort requirement.
204.32 Supplement, not supplant.
204.33–204.39 [Reserved]

Subpart E—Due Process Procedures

204.40–204.42 [Reserved]
204.43 Eligibility for review.
204.44–204.49 [Reserved]
204.50 Practice and procedure.
204.51–204.52 [Reserved]
204.53 The Secretary's decision.
204.54–204.59 [Reserved]

Authority: Sections 552–558, 591–596 of Pub. L. 97–35, 95 Stat. 464–469, 480–482 (20 U.S.C. 3801–3807, 3871–3876), as amended by Pub. L. 98–211, unless otherwise noted.

Subpart A—General Definitions and Applicability

§§ 204.1–204.9 [Reserved]

Subpart B—General Administrative Requirements

§§ 204.10–204.12 [Reserved]

§ 204.13 State rulemaking and other SEA responsibilities.

(a) *General responsibilities of an SEA.* An SEA is responsible for ensuring that the agencies that receive Chapter 1 funds in the State comply with all statutory and regulatory provisions applicable to Chapter 1.

(b) *State rulemaking.* (1) Chapter 1 does not—

(i) Authorize States to issue rules, regulations, or policies that apply to agencies operating Chapter 1 projects, except as related to State audits and financial responsibilities; or

(ii) Encourage, preempt, or prohibit rules, regulations, or policies issued under State law.

(2) If a State adopts rules, regulations, or policies relating to the administration and operation of programs funded under Chapter 1 (including those based on State interpretation of any Federal statute, regulation, or guideline), the State shall—

(i) Ensure that the rules, regulations, or policies do not conflict with the provisions of—

(A) Chapter 1;

(B) The regulations in this Part and 34 CFR Parts 200 through 203; or

(C) Other applicable Federal statutes and regulations; and

(ii) Identify the State rules, regulations, or policies as State-imposed requirements.

(Sec. 556, 20 U.S.C. 3805; Sec. 591(d), 20 U.S.C. 3871(d), added by Sec. 15 of Pub. L. 98–211)

§§ 204.14–204.19 [Reserved]

Subpart C—Project Requirements

§ 204.20 [Reserved]

§ 204.21 Annual meeting of parents.

(a) An agency that receives Chapter 1 funds shall convene annually a public meeting, to which all parents of eligible children must be invited, to explain to those parents the programs and activities provided with Chapter 1 funds.

(b) If parents desire further activities, the agency may, upon request, provide reasonable support for these activities.

(Sec. 556(e), 20 U.S.C. 3805(e), added by Sec. 4 of Pub. L. 98–211)

§204.22 Allowable costs.

(a) An agency that receives Chapter 1 funds may use those funds only to meet the cost of project activities that—

(1) Are designed to meet the special educational needs of the children eligible to be served under the applicable Chapter 1 program;

(2) Are included in an approved application; and

(3) Comply with all requirements applicable to Chapter 1 programs.

(b) The project activities referred to in paragraph (a) of this section may include the applicable activities in section 555(c) of Chapter 1.

(c) Administrative direction and control of Chapter 1 funds and title to property acquired with these funds must be in a public agency.

(d) An agency that receives Chapter 1 funds may assign personnel paid entirely with Chapter 1 funds to supervisory duties that provide some benefit to children not participating in the Chapter 1 project, if—

(1) These duties are limited, rotating, and supervisory;

(2) Personnel with functions similiar to those of the Chapter 1 personnel, but who are not paid with Chapter 1 funds, are assigned to these duties at the same school site;

(3) These duties do not include substitute teaching of a non-Chapter 1 class or regular supervision of a homeroom;

(4) The Chapter 1 personnel do not perform any duties for pay that non-Chapter 1 personnel perform without pay; and

(5) The proportion of total work time that Chapter 1 personnel at the same school site spend performing these duties does not exceed the lesser of either—

(i) The proportion ot total work time that non-Chapter 1 personnel spend performing these duties; or

(ii) Ten percent of the Chapter 1 person's total work time.

Examples. Examples of the types of duties that might meet the conditions in paragraph (d) of this section include hall duty, lunchroom supervision, playground supervision, and other tasks commonly shared among the staff in a school.

(Sec. 554(a), 20 U.S.C. 3803(a); (Sec. 555(c), 20 U.S.C. 3804(c); (Sec. 556(b)(2), 20 U.S.C. 3805(); (Sec. 556(b)(3), 20 U.S.C. 3805(b)(3); (Sec. 556(d)(10), 20 U.S.C. 3805(d)(10); added by (Sec. 3 of Pub. L. 98–211)

§ 204.23 Evaluation.

(a) *SEA evaluation.* (1) Each SEA shall—

(i) Conduct an evaluation of the Chapter 1 programs in the State at least once every two years and make public the results of that evaluation; and

(ii) Collect data annually on—

(A) The race, age, and gender of children served by the Chapter 1 programs in the State; and

(B) The number of children served by grade level under the Chapter 1 programs in the State.

(2) To meet the requirement in paragraph (a)(1)(i) of this section, the SEA may, for each Chapter 1 program, aggregate evaluation data collected under paragraph (b)(1)(i) of this section to obtain State-wide totals.

(b) *Applicant agency evaluation.* (1) An agency that receives Chapter 1 funds shall, at least once every three years, evaluate its Chapter 1 project in terms of the project's effectiveness in achieving the goals set for the project. This evaluation must include—

(i) Objective measurements of educational achievement in basic skills; and

(ii) A determination of whether improved performance is sustained over a period of more than one year.

(2) The agency shall consider the results of the evaluation required in paragraph (b)(1) of this section in the improvement of the agency's Chapter 1 project.

(Sec. 555(e), 20 U.S.C. 3804(e), added by (Sec. 1(b) of Pub. L. 98–211; (Sec. 556(b)(4), 20 U.S.C. 3805(b)(4), as amended by Sec. 2(d) of Pub. L. 98–211)

§§ 204.24–204.29 [Reserved]

Subpart D—Fiscal Requirements

§ 204.30 Maintenance of effort.

(a) *Basic standard.* Except as provided in §204.31, an SEA shall pay a

State agency or LEA its allocation of funds under Chaper 1 programs if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the affected state agency or LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures of State and local funds for the second preceding fiscal year. For purposes of determining maintenance of effort, "preceding fiscal year" means the fiscal year prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds made available on July 1, 1982, if a State is using the Federal fiscal year, the "preceding fiscal year" is fiscal year 1981 (which began on October 1, 1980). If a State is using a fiscal year that begins on July 1, 1982, the "preceding fiscal year" is the 12-month fiscal period ending on June 30, 1981.

(b) *Failure to maintain effort.* (1) If a State agency or LEA fails to maintain effort and a waiver under § 204.31 is not granted, the SEA shall reduce the affected State agency's or LEA's allocation of funds under Chapter 1 in the exact proportion to which the State agency or LEA fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the State agency or LEA) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the State agency or LEA failed to maintain effort, the SEA may consider the State agency's or LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA or State agency) for the third preceding fiscal year.

Example: In fiscal year 1983, a State agency or LEA fails to maintain effort because its fiscal effort in the preceding fiscal year (1981) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1980). In the following fiscal year (1984), the State agency's or LEA's fiscal effort in the second preceding fiscal year (1981) could be considered to be no less than 90 percent of its fiscal effort in the third preceding fiscal year (1980).

(Sec. 558(a), 20 U.S.C. 3807(a), as amended by Sec. 19 of Pub. L. 98-211)

§ 204.31 Waiver of the maintenance of effort requirement.

(a)(1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement applying to an affected State agency or LEA in § 204.30 if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include—

(i) A natural disaster;

(ii) A precipitous and unforeseen decline in the financial resources of the LEA or State agency; or

(iii) Other exceptional or uncontrollable circumstances.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b)(1) If the SEA grants a waiver under paragraph (a) of this section, the SEA shall not reduce the amount of Chapter 1 funds the affected State agency or LEA is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA may consider the State agency's or LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA or State agency) for the third preceding fiscal year.

Example: A State agency or LEA secures a waiver because its fiscal effort in the preceding fiscal year (1981 is less than 90 percent of its fiscal effort in the second preceding fiscal year (1980) due to exceptional or uncontrollable circumstances. In the following fiscal year, the State agency's or LEA's fiscal effort in the second preceding fiscal year (1981) could be considered to be no less than 90 percent of its fiscal effort for the third preceding fiscal year (1980).

(Sec. 558(a)(3), 20 U.S.C. 3807(a)(3), as amended by Sec. 19 of Pub. L. 98-211; 127 Cong. Rec. H5645 (daily ed. July 29, 1981))

§ 204.32 Supplement, not supplant.

(a) Exept as provided in paragraph (b) of this section, an agency that receives Chapter 1 funds may use those funds only to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of Chapter 1 funds, be made available for the education of pupils participating in Chapter 1 projects, and in no case may Chapter 1 funds be used to supplant those non-Federal funds.

(b) An agency may exclude, for the purposes of determining compliance with the supplement, not supplant requirement in paragraph (a) of this section, State and local funds spent in carrying out special programs to meet the educational needs of educationally deprived children, including compensatory education programs for educationally deprived children, that meet the following requirements:

(1) All children participating in the program are educationally deprived.

(2) The program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives.

(3) The program provides supplementary services designed to meet the special educational needs of the children who are participating.

(4) The agency keeps records and affords access to those records as necessary to ensure the correctness and verification of the requirements in paragraph (b)(1)-(3) of this section.

(5) The SEA monitors performance under the program to ensure that the requirements of paragraph (b)(1)-(4) of this section are met.

(c) The supplement, not supplant requirement in paragraph (a) of this section does not require that an agency provide Chapter 1 services outside the regular classroom or school program.

(Sec. 558(b), 20 U.S.C. 3807(b), as amended by Sec. 6 of Pub. L. 98-211; Sec. 558(d), 20 U.S.C. 3807(d), as amended by Sec. 7 of Pub. L. 98-211)

§§ 204.33-204.39 [Reserved]

Subpart E—Due Process Procedures

§§ 204.40-204.42 [Reserved]

§§ 204.43 Eligibility for review.

(a) Review under these regulations is available to a recipient of Chapter 1 funds that receives a written notice from an authorized Department official of—

(1) A final audit determination;

(2) An intent to withhold funds;

(3) A cease and desist complaint; or

(4) A proceeding designated by the Secretary.

(b) If a recipient receives written notice and brings a lawsuit to challenge that notice, the recipient has failed to exhaust administrative remedies and the Secretary may move for dismissal of the lawsuit on that basis.

(c) If the Panel assigned to hear an appeal finds that there are no issues in the appeal within the Board's jurisdiction, the Panel may, at the request of a party or Panel member, issue a decision or order to that effect.

(Sec. 592, U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c; Sec. 455 of GEPA, 20 U.S.C. 1234d)

§§ 204.44-204.49 [Reserved]

§ 204.50 Practice and procedure.

(a) *General.* Practice and procedure before the Board in proceedings conducted under the regulations in this

Part are governed by the rules in Subpart E of 34 CFR Part 78.

(b) *Burden of proof.* The appellant shall present its case first and shall have the burden of proving the allowability of the expenditures disallowed in a final audit determination.

(Sec. 592(a), 20 U.S.C. 3872(a), as amended by Sec. 16 of Pub. L. 98-211; Sec. 451(e) of GEPA, 20 U.S.C. 1234(e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§§ 204.51-204.52 [Reserved]

§ 204.53 The Secretary's decision.

(a) The Panel's decision becomes the final decision of the Secretary 60 calendar days after the date the recipient receives the Panel's decision unless the Secretary, for good cause shown—

(1) Modifies or sets aside the Panel's decision; or

(2) Remands the Panel's decision to the Board for further review or consideration.

(b) If the Secretary modifies or sets aside the Panel's decision within the 60 days, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action; and

(2) Becomes the Secretary's final decision 60 calendar days after it is issued.

(c) If the Secretary remands the Panel's decision to the Board, neither the Panel's decision nor the Secretary's remand becomes the final decision of the Department

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d); Sec. 455 of GEPA, 20 U.S.C. 1234d)

§ 204.54-204.59 [Reserved]

[FR Doc. 84-21151 Filed 8-8-84; 8:45 am]
BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD-FRL-2651-5]

Revisions to the National Ambient Air Quality Standards for Carbon Monixide

AGENCY: Environmental Protection Agency.

ACTION: Request for additional public comment.

SUMMARY: On August 18, 1980 EPA proposed revisions to the existing primary national ambient air quality standards (NAAQS) for carbon monoxide (CO) and revocation of the existing secondary standards (45 FR 55066). This notice summarizes what has transpired since proposal, reviews the current basis for EPA's proposal to revise the CO standards, and solicits additional public comment prior to final action on this rule.

DATE: Comments must be postmarked by September 24, 1984.

ADDRESSES: Submit all comments (duplicate copies are preferred) to: Central Docket Section (LE-131), Environmental Protection Agency, Attn: Docket No. OAQPS 79-7, 401 M Street, SW., Washington, D.C. 20460. Docket No. OAQPS 79-7 is located in the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, and a reasonable fee my be charged for copying.

Availability of Related Information. The final revised criteria document, "Air Quality Criteria for Carbon Monoxide" (EPA-600/8-79-022, October 1979) is available from: U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161 (PB 81-244840, $17.00 paper copy and $4.50 microfiche). The addendum to the criteria document "Revised Evaluation of Health Effects Associated with Carbon Monoxide Exposure" (EPA-600/8-83-033F, July 1984, and the final revised staff paper, "Review of the NAAQS for Carbon Monoxide: Reassessment of Scientific and Technical Information" (EPA-450/5-84-004, July 1984) are available from U.S. Environmental Protection Agency Library (MD-35), Research Triangle Park, N.C. 27711, telephone (919) 541-2777 (FTS 629-2777).

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jones, Strategies and Air Standards Division (MD-12), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone: (919) 541-5531 (FTS 629-5531).

SUPPLEMENTARY INFORMATION:

Background

As discussed in the August 18, 1980 proposal notice, an assessment of the scientific evidence accumulated since 1970 led EPA to propose: (1) Retaining the 8-hour primary carbon monoxide (CO) standard level of 9 parts per million (ppm), (2) revising the 1-hour primary standard level from 35 ppm to 25 ppm, (3) revoking the existing secondary CO standards (since no adverse welfare effects have been reported at or near ambient CO levels), (4) changing the form of the standard from deterministic to statistical (i.e., EPA proposed to allow one expected exceedance of the standard level per year), and (5) adopting a daily interpretation for exceedances of the CO standards, so that exceedances would be determined on the basis of the number of days on which the 8- or 1-hour average concentrations were above the standard levels (45 FR 55066). The proposal notice sets forth in more detail the rationale for these and other revisions in the CO national ambient air quality standards (NAAQS) and background information related to the proposal.

Developments Subsequent to Proposal

Following proposal EPA held two public meetings to receive comments on the proposed standard revisions. Meetings were held in Washington, D.C. on October 2, 1980 and Denver, Colorado on October 10, 1980; transcripts are available in the docket (Docket No. OAQPS 79-7). The Clean Air Scientific Advisory Committee (CASAC) CO Subcommittee also met on November 15, 1980 to review the notice of proposed rulemaking (45 FR 55066) with EPA officials and the CASAC met on November 17, 1981 to hear a status report on the regulation. The public was invited to both CASAC meetings (45 FR 73790 and 46 FR 53210) and transcripts of the meetings have been placed in the docket (Docket No. OAQPS 79-7).

On June 18, 1982, EPA announced (47 FR 26407) an additional public comment period to address several key issues and technical documents related to the review of the CO standards. These issues included: (1) The role of the Aronow (1981) study, (*1*)(2) consideration of a multiple exceedance 8-hour standard, (3) the technical adequacy of the revised draft sensitivity analysis (*2*) on the Coburn model predictions of blood carboxyhemoglobin (COHb) levels, and (4) the technical adequacy of the revised exposure analysis. (*3*) The Clean Air Scientific Advisory Committee (CASAC) met on July 6, 1982 to provide its advice on these issues. CASAC's recommendations arising from that meeting are summarized in an August 31, 1982 letter to the Administrator which has been placed in the public docket (Docket No. OAQPS 79-7, IV-H-41).(*4*)

The 1980 proposal was based in part on several health studies conducted by Dr. Wilbert Aronow. (*5-11*) Based in part on evaluation of these studies in 1979 by EPA staff and CASAC, it was concluded at the time of proposal that

COHb levels of 2.7–3.0 percent represent a health concern for individuals with angina and other types of cardiovascular heart disease. In March 1983 EPA learned that the Food and Drug Administration (FDA) had raised serious questions regarding the technical adequacy of several studies conducted by Dr. Aronow on experimental drugs, leading FDA to reject use of the Aronow drug studies data. While there was then no direct evidence that similar problems might exist for Dr. Aronow's CO studies, EPA concluded that an independent examination of these studies was advisable prior to a final decision on the CO NAAOS. In the meantime, the current CO air quality standards, which provide approximately the same level of health protection as the revisions proposed in August 1980, have remained in place.

An expert committee was convened and met with Dr. Aronow to discuss his studies and to examine the limited available data and records from this 1981 CO study. In its report,(*12*) the Committee (chaired by Dr. Steven M. Horvath, Director of the Institute of Environmental Stress, University of California-Santa Barbara) concluded that EPA should not rely on Dr. Aronow's data due to concerns regarding the research which substantially limit the validity and usefulness of the results. In early June 1983, EPA received a detailed reply from Dr. Aronow disputing, but not effectively refuting, the major points raised by the "Horvath Committee" report.(*13*)

Addendum to the 1979 Criteria Document and Staff Reassessment

On August 18, 1983, EPA announced (48 FR 37519) the availability of an external review draft of the document "Revised Evaluation of Health Effects Associated with Carbon Monoxide Exposure: An Addendum to the 1979 Air Quality Criteria Document for Carbon Monoxide"(*14*) (hereafter cited as Addendum). The Addendum reevaluates the scientific data base concerning health effects associated with exposure to CO at or near ambient exposure levels in light of the Horvath Committee's recommendations concerning Dr. Aronow's studies and taking into account new findings reported beyond those reviewed in the 1979 Criteria Document.

On September 16, 1983 EPA announced the availability of a draft staff paper, "Review of the NAAQS for Carbon Monoxide: 1983 Reassessment of Scientific and Technical Information" (hereafter cited as Staff Reassessment)(*15*) and solicited public comment on the draft paper (48 FR 41608). The Staff Reassessment, prepared by the Office of Air Quality Planning and Standards (OAQPS), provided the staff's assessment of how the scientific data reviewed in the Addendum might be used in selection of final CO standards. CASAC held a public meeting on September 25, 1983 to review both the draft Addendum and draft Staff Reassessment. In addition to comments from CASAC members, representatives of several organizations also provided critical review of both EPA documents. A transcript of the CASAC meeting has been placed in the public docket (OAQPS 79–7). Both the draft Addendum and the draft staff Reassessment have revised to reflect public and CASAC comments. Both final documents are available from the address given earlier in the Availability of Related Information Section of this notice. Where there are differences between the 1979 criteria document and 1980 proposal assessment of the health effects evidence and the more recent EPA documents, the final Addendum and final Staff Reassessment represent the Agency's current interpretation.

The CASAC sent a closure letter to the Administrator on May 17, 1984 which concluded that both the Addendum and Staff Reassessment "represent a scientifically balanced and defensible summary of the current basis of our knowledge of the health effects literature for this pollutant."(*16*) The closure letter, which also discusses major issues addressed by the CASAC and CASAC's recommendations concerning those issues, has been placed in the public docket (Docket No. OAQPS 79–7, IV–K–25).

Revised Basis for Primary Standards

The Staff Reassessment and CASAC findings and recommendations set forth a framework for considering which primary CO standards will adequately protect public health with an adequate margin of safety. The discussion that follows on alternative primary standards relies heavily on that framework and on the supporting material in the Staff Reassessment and CASAC closure letter.

Based on the assessment of scientific evidence discussed in the Addendum (pp. 7–19, 24–26) and the Staff Reassessment (pp. 8–16), EPA remains concerned that adverse health effects may be experienced by large numbers of sensitive individuals with COHb levels in the range 3.0 to 5.0 percent. The CASAC also concluded after reviewing the scientific literature (not including the Aronow studies), "that the critical effects level for NAAOS-setting purposes is approximately 3 percent COHb (not including a margin of safety)." (*16*)

In addition to concurring with EPA that cardiovascular effect occur at approximately 3 percent COHb, (*17*) the CASAC also indicated that several studies (*18–20*) reporting physiological effects in the range 2.3–2.8 percent COHb lend support to concerns about low level CO exposures and should be considered in setting a standard with an adequate margin of safety. Furthermore, EPA cannot totally ignore the findings reported in the Aronow studies which will be considered along with other uncertain factors in selecting primary CO standards which provide an adequate margin of safety.

A large, diverse segment of the national population is believed to be sensitive to CO, and may include persons with angina and other cardiovascular disease (over 7.9 million), peripheral vascular disease, (over 0.7 million), fetuses and infants (over 3.1 million live births per year), persons with chronic obstructive pulmonary disease (about 14 million), elderly individuals (over 24.7 million individuals over 65 years old), and anemics (over 3 million). The levels of COHb that might produce adverse effects for each of these groups is uncertain. However, elevated COHb levels in even a small percentage of this very large sensitive population translates to a significant number of individuals. The size of the sensitive population, then, is further support for a large margin of safety. For the reasons discussed above and other margin of safety considerations discussed in the Staff Reassessment (pp. 25–32), EPA believes that unless the primary standards are set to keep most of the sensitive population somewhat below 3.0 percent COHb, the Agency would not be meeting the Clean Air Act requirement that primary standards be set to provide an adequate margin of safety.

Based on an exposure analysis (*21*) summarized in the Staff Reassessment, 8-hour CO standards with one expected exceedance allowed per year in the range 9 to 12 ppm are estimated to keep more than 99 percent of the adult cardiovascular population somewhat below 3.0 percent COHb. Standards within this range would provide different levels of protection. For example, the proposed 9 ppm, 8-hour average standard is estimated to keep 99 percent of the adult cardiovascular population below 2.1 percent COHb. A 12 ppm, 8-hour standard would keep almost 99 percent of the population

below 2.5 percent COHb. The 2.5 percent COHb level is in the range where physiological effects of concern to EPA and CASAC have been reported.

In using the exposure analysis estimates to evaluate the protection afforded by alternative standards, it should be noted that the exposure estimates are based on best judgments of certain key inputs to the analysis. Consequently, EPA must consider the uncertainties associated with the exposure estimates in evaluating alternative standards. There are several factors contributing to uncertainties about the exposure estimates. These factors include: The paucity of information on several of the needed inputs, the fact that the nationwide estimates were extrapolated from only four urbanized areas, and the use of only two representative sets (one for men and one for women) of physiological parameters (e.g., blood volume) rather than the distributions of physiological parameters in applying the Coburn model to derive COHb estimates in the exposure analysis. As indicated in the Staff Reassessment (pp. 18–21), some individuals with physiological parameters that maximize uptake of COHb if exposed to certain patterns of air quality attaining a 12 ppm, 8-hour standard would exceed 3.0 percent COHb. Consequently, the Agency is concerned that a 12 ppm, 8-hour standard may not provide an adequate margin of safety. EPA is continuing its CO exposure research efforts which will lead to future improvements in the exposure analysis and a better capability to assess the accuracy of the exposure estimates. (*22,23*)

While the CASAC concurred that the ranges of 9 to 12 ppm for the 8-hour and 25 to 35 ppm for the 1-hour primary standards recommended in the Staff Reassessment are scientifically defensible, they recommended that the Administrator consider choosing the 8-hour and 1-hour CO standards to maintain approximately the same level of protection afforded by the current standards. (*16*) In making their recommendation the CASAC cited the uncertainties within the scientific data base and margin of safety concerns.

Since completion of the Addendum and Staff Reassessment, the Agency has considered various alternatives including reproposal of the same or different standards, reaffirmation of the existing CO standards, or promulgation of the revisions proposed in August 1980. The CASAC has advised the Administrator that, even without the use of the Aronow studies to determine a critical effects level, there remains a sufficient and scientifically adequate basis on which to finalize the CO standards. (*16*) Given the precautionary nature of the Clean Air Act, the assessment of the scientific evidence and uncertainties contained in the Addendum and Staff Reassessment, and the findings and recommendations of the CASAC, the Agency is inclined to promulgate the revisions to the standards proposed in 1980.

Because of the change in the interpretation of the scientific evidence since proposal and the significance of this decision, the Agency believes it is important to air the issues fully and to encourage public participation and comment before taking final action. Therefore, EPA is soliciting additional public comment. The Agency has and will continue to consider the comments received from the public during the previous comment periods. For this reason, commenters need not restate or resubmit earlier comments.

List of Subjects in 40 CFR Part 50

Intergovernmental relations, Air pollution control, Carbon monoxide, Ozone, Sulfur oxides, Particulate matter, Nitrogen Dioxide, Lead.

Dated: August 3, 1984.

Joseph A. Cannon,

Assistant Administrator for Air and Radiation.

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[FR Doc. 84-21120 Filed 8-8-84; 8:45 am]

BILLING CODE 6560-26-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 79-184]

Inquiry Into Development of Policies for Loading of Circuits Among North Atlantic Facilities During the 1986-1991 Period; Public Notice Announcing Adoption of Notice of Inquiry

AGENCY: Federal Communications Commission.

ACTION: Public notice regarding third notice of inquiry.

SUMMARY: This notice of inquiry provides interested persons an opportunity to comment on the policy for distributing circuits among North Atlantic cable and satellite facilities during the 1985-1991 period. Under the present policy, message telephone circuits are distributed among available North Atlantic facilities using primarily a balanced loading methodology.

DATES: Entities made parties to this proceeding shall, and other interested persons may, submit:

A. Traffic forecasts by August 31, 1984;

B. Circuit distribution plans and comments on policy options by September 14, 1984;

C. Analyses of the proposed circuit distribution plans on October 10, 1984; and

D. Final comments on all previous submissions on November 2, 1984.

ADDRESS: Responses to this notice should be submitted to: The Secretary, Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert Gosse, International Policy Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-4047.

SUPPLEMENTARY INFORMATION:

[Report No. 18078]

July 27, 1984.

The Commission has begun an inquiry to determine what policy it should follow to develop policies for distribution (loading) of circuits among North Atlantic facilities during the 1986-1991 period.

The circuit distribution guidelines currently in force were developed in Docket 18875 and expire at the end of 1985. While the Commission issued guidelines pertaining to North Atlantic facilities in the 1985-1991 period in January 1981, it deferred consideration of the circuit distribution policies to be applied during that period.

Under the present guidelines message telephone traffic is routed over satellite and cable facilities in the North Atlantic region primarily following a "balanced" loading methodology. This distributes circuits among facilities with unused capacity in a manner which, to the extent possible, results in all transmission systems (cables and satellites) on a given route carrying equal numbers of circuits. At the present time, there are more cable routes than satellite routes between North America and Europe. However, since some of the cables are fully loaded and all the cables have smaller capacities than the satellites, the result is that traffic is now divided equally between cable and satellite facilities.

The notice of inquiry requested comments on three policy options: continued use of balanced loading as the basis for circuit distribution, use of a methodology other than balanced loading for distribution of circuits; and the removal or phased removal of the Commission from circuit distribution decisions.

It also asked the carriers to submit circuit distribution plans using their preferred circuit distribution methodology. Message telephone carriers were requested to submit circuit distribution plans using the balanced lead methodology. Carriers were asked to analyze the effect on customers of all such distribution plans submitted in terms of cost and service reliability. In addition, comments were requested concerning the effect of the Commission's removal or phased removal of itself from circuit distribution decisions on the development of competition.

The Commission made the following carriers parties to this proceeding: AT&T; Comsat; FTC Communications, Inc.; The Hawaiian Telephone Co.; ITT World Communications, Inc.; RCA Global Communications, Inc.; TRT Telecommunications Corp.; The Western Union Telegraph Co.; and Western Union International, Inc.

Action by the Commission July 26, 1984, by Third Notice of Inquiry (FCC 84-351). Commissioners Fowler (Chairman), Quello, Dawson, Rivera, and Patrick.

Note.—Due to the continuing effort to minimize publishing costs, the Notice of Inquiry will not be printed herein. However, copies may be obtained from the FCC Office of Public Affairs, Rm. 202, 1919 M St. NW., Washington, D.C. 20554 and the International Transcription Service, also located at 1919 M St. NW. Tel.: (202) 296-7322. A copy is also available for public inspection in the FCC Dockets Branch, Rm. 239, and the FCC Library, Rm. 639, both also located at 1919 M St. NW.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-21147 Filed 8-8-84; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 49, No. 155
Thursday, August 9, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Inyo National Forest Grazing Advisory Board; Meeting

The Inyo National Forest Grazing Advisory Board will meet at 10 a.m. on September 11, 1984, in the Inyo National Forest Conference Room in Bishop, California. The purpose of the meeting is:

FY 84 and 85 Range Management Projects
Introduction to Forest Land Management Planning Process
Grazing Advisory Board Recommendations
Establishment of Sub-committees
Establish Next Meeting Date

The meeting will be open to the public. Persons who wish to attend may notify Inyo National Forest—telephone (619) 873-5841. Written statements may be filed with the committee before or after the meeting. Members of the public wishing to speak at the meeting will be recognized by the committee chairman at the appropriate time.

Dated: July 31, 1984.

Eugene E. Murphy,

Forest Supervisor.

[FR Doc. 84-21104 Filed 8-8-84; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

ALLTEL Florida, Inc., Live Oak, FL; Proposed Loan Guarantee

AGENCY: Rural Electrification Administration (REA), USDA.

ACTION: Proposed loan guarantee.

SUMMARY: Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 320-22 (Guarantee of Loans for Telephone Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $28,930,000 to ALLTEL Florida, Inc., of Live Oak, Florida. This guarantee will be used to finance telephone facilities to serve 46,591 subscribers, including 9,180 new subscribers over 6,322 miles of plant in the State of Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Wallace S. Townsend, President, ALLTEL Florida, Inc., P.O. Box 550, Live Oak, Florida 23060.

SUPPLEMENTARY INFORMATION: Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of the guaranteed loan funds from Mr. Wallace S. Townsend at the address given above.

In order to be considered, proposals must be submitted on or before September 10, 1984 to Mr. Townsend. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as ALLTEL Florida, Inc., and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 320-22 are available from the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.851 Rural Telephone Loans and Loan Guarantees.

Dated: August 3, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84-21171 Filed 8-8-84; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Crooked-Otter Creeks and Middle Fork Salt River Watersheds, Missouri

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Crooked-Otter Creeks and Middle Fork Salt River Watersheds, Macon, Randolph, Shelby, Monroe, Audrain, Boone and Callaway Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Paul F. Larson, State Conservationist, Soil Conservation Service, 555 Vandiver Drive, Columbia, Missouri 65202, telephone 314/875-5214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects may cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul F. Larson, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for these projects.

The project concerns a plan for watershed protection and flood prevention. Alternatives under consideration to reach objectives include systems for conservation land treatment, nonstructural measures and earth dams.

A draft environmental impact statement will be prepared and is expected to be ready for circulation and review by agencies and the public by December 1985. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Meetings will be held at 7:00 p.m., September 11, 1984, in the Community Room of the Mercantile Bank, Shelbina, Missouri; and at 7:00 p.m., September 12, 1984, in the

Commons of the Macon Vocational Technical School, Macon, Missouri to determine the scope of the evaluation of the proposed action. Further information on the proposed action, or the scoping meeting may be obtained from Paul F. Larson, State Conservationist, at the above address or telephone 314/875-5214.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and federally assisted programs and projects are applicable)

Dated: July 31, 1984.

Robert J. Graham,

Acting State Conservationist.

[FR Doc. 84-21107 Filed 8-8-84; 8:45 am]

BILLING CODE 3410-16-M

Felton Covered Bridge RC&D Measure, California

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene E. Andreuccetti, State Conservationist, Soil Conservation Service, 2828 Chiles Road, Davis, California 95616, telephone (916) 449-2848.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Felton Covered Bridge RC&D Measure in Santa Cruz County, California.

The measure concerns plans for critical area treatment. The planned works of improvement include streambank stabilization and woody and herbaceous plantings.

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency. Basic data developed during the environmental evaluation is on file and may be reviewed by contacting Eugene E. Andreuccetti, State Conservationist, Soil Conservation Service, 2828 Chiles Road, Davis, California 95616, telephone (916) 449-2848. A combined environmental assessment and a finding of no significant impact has been prepared and sent to various Federal, State and local agencies, and interested parties. A limited number of copies are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until thirty days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assested programs and projects is applicable)

Gerald G. Larson,

Assistant State Conservationist.

[FR Doc. 84-21108 Filed 8-8-84; 8:45 am]

BILLING CODE 3410-16-M

Bantam River Critical Area Treatment RC&D Measure, Connecticut

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Philip H. Christensen, State Conservationist, Soil Conservation Service, 16 Professional Park Road, Storrs, Connecticut 06268, telephone (203) 629-9361.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Bantam River Critical Area Treatment RC&D Measure, Litchfield County, Connecticut.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Philip H. Christensen, State Conservationist, has determined the preparation and review of an Environmental Impact Statement are not needed for this project.

The measure concerns a plan to stabilize eroded streambanks along the Bantam River. The planned action includes reshaping affected streambanks to a 2:1 slope, and placement of bedding material and stone (riprap). Work is proposed at nine sites for a total distance of 2,700 feet. All disturbed areas will be seeded to grasses following construction. Additional vegetative plantings will include shrubs for stabilization and wildlife habitat.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data development during the environmental assessment are on file and may be reviewed by contacting Philip H. Christensen. The Environmental Assessment has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the Environmental Assessment are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program)

Dated: July 31, 1984.

Philip H. Christensen,

State Conservationist.

[FR Doc. 84-21103 Filed 8-8-84; 8:45 am]

BILLING CODE 3410-16-M

Rock Creek Watershed, Oregon

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Rock Creek Watershed project, Gilliam and Morrow Counties, Oregon.

FOR FURTHER INFORMATION CONTACT: Jack P. Kanalz, State Conservationist, Soil Conservation Service, 1220 S.W. Third Avenue, 16th Floor, Portland, Oregon 97204, telephone (503) 221-2751.

SUPPLEMENTARY INFORMATION: A determination has been made by Jack P. Kanalz that the proposed works of improvement for the Rock Creek project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Jack P. Kanalz, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management

and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 3, 1984.

Jack P. Kanalz,

State Conservationist.

[FR Doc. 84-21106 Filed 8-8-84; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 261]

Resolution and Order Approving the Application of the State of Delaware for a Special-Purpose Foreign-Trade Subzone for General Motors in Wilmington, DE, Within the Wilmington Customs Port of Entry; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u); the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the State of Delaware, submitted through the Delaware Development Office, filed with the Foreign-Trade Zones Board (the Board) on December 1, 1983, requesting special-purpose subzone status for the auto manufacturing plant of General Motors Corporation in Wilmington, Delaware, within the Wilmington Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone for General Motors in Wilmington, Delaware

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Delaware Development Office, on behalf of the State of Delaware, grantee of Foreign-Trade Zone No. 99, Wilmington, has made application (filed December 1, 1983, Docket No. 42-83, 48 FR 55888) in due and proper form to the Board for authority to establish a special-purpose subzone at General Motors Corporation's automobile manufacturing plant in Wilmington, Delaware, within the Wilmington Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed December 1, 1983, the Board hereby authorizes the establishment of a subzone at the General Motors Wilmington plant, designated on the records of the Board as Foreign-Trade Subzone No. 99C at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activiation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 26th day of July 1984 pursuant to Order of the Board.

Foreign-Trade Zones Board.

William T. Archey,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 84-21087 Filed 8-8-84; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 266]

Resolution and Order Approving the Application of the Georgia Foreign-Trade Zone, Inc., for a Special-Purpose Subzone in La Grange, GA, Adjacent to the Atlanta Customs Port of Entry; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 26, filed with the Foreign-Trade Zones Board (the Board) on July 27, 1983, requesting special-purpose subzone status for the Goetze Gasket Company facility in La Grange, Georgia, adjacent to the Atlanta Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in La Grange, Georgia, Adjacent to the Atlanta Customs Port of Entry.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign

commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 26 in the Atlanta port of entry area, has made application (filed July 27, 1983, Docket No. 28–83, 48 FR 37503) in due and proper form to the Board for authority to establish a special-purpose subzone at the gasket manfacturing facility of Goetze Gasket Company located in La Grange, Georgia, adjacent to the Atlanta Customs port of entry.

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed July 27, 1983, the Board hereby authorizes the establishment of a subzone at the Goetze Gasket plant in La Grange, Georgia, designated on the records of the Board as Foreign-Trade Subzone No. 26B at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the data of issuance of the grant, and prior thereto, any necessary permits shall be obtained form Federal, State, and municipal authorities.

Officers and empolyees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement localy by the District Director of Customs and District Army Engineer with the grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 19th day of July 1984 pursuant to Order of the Board.

Foreign-Trade Zones Board.

William T. Archey,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 84–21091 Filed 8–8–84; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 263]

Resolution and Order Approving the Application of the Indianapolis Airport Authority for a Special-Purpose Foreign-Trade Subzone for General Motors in Kokomo, IN, Adjacent to the Indianapolis Customs Port of Entry; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72 in Indianapolis, filed December 1, 1983 with the Foreign-Trade Zones Board (the Board) requesting special-purpose subzone status for the auto electronics manufacturing plant of General Motors Corporation's Delco Division, located in Kokomo, Indiana, adjacent to the Indianapolis Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone for General Motors in Kokomo, Indiana, Adjacent to the Indianapolis Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone No. 72 in Indianapolis, has made application (filed December 1, 1983, Docket No. 44–83, 48 FR 55890) in due and proper form to the Board for authority to establish a special-purpose subzone at General Motors Corporation's Delco Electronics Division auto electronic products manufacturing facilities in Kokomo, Indiana, adjacent to the Indianapolis Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed December 1, 1983, the Board hereby authorizes the establishment of a subzone at the General Motors-Delco Division plant in Kokomo, Indiana, designated on the records of the Board as Foreign-Trade Subzone No. 72A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant,

and prior thereto, any necessary pe shall be obtained from Federal, Sta and municipal authorities.

Officers and employees of the Ur State shall have free and unrestrict access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 26th day of July 1984 pursuant to Order of the Board.

Foreign-Trade Zones Board.

William T. Archey,

Assistant Secretary for Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 84-21089 Filed 8-8-84; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 262]

Resolution and Order Approving the Application of the Greater Detroit Foreign-Trade Zone, Inc., for Special-Purpose Foreign-Trade Subzones for General Motors in Ypsilanti, and Pontiac, MI, Adjacent to the Detroit Customs Port of Entry; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70 in Detroit, filed December 1, 1983, with the Foreign-Trade Zones Board (the Board) requesting special-purpose subzone status for the General Motors Corporation automobile manufacturing plants in Ypsilanti and Pontiac, Michigan, adjacent to the the Detroit Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish Foreign-Trade Subzones for General Motors in Ypsilanti and Pontiac, Michigan, Adjacent to the Detroit Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 70, has made application (filed December 1, 1983, Docket No. 43–83, 48 FR 55889) in due and proper form to the Board for authority to establish special-purpose subzones at General Motors Corporation's automobile manufacturing facilities in Ypsilanti and Pontiac, Michigan, adjacent to the Detroit Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed December 1, 1983, the Board hereby authorizes the establishment of subzones at the General Motors Ypsilanti and Pontiac plants, designated on the records of the Board as Foreign-Trade Subzones No. 70F and 70G at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 26th day of July 1984 pursuant to Order of the Board.

Foreign-Trade Zones Board.

William T. Archey,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 84-21088 Filed 8-8-84; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 264]

Resolution and Order Approving the Application of the City of Tulsa-Rogers County Port Authority for a Special-Purpose Foreign-Trade Subzone for General Motors in Oklahoma City OK, Within the Oklahoma City Customs Port of Entry; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Tulsa-Rogers County Port Authority, grantee of Foreign-Trade Zone 53 in Tulsa, filed December 1, 1983, with the Foreign-Trade Zones Board (the Board) requesting special-purpose subzone status for the General Motors Corporation automobile manufacturing plant in Oklahoma City, Oklahoma, within the Oklahoma City Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone for General Motors in Oklahoma City, Oklahoma

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the City of Tulsa-Rogers County Port Authority, grantee of Foreign-Trade Zone No. 53 in Tulsa, has made application (filed December 1, 1983, Docket No. 45–83, 48 FR 55891) in due and proper form to the Board for authority to establish a special-purpose subzone at General Motors Corporation's automobile manufacturing plant in Oklahoma City, Oklahoma, within the Oklahoma City Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed December 1, 1983, the Board hereby authorizes the establishment of a subzone at the General Motors plant in Oklahoma City, designated on the records of the Board as Foreign-Trade Subzone No. 53A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 26th day of July 1984 pursuant to Order of the Board.

Foreign-Trade Zones Board.

William T. Archey,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 84–21090 Filed 8–8–84; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Gate Group U.S.A., Inc. ("Gate Group"). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on this certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 83–00031."

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202–377–0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595–604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class export by the applicant;

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant; and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and for the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937–40 (April 13, 1983).

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from Gate Group on November 17, 1983. The application was deemed submitted on April 17, 1984. A summary of the application was published in the **Federal Register** on November 30, 1983 (48 FR 54088)

Description of Certified Conduct

Based on analysis of the application and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by Gate Group meet the four standards of the Act:

Export Trade

(a) Paper, paper coating and glazing, envelopes, printing ink, lighting and electronic glassware, printing trade machinery, and photographic equipment and supplies for the graphic arts industry (the "Products").

(b) Export trade services (consulting; international market research; advertising; marketing; insurance; product research and design exclusively for export; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange; financing; and taking title to goods) in connection with the foregoing Products.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

(a) Gate Group may enter into and terminate agreements, each with a single supplier, to sell that supplier's Products in designated Export Markets. In each agreement, the supplier may agree not to sell, directly or through any intermediary other than Gate Group, into the designated Export Markets.

(b) Gate Group may enter into and terminate agreements with its foreign sales representatives. In each agreement, Gate Group may establish quotas and prices for the Products to be sold in the Export Markets by its foreign sales representative.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202–377–3031.

Dated: August 6, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84–21174 Filed 8–8–84; 8:45 am]

BILLING CODE 3510–DR–M

[Case No. 640]

Hi-Tech Air Corp., et al.; Order Amending Temporary Denial of Export Privileges

In the matter of: Robert J. Lambert, individually and doing business as Computer and Test System, 5671 Via Ceresa; Yorba Linda, California 92686; Dierk Hagemann, individually and doing business as Hi-Tech World Transport Corporation (formerly Uni-Data World Transport Corporation), 110 Standard Street, El Segundo, California 90245; Albert Franz Kessler, 20 Kennel Street, 8800 Thalwil, Switzerland.

By a Temporary Denial Order (the "Order") issued February 28, 1983 (48 FR 10108, Mar. 10, 1983), respondents Robert J. Lambert, et al., and the related parties named in Paragraph III of the Order were temporarily denied, pursuant to Section 388.19 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1983)), all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data. The Order has been amended three times. Each of the first two amendments deleted one of the related parties listed in Paragraph III (48 FR 20784, May 9, 1983; 48 FR 34090, July 27, 1983). The third amendment clarified that the Order applies to a respondent individually and to the company through which he does business, and added the new or correct name for one respondent and two related parties (49 FR 9763, Mar. 15, 1984). Upon motion of the U.S. Department of Commerce, an order was then issued to Hi-Tech Air Transport Corporation ("Hi-Tech Air") to show cause why it should not be added to the list of related parties in Paragraph III of the Order.

Papers filed in this proceeding show that Hi-Tech Air was formed November 2, 1982 for the purpose of carrying on the air freight forwarding business previously conducted by Uni-Data World Transport Corporation and its principal, respondent Dierk Hagemann. Uni-Data World Transport Corporation, which is present named Hi-Tech World Transport Corporation, is denied all U.S. export privileges under the Order as the company through which Hagemann conducts business. The address of Hi-Tech Air is the same as that of

Hagemann and Hi-Tech World Transport Corporation:

Hi-Tech Air Transport Corporation, 110 Standard Street, El Segundo, California 90245.

Based on the information contained in the papers filed in this proceeding, I find that Hi-Tech Air should be named as a related party.

Accordingly, it is hereby ordered that, effective immediately, the Order of February 28, 1983 is further amended by adding, to the related parties named in Paragraph III, the following:

Hi-Tech Air Transport Corporation, 110 Standard Street, El Segundo, California 90245.

A copy of this Amendment of the Order shall be served on Hi-Tech Air and published in the **Federal Register.**

Dated: August 3, 1984, 4:20 pm EDT.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 84-21196 Filed 8-8-84; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Additional Import Restraint Level for Certain Cotton Apparel Products Produced or Manufactured in Romania

August 6, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 10, 1984. For further information contact Diana Bass, International Trade Specialist (202) 377-4212.

Background

Under the terms of the Bilateral Cotton Textile Agreement of January 28 and March 31, 1983 between the Governments of the United States and the Socialist Republic of Romania, the United States Government has decided to control imports of women's girls' and infants' cotton trousers in Category 348, produced or manufactured in Romania and exported during 1984, at a level of 78,652 dozen. The level will be adjusted to account for merchandise in Category 348 that has been exported during the period which began on January 1, 1984. For the January-May period those charges have amounted to 52,281 dozen. The letter to the Commissioner of Customs which follows this notice amends the directive of December 19, 1983, which established the restraint limits for cotton, wool and man-made fiber textile products from Romania during 1984 (48 FR 56625), to include a level of 78,652 dozen for Category 348.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 6, 1984.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 19, 1983, which directed you to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products, produced or manufactured in Romania and exported during 1984.

Effective on August 10, 1984, the directive of December 19, 1983 is hereby amended to include a resraint limit of 78,652 dozen [1] for cotton textile products in Category 348.

Cotton textile products in Category 348 which have been exported to the United States prior to January 1, 1984 shall not be subject to this directive.

Textile products in Category 348 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-21192 Filed 8-8-84; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultation With Korea to Review Trade in Categories 337 and 659pt.

August 6, 1984.

On July 26, 1984, the Government of the United States requested consultations with the Government of the Republic of Korea with respect to cotton playsuits in Category 337 and man-made fiber coveralls, overalls, and jumpsuits in Category 659pt., produced or manufactured in Korea. This request was made on the basis of the agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that if no solution is agreed upon in consulations with Korea, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Categories 337 and 659pt., produced or manufactured in Korea and exported to the United States during the twelve-month period which began on January 1, 1984 and extends through December 31, 1984.

Anyone wishing to comment or provide data or information regarding the treatment of these categories from Korea under the Bilateral Cotton, Wool and Man-Made fiber Textile Agreement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect to the exemption contained in 5 U.S.C. 553(a)(1) relating

[1] The restraint limit has not been adjusted to account for any imports exported after December 31, 1983. Imports during the January-May 1984 period have amounted to 52,218 dozen.

to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-21086 Filed 8-8-84; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Exchange Proposal to Trade Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions for trading commodity options on the New York Mercantile Exchange crude oil futures contract.

SUMMARY: The New York Mercantile Exchange ("NYMEX") has submitted an application to trade options on commodity futures contracts for crude oil under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"). The Commission believes that public comments on the proposal is in the public interest and is consistent with its option regulations and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before September 10, 1984.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to the NYMEX Crude Oil options contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Commission has previously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts are permitted to be traded on domestic boards of trade designated by the Commission as contract markets for options trading (46 FR 54500 (November 3, 1981)). Initially, the pilot program provided that each board of trade would be approved for trading in no more than one futures option contract. These regulations were subsequently amended to allow the approval of additional options on certain futures contracts for each domestic board of trade (48 FR 41575 (September 16, 1983); 49 FR 2752 (January 23, 1984)).

Under the initial option pilot program, the NYMEX submitted an application for designation as a contract market in options on heating oil futures contracts (47 FR 18639 (April 30, 1982)). However, under Commission procedures (46 FR 47108 (September 24, 1981)), that application was deemed voluntarily withdrawn by the Exchange for its failure to respond to a staff inquiry regarding the proposal.

NYMEX has applied for contract market designation, pursuant to section 6 of the Commodity Exchange Act, 7 U.S.C. 8 (1982), ("Act") and Commission Regulation 33.5, to trade options on crude oil futures contracts.

A copy of the terms and conditions of the proposed NYMEX option on crude oil futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by NYMEX in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by NYMEX in support of its application, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by September 10, 1984. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C. on August 6, 1984.

Jane K. Stuckey,

Secretary to the Commission.

[FR Doc. 84-21161 Filed 8-8-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Department of the Army Performace Review Boards

AGENCY: Department of the Army Defense.

ACTION: Notice.

SUMMARY: Notice is hereby given of the name of additional members of the DARCOM for the Department of Army for 1984.

EFFECTIVE DATE: August 7, 1984.

FOR FURTHER INFORMATION CONTACT: Carol D. Smith, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, Washington, DC 20310, (202) 697-2204.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5 U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The boards shall review and evaluate the initial appraisal of senior executive's performance by the supervisor and make recommendations to the appointing authority or rating official relative to the performance of the senior executives. Each board's review and recommendation will include only those senior executive's appraisals from their respective commands or activities. Publication of this notice corrects the notice published in 49 CFR 132, dated July 9, 1984, page 27970, to account for additions and deletions to the membership of those boards previously published.

The additional member of the Performance Review Board for the US Army Materiel Development and Readines Command is:

Major General James G. Boatner, Deputy Chief of Staff for Personnel, HQ, US Army Materiel Development and Readiness Command.

Carol D. Smith,

Chief, Senior Executive Service Office.

[FR Doc. 84-21071 Filed 8-8-84; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

[Docket No. TA84-2-21-000]

August 6, 1984.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 31, 1984, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective on September 1, 1984:

Ninety-fifth Revised Sheet No. 16
Fourth Revised Sheet Nos. 16B through 16D
Thirty-third Revised Sheet No. 64
Fourth Revised Sheet No. 64D
Eleventh Revised Sheet Nos. 64E through 64I
Second Revised Sheet No. 66
Second Revised Sheet No. 67

Columbia states that the rates set forth in Ninety-fifth Revised Sheet No. 16 reflect an increase of $1.18/Dth in demand and a 2.60¢/Dth increase in commodity, which results in an approximate increase of $50,686,567 applicable to sales rate schedules for the subject PGA period. This increase is composed of the net of (1) a Purchased Gas Adjustment which reflects an increase in the current cost of gas, (2) a net decrease in the PGA surcharge, (3) a decrease in the Advance Payment Adjustment, and (4) a six-month surcharge relating to take-or-pay reimbursement to Panhandle Eastern Pipe Line Company and Texas Gas Transmission Corporation.

The Purchased Gas Surcharge amounts set forth on Fourth Revised Sheet Nos. 16B and 16C provides for the recovery of $1,792,864 in gas purchase costs over the six-month period ending February 28, 1985, such costs to be recovered from customers receiving service under Columbia's Rate Schedule SGES.

In addition, Second Revised Sheet Nos. 66 and 67 provide for the cancellation of Section 22 "Temporary Tracking of Louisiana First Use Tax (LFUT)—Rate Adjustment" from the General Terms and Conditions of Columbia's FERC Gas Tariff, Original Volume No. 1.

Further, Columbia's filing also contains material related to the affiliated entities test contained in section 601(b)(1)(E) of the NGPA. Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21168 Filed 8-8-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-58-001]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

August 3, 1984.

Take notice that on July 18, 1984, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket NO. CP84-58-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas through June 30, 1985, on behalf of Anchor-Hocking Corporation (Anchor-Hocking) under 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 on file with the Commission and open to public inspection.

Columbia proposes to transport up to 800 dt equivalent of natural gas per day from Delta Drilling Company (Delta) in Indiana County, Pennsylvania, to Baltimore Gas and Electric Company (BG&E) in Baltimore, Maryland. The gas purchase agreement between Delta and Anchor-Hocking indicates that Columbia has released certain gas supplies of Delta. Columbia states that these supplies are subject to the ceiling price provisions of Section 102 of the Natural Gas Policy Act of 1978. It is further indicated that Anchor-Hocking has purchased this released natural gas from Delta and that BG&E is the distribution company serving Anchor-Hocking in Baltimore, Maryland.

For this transportation Columbia states it would charge Anchor-Hocking its average system-wide storage and transmission cost, exclusive of company-use and unaccounted-for gas, currently 40.11 cents per dt equivalent. In addition, Columbia would retain 2.85 percent of the gas delivered to it for company-use and unaccounted-for gas. Furthermore, it is stated Columbia would charge Anchor-Hocking a GRI surcharge of 1.21 cents where applicable.

The proposed service is a continuation of the service authorized previously in Docket No. CP84-58-000, which authorization would terminate on August 18, 1984.

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 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.

[FR Doc. 84-21165 Filed 8-8-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-169-001]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Amendment To Request Under Blanket Authorization

August 3, 1984.

Take notice that on July 24, 1984, Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325, and Columbia Gulf Transmission Company (Columbia Gulf) (referred to jointly as Columbia), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP84-169-001 an amendment to the authorization granted in Docket No. CP84-169-000 pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 15.205) that Columbia proposes to extend their authorization to transport up to 3 billion Btu of natural gas per day on behalf of Procter and Gamble Manufacturing Company (P&G) through November 1, 1984, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Columbia states that the original authorization to transport gas to P&G's Baltimore, Maryland plant expires July 27, 1984. Columbia further states that in all other respects the transportation arrangement would remain the same.

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 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.

[FR Doc. 84-21164 Filed 8-8-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-22-002]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 6, 1984.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on August 1, 1984, filed a revised tariff sheet pursuant to Sections 12 (PGA Clause), 12A (Incremental Pricing Surcharges), and 13 (Research, Development and Demonstration Cost Adjustment) of the General Terms and Conditions of its tariff. The revisions, shown on Forty-First Revised Sheet No. 16 provide for Consolidated's semi-annual PGA to be effective September 1, 1984.

Consolidated has included in its filing:

(a) Rate increases from pipeline suppliers in the amount of $71.5 million;

(b) Rate increases from producer suppliers in the amount of $25.6 million;

(c) A surcharge of 8.77 cents per dekatherm to recoup amounts accumulated in account 191, Unrecovered Purchased Gas Costs which includes, in addition to the standard entries, continuaton of a special surcharge to collect NGPA rates for "old" pipeline production produced prior to January 1983 except for the eighteen months covered by Docket No. RP80-61 (which period is subject to Commission orders issued February 4, 1983, and April 6, 1983, in Docket Nos. TA82-2-22-000, *et al.* and a Fourth Circuit Appeal, No. 83-1499); and

(d) A surcharge credit of 7.21 cents per dekatherm to flow back pipeline supplier refunds.

Consolidated, in addition to its proposed PGA rate change (1) submits a computation in accordance with the procedures approved in *Offshore Construction Costs of Natural Gas Pipelines*, Docket No. RP79-28-000 and (2) seeks waiver of certain incremental pricing reporting requirements.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as 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, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before August 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a 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. 84-21167 Filed 8-8-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-450-001]

Northwest Pipeline Corp.; Request Under Blanket Authorization

August 3, 1984.

Take notice that on July 30, 1984, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP84-450-001 an amended request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Northwest proposes to transport natural gas for an eligible end-user under the authorization issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the amended request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 5,000 Mcf of natural gas per day for the account of NGL Production Company (NGL) pursuant to an amended letter agreement (Agreement) dated July 20, 1984. The proposed transportation service would be for an initial term expiring June 30, 1985, unless earlier superseded by Commission approval of Northwest's application for inclusive longer-term service pending in Docket No. CP84-560-000, it is stated.

Northwest states that the gas is purchased by Overthrust Gas Brokers Company (OGBC) from Cities Service Oil Company (Cities) and sold by OGBC to NGL pursuant to a gas purchase contract dated January 18, 1984, at the existing points of interconnection between the Montana-Dakota Utilities Company (Mondak) pipeline and the Colorado Interstate Gas Company (CIG) pipeline in Park County, Wyoming (Elk Basin receipt point) or Fremont County, Wyoming (Madden receipt point). NGL warrants that this gas was not dedicated to interstate commerce on or before November 8, 1978, and has qualified for section 103 pricing under the Natural Gas Policy Act of 1978, it is stated.

Northwest states that NGL has agreed to pay OGBC $2.455 per million Btu for the gas which includes OGBC's agency fee of 12.0 cents per million Btu and reimbursement of 23.5 cents per million Btu for Mondak transportation charge incurred in delivering the gas to CIG.

CIG, pursuant to a gas transportation agreement dated July 3, 1984, would transport the gas for the account of NGL from the Elk Basin or Madden receipt points for redelivery to Northwest in Sweetwater County, Wyoming (Green River or Crossover 16 receipt points) or Uintah County, Utah (Red Wash receipt point), it is stated. CIG proposes to charge NGL a rate of 36.08 cents per Mcf plus an AIC charge of 2.5 cents per million Btu and retain compressor fuel in kind attributable to transporting NGL's gas, it is indicated.

Northwest states that it would transport NGL's gas from Green River or Crossover 16 receipt points or the Red Wash receipt point and redeliver equivalent volumes, less fuel, to NGL's Foundation Creek, North Douglas Creek, and Moxa Arch processing plants located in Rio Blanco County, Colorado, and Lincoln County, Wyoming. Northwest proposes to charge NGL a mainline transportation rate of 1.25 cents per million Btu per 100 miles,[1] an AIC charge of 2.5 cents per million Btu and a GRI adjustment of 1.18 cents per million Btu. Northwest would also retain 0.83 percent of volumes transported for fuel usage. These rates are set forth in Rate Schedule AIC-1, Sheet No. 81, in

[1] Depending on which processing plant serves as the redelivery point, the mainline transportation rate is either 1.25 cents or 2.50 cents per million Btu.

Northwest's currently effective FERC Gas Tariff, Volume No. 1, it is explained.

The average delivered price of the gas to NGL, exclusive of fuel, would be approximately $2.9801 per million Btu, it is stated. Northwest states that the proposed service is conditioned upon the availability of pipeline capacity sufficient to provide such service without detriment or disadvantage to Northwest's existing customers who are dependent on Northwest's general system supply.

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 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.

[FR Doc. 84-21168 Filed 8-8-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-28-005]

Panhandle Eastern Pipe Line Co.; Change in Tariff

August 6, 1984.

Take notice that on July 17, 1984 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Substitute Forty-Eighth Revised Sheet No. 3-A

Second Substitute Twenty-Fifth Revised Sheet No. 3-B

An effective date of March 1, 1984 is proposed.

Panhandle states that these revised tariff sheets reflect a reduced PGA rate adjustment of (0.21¢) per Dt in Panhandle's applicable commodity and one-part rates.

Panhandle states that this proposed rate reduction represents a downward revision of the PGA rate adjustment which became effective March 1, 1984 in docket No. TA84-1-28 and is being filed at this time in compliance with Commission Orders in the subject proceeding dated May 25, 1984 and July 13, 1984. Ordering Paragraph (B) of the Commission's *Order Accepting Revised Tariff Sheets, Subject to Conditions,* dated May 25, 1984 in Docket Nos. TA84-1-28-002 and TA84-1-28-004, conditioned acceptance of the previously filed tariff sheets effective March 1, 1984, upon Panhandle filing revised tariff sheets to reflect the removal of certain carrying charges from Account No. 191 associated with the unrecovered gas costs for the months of June 1983 through August 1983. This adjustment represents a (0.21¢) per Dt. reduction in the carrying charge surcharge, and is reflected in the instant filing, in compliance with the Commission's May 25, 1984 Order and Ordering Paragraph (C) of the Commission's Order dated July 13, 1984, without prejudice to Panhandle's right to seeking judicial review of the Commission's Order dated May 25, 1984.

Supporting computation sheets are enclosed and copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before August 14, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21169 Filed 8-8-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST84-878-000, et al.]

Sea Robin Pipeline Company, et al.; Self-Implementing Transactions

August 6, 1984.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(D) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "(C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Kenneth F. Plumb,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (cents per MMBtu)
ST84-878	Sea Robin Pipeline Co	Southern Natural Gas Co	6-1-84	G		
ST84-879	ANR Pipeline Co	A. E. Staley Manufacturing Co	6-1-84	F(157)		
ST84-880	ANR Pipeline Co	Archer Daniels Midland Co	6-1-84	F(157)		
ST84-881	Colorado Interstate Gas Co	Robinson Brick Co	6-1-84	F(157)		
ST84-882	Northwest Pipeline Corp	NGL Production Co	6-4-84	F(157)		
ST84-883	Louisiana Intrastate Gas Corp	Tennessee Gas Pipeline Co	6-4-84	C	11-1-84	20.00
ST84-884	Tennessee Gas Pipeline Co	THC Pipeline Co	6-4-84	B		
ST84-885	Tennessee Gas Pipeline Co	Gulf South Pipeline Co	6-4-84	B		
ST84-886	Tennessee Gas Pipeline Co	Houston Pipeline Co	6-4-84	B		
ST84-887	Panhandle Eastern Pipe Line Co	Anderson, Clayton & Co	6-4-84	F(157)		
ST84-888	Panhandle Eastern Pipe Line Co	A.P. Green Refractories Co	6-4-84	F(157)		
ST84-889	Panhandle Eastern Pipe Line Co	B.F. Goodrich Co	6-4-84	F(157)		
ST84-890	Northern Natural Gas Co	Bridgeline Gas Distribution Co	6-5-84	B		
ST84-891	Dow Intrastate Gas Co	Gulf South Pipeline Co	6-5-84	C		
ST84-892	Consolidated Gas Transmission Corp	Transcontinental Gas Pipe Line Corp	6-1-84	G		
ST84-893	Gasdel Pipeline System Inc	Public Service Electric and Gas Co	6-6-84	B		
ST84-894	Gasdel Pipeline System Inc	Public Service Electric and Gas Co	6-6-84	B		
ST84-895	Columbia Gulf Transmission Co	Dow Intrastate Gas Co	6-6-84	B		
ST84-896	Acadian Gas Pipeline System	Natural Gas Pipeline Co. of America	6-6-84	C		
ST84-897	ANR Pipeline Co	Anchor Glass Container Corp	6-6-84	F(157)		
ST84-898	PGC Pipeline	Mississippi River Transmission Corp	6-11-84	D		
ST84-899	ANR Pipeline Co	Texaco, Inc	6-7-84	F(157)		
ST84-900	ANR Pipeline Co	Great Plains Gasification Associates	6-7-84	F(157)		
ST84-901	Northwest Pipeline Corp	Panhandle Eastern Pipeline Co	6-8-84	G		
ST84-902	Tennessee Gas Pipeline Co	Monterey Pipeline Co	6-8-84	B		
ST84-903	Northern Natural Gas Co	Delhi Gas Pipeline Corp	6-8-84	B		
ST84-904	Northern Natural Gas Co	Delhi Gas Pipeline Corp	6-8-84	B		
ST84-905	Northern Natural Gas Co	Tennessee Gas Pipeline Corp	6-8-84	G		
ST84-906	Consumers Power Co	Michigan Gas Storage Co	6-6-84	G(HT)	11-3-84	65.71
ST84-907	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	6-8-84	B		
ST84-908	Transcontinental Gas Pipe Line Corp	Florida Gas Transmission Co	6-8-84	G		
ST84-909	Consolidated Gas Supply Corp	SCM Corp	6-8-84	F(157)		
ST84-910	Cranberry Pipeline Corp	Columbia Gas Transmission Corp	6-8-84	C		
ST84-911	Consumers Power Co.[3]	Michigan Gas Storage Co	6-6-84	G(HT)		
ST84-912	Consumers Power Co.[3]	Michigan Gas Storage Co	6-6-84	G(HT)		
ST84-913	Consumers Power Co.[3]	Michigan Gas Storage Co	6-6-84	G(HT)		
ST84-914	Mid Louisiana Gas Co	United Gas Pipe Line Co	6-11-84	G		
ST84-915	Michigan Gas Storage Co	Consumers Power Co	6-11-84	B		
ST84-916	Michigan Gas Storage Co	Consumers Power Co	6-11-84	B		
ST84-917	Michigan Gas Storage Co	Consumers Power Co	6-11-84	B		
ST84-918	Oklahoma Natural Gas Co	Bridgeline Gas Distribution Co	6-12-84	C	11-9-84	24.32
ST84-919	Oklahoma Natural Gas Co	Natural Gas Pipeline Co. of America	6-12-84	C		
ST84-920	Taft Pipeline	Esperanza Gas Co	6-13-84	C	11-10-84	25.00
ST84-921	Delhi Gas Pipeline Corp	Mississippi River Transmission Corp	6-13-84	D		
ST84-922	Transcontinental Gas Pipe Line Corp	James River-Norwalk, Inc	6-14-84	F(157)		
ST84-923	Northwest Pipeline Corp	Colorado Interstate Gas Co	6-14-84	G		
ST84-924	Louisiana Intrastate Gas Corp	Texas Gas Transmission Corp	6-14-84	C	11-11-84	20.00
ST84-925	Panhandle Eastern Pipe Line Co	Peoples Natural Gas Co	6-14-84	B		
ST84-926	Tennessee Gas Pipeline Co	United Gas Pipeline Co	6-15-84	G		
ST84-927	Houston Pipe Line Co	Tennessee Gas Pipeline Co	6-18-84	C		
ST84-928	Northwest Central Pipeline Corp	Municipal Utilities, Carrollton, MO	6-18-84	F(157)		
ST84-929	Colorado Interstate Gas Co	West Texas Gas, Inc	6-21-84	B		
ST84-930	Acadian Gas Pipeline System	Mississippi River Transmisstion Corp	6-15-84	C		
ST84-931	Northwest Central Pipeline Corp	Frito-Lay, Inc	6-18-84	F(157)		
ST84-932	Texas Eastern Transmission Corp	Houston Pipe Line Co	6-19-84	B		
ST84-933	Tennessee Gas Pipeline Co	Washington Gas Light Co	6-18-84	B		
ST84-934	Tennessee Gas Pipeline Co	Public Service Electirc and Gas Co	6-18-84	B		
ST84-935	Tennessee Gas Pipeline Co	Washington Gas Light Co	6-18-84	B		
ST84-936	Colorado Interstate Gas Co	Wycon Chemical Co	6-19-84	F(157)		
ST84-937	Northern Natural Gas Co	Delhi Gas Pipeline Corp	6-19-84	B		
ST84-938	Columbia Gas Transmission Corp	Bally Ribbon Mills	6-20-84	F(157)		
ST84-939	Columbia Gas Transmission Corp	Yenkin-Majestic Paint Corp	6-20-84	F(157)		
ST84-940	Columbia Gas Transmission Corp	Chesapeake Park, Inc	6-20-84	F(157)		
ST84-941	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	6-21-84	B		
ST84-942	Panhandle Eastern Pipe Line Co	Brockway, Inc	6-21-84	F(157)		
ST84-943	Panhandle Eastern Pipe Line Co	Kaiser Aluminum and Chemical Corp	6-21-84	F(157)		
ST84-944	Delhi Gas Pipeline Corp	Mississippi River Transmisstion Corp	6-21-84	D		
ST84-945	Delhi Gas Pipeline Corp	Florida Gas Transmisstion Co	6-21-84	D		
ST84-946	Delhi Gas Pipeline Corp	Mississippi River Transmisstion Corp	6-21-84	C		
ST84-947	Algonquin Gas Transmission Co	Bay State Gas Co	6-21-84	B		
ST84-948	Houston Pipe Line Co	Natural Gas Pipeline Co. of America	6-21-84	C		
ST84-951	Northern Natural Gas Co	Armco, Inc	6-22-84	F(157)		
ST84-952	Panhandle Eastern Pipe Line Co	Reilly Tar and Chemical Co., *et al*	6-25-84	F(157)		
ST84-953	Louisiana Intrastate Gas Corp	Tennessee Gas Pipeline Corp	6-25-84	C	11-22-84	20.00
ST84-954	Panhandle Eastern Pipe Line Co	Delhi Gas Pipeline Corp	6-25-84	B		
ST84-955	The Peoples Natural Gas Co	Ameircan Refinding Group	6-26-84	G/F(157)		
ST84-956	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	6-29-84	C		
ST84-957	Natural Gas Pipeline Co. of America	Dow Intrastate Gas Co	6-28-84	B		
ST84-958	Trunkline Gas Co	Intrastate Gathering Corp	6-27-84	B		
ST84-959	ANR Pipeline Co	THC Pipeline Co	6-27-84	B		
ST84-960	Consumers Power Co.[4]	Michigan Gas Storage Co	6-29-84	G(HT)	11-26-84	59.73/62.27
ST84-961	Columbia Gas Transmission Corp	AGG ROK Materials	6-29-84	F(157)		
ST84-962	Columbia Gas Transmission Corp	Atlantic Cement Co., Inc	6-29-84	F(157)		
ST84-963	Columbia Gas Transmission Corp	Hershey Medical Center	6-29-84	F(157)		
ST84-964	Columbia Gas Transmission Corp	Teledyne Ohio Steel	6-29-84	F(157)		
ST84-965	Columbia Gas Transmission Corp	Mountaineer Gas Co	6-29-84	B		
ST84-966	Columbia Gas Transmission Corp	Orange and Rockland Utilities, Inc	6-29-84	B		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[3] The proper authority for this transaction is not clear from the filing.

[4] Dismissed by an order of the Director, Office of Pipeline and Producer Regulation, issued July 27, 1984.

[FR Doc. 84-21170 Filed 8-8-84; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 3194-003, et al.]

Hydroelectric Applications (Joseph Martin Keating, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1.a. Type of Application: Major License Under 5 MW.

b. Project No: 3194-003.

c. Date Filed: May 31, 1983.

d. Applicant: Joseph Martin Keating.

e. Name of Project: Foottrail.

f. Location: On the Silver Fork of the American River, near Kyburz, in El Dorado County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791-825(r).

h. Contact Person: Mr. Joseph Martin Keating, 847 Pacific Street, Placerville, California 95667 and James B. Vasile, Esq., Newman & Holtzinger, P.C., 1025 Connecticut Avenue, N.W., Washington, D.C. 20036.

i. Comment Date: September 24, 1984.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 10-foot-high, 155-foot-long concrete diversion dam on the confluence of Caples Creek and the Silver Fork of the American River; (2) a 2,760-foot-long, 9-foot horseshoe tunnel; (3) a 96-inch-diameter, 300-foot-long pipeline; (4) a 54-inch-diameter, 1,200-foot-long penstock; (5) a powerhouse, located at elevation 5,567 feet msl, containing three 1,100-kW turbine-generator units with a combined average annual generation of 12.0 GWh; and (6) a switchyard and primary transmission line. Project power would be sold to either Pacific Gas and Electric Company or Sierra Pacific Power Company. The project would be located on lands of Eldorado National Forest. Applicant estimates construction cost at $5,500,000. No recreational facilities are proposed for development by the Applicant.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

2a. Type of Application: Transfer of License.

b. Project No: 3562-002.

c. Date Filed: May 10, 1984.

d. Applicants: Maine Hydro-Electric Development Corporation and Barker Hydro Company.

e. Name of Project: Barker's Mill Upper Dam.

f. Location: Little Androscoggin River, near the City of Auburn, in Androscoggin County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John W. Gulliver, Pierce, Atwood, Scriber, Allen, Smith & Lancaster, One Monument Sq., Portland, Maine 04101.

i. Comment Date: September 12, 1984.

j. Description of Proposed Transfer: The Applicants propose to transfer the license from Maine Hydro-Electric Development Corporation (Licensee) to Barker Hydro Company (Transferee). The Barker's Mill Upper Dam Project, as licensed, would consist of an existing breached dam (to be repaired), a reservoir, and powerhouse containing one 950-kW turbine/generator. The license was issued on August 22, 1983, with commencement of construction due within two years.

The Transferee has proposed to develop and operate the project in accordance with the existing license.

The Transferee is a limited partnership, organized under the laws of the State of Maine.

k. This notice also consists of the following standard paragraphs: B and C.

3a. Type of Application: Major License (Under 5 MW)[1]

b. Project No: 3741-001.

c. Dated Filed: July 28, 1983.

d. Applicant: Joseph M. Keating.

e. Name of Project: Horsetail.

f. Location: On McGee Creek in Mono County, near Bishiop, California, within Inyo National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Mr. Joseph M. Keating, 847 Pacific Street, Placerville, California 95667.

i. Comment Date: September 4, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion structure on McGee Creek at elevation 7,520 feet msl; (2) a 42-inch-diameter, 4,780-foot-long, steel penstock; (3) a powerhouse containing two generating units; one with an installed capacity of 1600 kW and the other with an installed capacity of 250 kW, both operating under a head of 440 feet; and (4) a 66-kV, 0.5-mile-long transmission line connecting with an existing transmission line of Southern California Edison Company (SCE).

No recreational facilities are proposed by the Applicant. The license application was filed as a result of a preliminary permit for the project.

k. Purpose of Project: The estimated 5 million kWh of energy generated annually by the project would be sold to SCE. The estimated cost of the project is $2,000,000.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

4a. Type of Application: Major License (Under 5 MW).[1]

b. Project No: 3742-001.

c. Date Filed: July 28, 1983.

d. Applicant: Joseph M. Keating.

e. Name of Project: Aspen Park.

f. Location: On Rock Creek, in Mono County near Bishop, California, within Inyo National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Joseph M. Keating, 847 Pacific Street, Placerville, California 95667.

i. Comment Date: September 4, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion structure on Bishop Creek at elevation 8,305 feet msl; (2) a 42-inch-diameter, 12,800-foot-long steel penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 3600 kW, operating under a head of 820 feet; (4) a 66-kV, 5600-foot-long transmission line connecting with an existing transmission line of Southern California Edison Company (SCE). No recreational facilities are proposed by the Applicant. The license application was filed as a result of a preliminary permit for the project.

k. Purpose of Project: The estimated 8.5 million kWh of energy generated annually by the project would be sold to SCE. The estimated cost of the project is $3,200,000.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

5a. Type of Application: Preliminary Permit.

b. Project No: 4225-003.

c. Date Filed: May 21, 1984.

d. Applicant: Ainsworth Irrigation District.

e. Name of Project: Merritt Reservoir.

f. Location: Merritt Reservoir, Cherry County, Nebraska.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contract Person: Mr. Harlin D. Welch, Manager, Ainsworth Irrigation

[1] This notice supersedes the notice issued on June 4, 1984, for the subject project.

District, 564 North Walnut, Ainsworth, Nebraska 69210.

i. Comment Date: October 1, 1984.

j. Description of Project: The proposed project would be located at the U.S.B.R. Merritt Dam and Reservoir, and would consist of the following: (1) A proposed powerhouse containing a single 1.480 kW generating unit; (2) a 7½ mile-long 34 kV transmission grid; and (3) appurtenant facilities. The estimated average annual generation is 7.5 million kWh.

k. Purpose of Project: The power generated at the project would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $40,000.

6a. Type of Application: Preliminary Permit.

b. Project No: 5715–001.

c. Date Filed: May 7, 1984.

d. Applicant: Alaska Power Authority.

e. Name of Project: Black Bear Lake.

f. Location: On Black Bear Lake and Black Bear Creek in the First Judicial District, on Prince of Wales Island, Alaska, in Klawock, Craig, Hydaburg, Ketchikan, and Thorne Bay, in the Tongass National Forest.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contract Person: Mr. Larry D. Crawford, Executive Director, Alaska Power Authority, 334 West 5th Ave. Anchorage, Alaska 99501 and Mr. Eric Eisen, Birch, Horton, Bittner, Pestinger and Anderson, 1140 Connecticut Avenue, N.W., Suite 100, Washington, D.C. 20036.

i. Comment Date: September 24, 1984.

j. Description of Project: The proposed project would consist of (1) A 29–foot–high, 145–foot–long concrete gravity dam creating (2) a 205–acre reservior with a storage capacity of 2,000 acre-feet at an elevation of 1,695 feet; (3) a 4,360-foot-long penstock, partially buried and conveyed through a tunnel to (4) a powerhouse containing a single generating unit with a rated capacity of 3,000 kW operating under a net head of 1,350 feet; (5) and 8-foot-wide, 84-foot-long tailrace; (6) and 80-mile-long, 69-kV transmission line, which will serve the Cities of Craig, Hydaburg, Klawock and Thorne Bay.

The total average annual energy production would be 19.6 GWh.

A preliminary permit, if issued does not authorize construction. The Applicant seeks a 24 month permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost for conducting these studies is $400,000.

k. Purpose of Project: Project power will be sold to the Cities of Klawock, Craig, Hydaburg and Thorne Bay.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

7a. Type of Application: Exemption From Licensing (5 MW or less).

b. Project No: 6943–001.

c. Date Filed: May 25, 1984.

d. Applicant: Santiam Water Control District.

e. Name of Project: Water Street.

f. Location: On Stayton Power Canal, near the town of Stayton, in Marion County, Oregon.

g. Filed Pursuant to: Section 408 of the Federal Energy Security Act U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Erling T. Soli, Haner, Ross & Sporseen, Inc., 15 S.E. 82nd Drive, Gladstone, Oregon 97027.

i. Comment Date: September 4, 1984.

j. Description of Project: The proposed project would utilize an existing dam owned and operated by Santiam Water Control District and would consist of: (1) A new intake including fish screens, trashracks, and a shutoff slide gate; (2) a 72-inch-diameter, 35-foot-long pipeline; (3) a powerhouse housing a single generating unit with a capacity of 155 kW and an average annual generation of 1,018,350 kWh; and (4) modifications to the fishway including installation of an 18-inch-diameter attraction water pipe, a 16-foot-long extension of the fish ladder, and the addition of two more pools on the downstream side of the structure.

k. Purpose of Project: Project power would be sold to Pacific Power & Light Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.

8a. Type of Application: Preliminary Permit.

b. Project No: 7602–000.

c. Date Filed: September 12, 1983.

d. Applicant: WP, Incorporated.

e. Name of Project: Loch Katrine.

f. Location: Partially in the Mt. Baker-Snoqualmie National Forest, on Katrine Creek, near North Bend, in King County, Washington. This notice supersedes an earlier notice dated October 17, 1983, in which the project was incorrectly identified as being on a tributary to the Green River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: September 21, 1984.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high concrete diversion dam at elevation 2,840 feet; (2) a 4,000-foot-long, 16-inch-diameter penstock; (3) a powerhouse containing a single generator with a rated capacity of 1,147 kW and an average annual energy production of 4.01 GWh, at elevation 1540 feet; (4) a switch yard; and (5) a 9.9-mile-long, 115–kV transmission line to an existing line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $100,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

9a. Type of Application: Preliminary Permit.

b. Project No.: 7786–000.

c. Date Filed: October 13, 1983.

d. Applicant: West Extension Irrigation District.

e. Name of Project: Three Mile Falls.

f. Location: On Umatilla River in Umatilla County, Oregon on Federal land managed by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Dale Hatch, Cook Electric, Inc., P.O. Box 1071, Twin Falls, Idaho 83303–1071.

i. Comment Date: August 31, 1984.

j. Competing Application: Project No. 7292–000. Date Filed: 5/17/83. Notice issued: August 17, 1983.

k. Description of Project: The proposed project would consist of two developments. Development No. 1 would use an existing 24-foot-high, 915-foot-long dam, owned by the Water and Power Resources Service, and would consist of a new powerhouse containing a single generating unit with a rated

capacity of 2,500 kW, operating under a head of 134 feet and producing an estimated average annual energy output of 4,060,000 kWh. The development would either connect to an existing Umatilla Electric Cooperative transmission line adjacent to the site or Pacific Power and Light Company's line 2 miles from the site. Development No. 2 would consist of: (1) An intake structure on the existing West Extension Irrigation Canal; (2) an 84-inch-diameter, 700-foot-long penstock, parallel to the existing irrigation system pipeline; (3) a powerhouse containing two generating units with a total rated capacity of 3,700 kW operating under a head of 134 feet and producing an estimated average annual energy output of 6,322,000 kWh. The development would connect to an existing Pacific Power and Light substation adjacent to the powerhouse.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost for conducting these studies is $100,000.

l. Purpose of Project: Project power will be sold to Pacific Power and Light Company.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C and D2.

10a. Type of Application: Preliminary Permit.

b. Project No.: 7809–000.

c. Date Filed: November 4, 1983.

d. Applicant: Emerson Falls Hydro Associates.

e. Name of Project: Emerson Falls Project.

f. Location: On the Sleepers River in The Town of St. Johnsbury, Caledonia County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert F. Desrochers, Emerson Falls Hydro Associates, North Danville Village, RFD 2, St. Johnsbury, VT 05819.

i. Comment Date: September 24, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 300-foot-long concrete diversion dam varying in height from 1 to 6 feet; (2) an impoundment with negligible storage, a surface area of 0.034 acres, and normal water surface elevation of 639.5 feet m.s.l.; (3) a proposed 3.5-foot-diameter, 390-foot-long steel penstock; (4) a proposed powerhouse containing one generating unit with an installed capacity of 200kW; (5) a proposed tailrace; (6) a proposed 15-foot-long underground transmission line; and (7) appurtenant facilities. The Applicant estimates that average annual generation would be 1,000,000 kWh. The dam and existing project facilities are owned by Peter C. Renes.

k. Purpose of Project: All project power generated would be sold to the Central Vermont Public Service Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $10,000.

11a. Type of Application: License (Minor).

b. Project No: 7887–001.

c. Date Filed: March 16, 1984.

d. Applicant: ESI Hydropower Co., Inc.

e. Name of Project: Minnewawa Project.

f. Location: On the Minnewawa Brook in the Town of Marlborough, Chesire County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. George E. Sansoucy, Power Technics, Inc., 90 Washington St., Room 31, P.O. Box 1469, Dover, NH, 03820.

i. Comment Date: September 24, 1984.

j. Description of Project: The proposed project would consist of: (1) The existing Minnewawa Dam, a concrete structure 60 feet high and 200 feet long; (2) an impoundment with a surface area of 10 acres, a storage capacity of 120 acre-feet, and a normal water surface elevation of 1,068 feet NGVD; a new 42-inch wood stave penstock on trestles and piers 5,776 feet long; (4) a new powerhouse containing one generating unit having a capacity of 938 kW; (5) a new tailrace; (6) a new transmission line 100 feet long; and (7) appurtenant facilities. The Dam and existing project facilities are owned by the Applicant. The Applicant estimates the average annual generation would be 3.5 million kWh.

k. Purpose of Project: All project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

12a. Type of Application: Preliminary Permit.

b. Project No: 8052–000.

c. Date Filed: February 6, 1984.

d. Applicant: The Town of Jackson, Wyoming.

e. Name of Project: Jackson Lake Power Project.

f. Location: On the Snake River in Teton County, Wyoming.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert L. Sherwin, Mayor, and Melvin Webb, Town Administrator, P.O. Box 1687, Teton County Courthouse, Jackson, Wyoming 83001.

i. Comment Date: September 26, 1984.

j. Description of Project: The proposed project would utilize the existing Bureau of Reclamations' Jackson Lake Dam and Reservoir and would consist of: (1) New penstocks utilizing the existing outlet works; (2) a new powerhouse containing turbine-generator units having a total rated capacity between 6,000 kW and 9,000 kW; (3) a tailrace returning flow to the river immediately downstream of the dam; (4) a new transmission line rated at 14.4 kV or 69 kV; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be between 21,500,000 kWh and 25,000,000 kWh. Project energy would be utilized by the Applicant or sold to the Lower Valley Power and Light Co. (LVPL).

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies permit would be $60,000.

13a. Type of Application: Preliminary Permit.

b. Project No.: 8096–000.

c. Date Filed: February 16, 1984.

d. Applicant: Iowa Hydropower Development Corporation.

e. Name of Project: Linn Grove Mill Dam.

f. Location: On the Little Sioux River in Buena Vista County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jean Pierre Bourgeacq, Iowa Hydropower Development Corporation, 228 Melrose Court, Iowa City, Iowa 52240.

i. Comment Date: September 28, 1984.

j. Description of Project: The existing dam is owned by the Buena Vista County Conservation Board. The proposed project consists of: (1) An existing concrete dam 135 feet long and 10 feet high; (2) an existing reservoir with a surface area of 10 acres and a storage capacity of 50 acre-feet at normal power pool elevation; (3) a proposed powerhouse containing one proposed unit rated at 310 kW; (4) a proposed 4.16-kV transmission line; and (5) appurtenant facilities.

The estimated average annual energy output for the project is 1,360 MWh.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

14a. Type of Application: Preliminary Permit.

b. Project No.: 8117-000.

c. Date Filed: February 21, 1984.

d. Applicant: City of Yakima, Washington.

e. Name of Project: Rattlesnake Mile Four.

f. Location: Partially in the Mt. Baker-Snoqualmie National Forest, on Rattlesnake Creek, near Naches, in Yakima County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Richard A. Zais, Jr., City Manager, City of Yakima, 129 North 2nd Street, Yakima, Washington 98901.

i. Comment Date: September 24, 1984.

j. Description of Project: The proposed project would consist of: (1) A new 303-foot-high concrete dam at elevation 2,257 feet; (2) an 80-foot-high concrete dike with a 400-foot-long concrete spillway; (3) a reservoir with a surface area of 340 acres and an active storage capacity of 46,000 acre-feet; (4) an intake structure; (5) a 450-foot-long, 5-foot-square penstock; (6) a powerhouse containing a single generator with a rated capacity of 3,000 KW and an estimated annual energy production of 13 GWh; and (7) a 19-mile-long, 34.5-kV transmission line to an existing Pacific Power and Light Company Line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary. The Applicant proposes to conduct geotechnical field studies to determine the optimum dam site location. Exploratory borings and subsurface investigations will be made at the dam site. The Applicant will undertake any corrective measures necessary to return the study sites to their original states. The estimated cost of permit activities is $280,000.

k. Purpose of Project: Power may be marketed to Pacific Power and Light Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

15a. Type of Application: Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity.

b. Project No: 8125-000.

c. Date Filed: February 23, 1984, and supplemented April 9, 1984.

d. Applicant: City of Wautoma, Wisconsin.

e. Name of Project: Wautoma Dam Hydro Project.

f. Location: On the White River near Wautoma, Waushara County, Wisconsin.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Joel Papke, Perry-Carrington Engineering Corporation, 8598 Highway 10, Marshfield, WI 54449

i. Comment Date: September 7, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 80 year old concrete dam approximately 12-foot-high and 49-foot-long; (2) a reservoir with an estimated storage area of 450 acre-feet; (3) a new powerhouse with a total installed capacity of 20 kW; (4) transmission lines; and (5) appurtenant facilities. The Applicant estimates the average annual generation to be 93,390 kWh. All power generated would be used by the Applicant.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

l. Proposed Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

16a. Type of Application: Exemption (5 MW or Less).

b. Project No: 8185-000.

c. Date Filed: March 20, 1984.

d. Applicant: Bluestone Energy Design, Inc.

e. Name of Project: Clifton Dam No. 3.

f. Location: On the On the Pacolet River in Spartansburg County, South Carolina.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. F. Timothy Lamb, President, Bluestone Energy Design, Inc., P.O. Box 469 Downtown Station, Boone, North Carolina 28607.

i. Comment Date: September 2, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing dam constructed of rock mortar, and concrete, and which is approximately 290 feet long and 28 feet high; (2) an existing reservoir with a surface area of 20 acres and a storage capacity of 250 acre-feet at power pool elevation of 623.4 feet m.s.l.; (3) restoration of 4-foot high flashboards; (4) a proposed powerhouse containing 3 generating units rated at 300 kW, 500 kW, and 1,200 kW, respectively; (5) two proposed transmission lines, 100 feet and 300 feet long and 4,160 volts and 12,470 volts, respectively; and (6) appurtenant facilities. The estimated average annual energy output for the project is 6,845,000 kWh.

k. Purpose of Project: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

17a. Type of Application: Preliminary Permit.

b. Project No: 8205-000.

c. Date Filed: March 27, 1984.

d. Applicant: CFS Hydroelectric Associates.

e. Name of Project: Janis Childers.

f. Location: On Sulphur Creek, near Paskenta, in Tehama County, California.

f. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. J. Rector, 324 South State Street, #500, Salt Lake City, Utah 84111.

i. Comment Date: September 26, 1984.

j. Description of Project: The proposed run-of-the-river project would consist of:

(1) A 6-foot-high, 100-foot-long, concrete diversion dam located on Sulphur Creek at elevation 3,098 feet msl; (2) a 6-foot-wide by 3-foot-deep, wide , 7,500-foot-long diversion conduit; (3) a 36-inch-diameter, 800-foot-long penstock; (4) a powerhouse located on Sulphur Creek at elevation 2,575 feet msl containing a single turbine-generator unit with a rated capacity of 2,950 kW and producing an estimated average annual generation of 10.2 GWh; (5) a 10-foot-wide by 100-foot-long tailrace; and (6) 1.5 miles of 12.5-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) line. Project power would be solid to PG&E. The project would occupy Bureau of Land Management and Mendokino National Forest lands.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $50,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

18a. Type of Application: Preliminary Permit.

b. Project No: 8212–000.

c. Date Filed: April 2, 1984.

d. Applicant: City of Santa Rosa.

e. Name of Project: Rock Creek.

f. Location: Within Shasta National Forest, on Rock Creek near Burney in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Broydon Riha, P.O. Box 1678, Santa Rosa, California 95402.

i. Comment Date: September 24, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 90-foot-long diversion structure on Rock Creek at elevation 3200 feet; (2) a 500-foot-long, 54-inch-diameter penstock; (3) a powerhouse with a total installed capacity of 3,300 kW; and (4) a 5000-foot-long, 12-kV transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

A preliminary permit does not authorize construction. The Applicant seeks a 24-month permit to study the feasibility of constructing and operating the project. No new roads will be constructed for conducting these studies which are estimated to cost $145,000.

k. Purpose of Project: The estimated 10.1 million kWh generated annually by the proposed project would be used by the Applicant to meet present and anticipated load within its system.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

19a. Type of Application: Major License.

b. Project No.: 8221–000.

c. Date Filed: April 4, 1984.

d. Applicant: Alaska Power Authority.

e. Name of Project: Bradley Lake Hydroelectric.

f. Location: On the Bradley River in Kenai Peninsula Borough, Alaska, partially on lands of the United States administered by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Earl Taylor, Project Manager, Alaska Power Authority, 334 West Fifth Avenue, Anchorage, Alaska 99501.

i. Comment Date: September 21, 1984.

j. Description of Project: The proposed project would consist of: (1) A 20-foot-high diversion dam with spillway crest elevation 2,204 feet on Middle Fork of Bradley River diverting flow through a 1,900-foot-long, 6-foot-diameter underground pipe to Marmot Creek, a tributary of Bradley Lake; (2) a 125-foot-high concrete faced rockfill dam with crest elevation 1,190 feet and a 4-foot-high parapet wall on the crest; (3) an ungated ogee spillway located on a saddle feature 150 feet east of the dam with crest elevation 1,180 feet; (4) the existing Bradley Lake, which would be raised 100 feet to have a usable storage capacity of 315,500 acre-feet and a surface area of 3,820 acres at maximum operating water surface elevation 1,180 feet; (5) a 470-foot-long, 18-foot-nominal diameter horseshoe-shaped tunnel through the east abutment for construction diversion and then for instream flow releases; (6) a 360-foot-long intake chennel; (7) a 42-foot-long intake structure with removable trash racks; (8) an 11-foot-diameter, concrete lined power tunnel consisting of a 950-foot-long horizontal section with dual gates 800 feet downstream of the intake operated through a verticle gate shaft, an 810-foot-long inclined section, and a 16,850-foot-long main section with steel lining on the downstream 2,400 feet; (9) a steel penstock consisting of a 9-foot-diameter roll-out section and a manifold section with three 5-foot-diameter outlets, one capped and two with 30- to 40-foot-long branches; (10) a 138-foot-long, 66-foot-wide, 112-foot-high reinforced concrete powerhouse at elevation 40 feet containing two 45-MW generating units with a total average annual energy output of 369.2 GWh; (11) a tailrace channel with a bottom width of 67 feet discharging into Kachemak Bay; and (12) two parallel, 20-mile-long, 115-kV transmisson lines from the substation adjacent to the powerhouse to a proposed Homer Electric Association line between Fritz Creek and Soldotna.

Access facilities would include a barge channel from Kachemak Bay, a barge basin and ramp, an airstrip and project roads connecting the airstrip, powerhouse, lower and upper construction camps and the dam. Recreation facilities would include camp sites near the barge basin dock and near Bradley Lake. The estimated present day project cost as of July 1983 is $300,000,000.

k. Purpose of Project: Power output would be sold to railbelt utilities.

l. This notice also consists of the following standard paragraphs: A3, A9, B and C.

20a. Type of Application: Exemption (5 MW or less).

b. Project No: 8230–000.

c. Date Filed: Arpil 5, 1984.

d. Applicant: Great Western Power and Light, Inc.

e. Name of Project: G.W.P. #7 Hydroelectric Project.

f. Location: On the American Fork River, in Utah County, Utah.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael J. Graham, 484 East 300 North Manti, Utah 84642.

i. Comment Date: September 4, 1984.

j. Description of Project: The Applicant would utilize lands under the jurisdiction of the U.S. Forest Service. The proposed project would consist of: (1) An existing concrete diversion structure that would be approximately 4 feet high, 12 feet long and 8 feet wide; (2) a proposed 36-inch penstock that would be approximately 8,000 feet long which diverges into two, 18-inch penstocks entering the powerhouse; (3) a proposed powerhouse containing 2 generating units rated at 450 kW each; (4) a proposed 50-foot long, 12.5 kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project would be 5,832,000 kWh.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

21a. Type of Application: Preliminary Permit.

b. Project No: 8309–000.

c. Date Filed: May 14, 1984.

d. Applicant: Town of Rotterdam, New York.

e. Name of Project: Erie Barge Canal Lock E–8.

f. Location: Mohawk River in Schenectady County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Christy Weise, J. Kenneth Fraser & Associates, 22 High Street, Rensselaer, New York 12144.

i. Comment Date: September 4, 1984.

j. Competing Application: Project No. 8003–000. Date Filed: January 26, 1984. Due Date: July 2, 1984.

k. Description of Project: The Applicant proposes two alternative developments, depending on the length of time that the project is proposed to be operational. Both schemes would utilize an existing 14-foot-high, 485-foot-long movable dam and existing navigation lock which are owned and operated by the New York State Department of Transportation. The existing 321-acre reservoir contains 2,100 acre-feet of storage capacity at a normal pool elevation of 223.8 feet m.s.l.

The Alternative A development would operate eight months of the year and would consist of: (1) A proposed intake structure; (2) a proposed reinforced concrete powerhouse containing two turbine/generator units, each with a capacity of 2,450 kW; and (3) appurtenant facilities. The estimated average annual generation would be 18,500 MWh.

The Alternative B development would operate twelve months of the year and would consist of: (1) A proposed intake structure; (2) a proposed reinforced concrete powerhouse containing two turbine/generator units, each with a capacity of 3,500 kW; and (3) appurtenant facilities. The estimated average annual generation would be 40,000 MWh.

l. Purpose of Project: Project power will either be sold to Niagara Mohawk Power Corporation or used for municipal purposes.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

22a. Type of Application: Conduit Exemption.

b. Project No.: 8310–000.

c. Date Filed: May 15, 1984.

d. Applicant: City of El Segundo.

e. Name of Project: WB–28 Hydroelectric Project.

f. Location: At the WB–28 turnout of the Metropolitan Water District of Southern California's water conveyance system, where the applicant receives water for its domestic water distribution system, in Los Angeles City, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: William M. Glickman, Director of Public Works, City of El Segundo, 350 Main Street, El Segundo, California 20945.

i. Comment Date: September 4, 1984.

j. Description of Project: The proposed project would utilize the excess pressure (head of 196 feet) at the WB–28 turnout, that is currently being dissipated by throttling valves in the applicant's pressure reducing vault, and would consist of a generating unit with a rated capacity of 450 kW and a 150-foot-long tap into the existing Southern California Edison Company's (SCE) 16–kV transmission line at the project site.

k. Purpose of Project: The estimated 2.9 million kWh of annual project energy would be sold to SCE.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

Competing Applications

A1. exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission to a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specific comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of the timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provison is subject to the following exception: If an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelecric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the

particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit applications must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption with application which the subject license or conduit exemption application would compete; whichever occured first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must comform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, is such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385 .210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in

section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 6, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21113 Filed 8-8-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL 2651-3]

Fuels and Fuel Additives; Waiver Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On July 16, 1984 counsel for E. I. du Pont de Nemours and Company, Inc. submitted an application for a waiver of the prohibition of introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act ("Act"). This application seeks a waiver for a gasoline-alcohol fuel containing methanol in combination with cosolvent alcohol(s) and a proprietary corrosion inhibitor. The Administrator of EPA has until January 14, 1985 (180 days from the date of receipt of the application) to grant or deny this application.

DATE: Comments should be submitted on or before September 24, 1984.

ADDRESS: Copies of the non-confidential information relative to this application are available for inspection in public docket EN-84-06 at the Central Docket Section (LE-131) of the EPA, Gallery I—West Tower, 401 M Street, S.W., Washington, D.C. 20460, (202) 382-7548, between the hours of 8:00 a.m. and 4:00 p.m. Any comments from interested parties should be addressed to this docket with a copy forwarded to Richard G. Kozlowski, Director, Field Operations and Support Division (EN-397), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Sylvia I. Correa, Attorney-Advisor, Field Operations and Support Division (EN-397), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, (202) 382-2635.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 46 FR 38528 (July 28, 1981).

E. I. du Pont de Nemours and Company, Inc. is requesting that EPA grant a waiver for introduction into commerce of a gasoline-alcohol fuel blend such that the resultant fuel is composed of a maximum of 3.7 weight percent fuel oxygen, a maximum of 5.0 volume percent methanol, a minimum of 2.5 volume percent cosolvent, and 41.2 milligrams per liter of DGOI-100, a commercially available Du Pont corrosion inhibitor formulation, or its equivalent. The composition of the proprietary corrosion inhibitor, DGOI-100, is considered confidential information. The gasoline-alcohol fuel must conform with the requirements of the most current ASTM specifications for unleaded gasoline and gasoline-oxygenate fuels. The cosolvents are any one or a mixture of ethanol, propanols or butanols (including gasoline-grade tertiary butanol).

Because of the proprietary nature of the corrosion inhibitor and because of EPA's desire to render a determination on the maximum amount of data, E. I. du Pont de Nemours & Co. will provide a reasonable amount of DGOI-100 for test purposes. For more information on obtaining the corrosion inhibitor contact: Ross E. Austin, Esq., E. I. du Pont de Nemours & Co. Legal Department, Wilmington, Delaware 19898, (302) 774-8553.

Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days, January 14, 1985, of receipt of the application, the waiver shall be treated as granted.

Dated: August 2, 1984.

Sheldon Meyers,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 84-21123 Filed 8-8-84; 8:45 am]

BILLING CODE 6560-50-M

[PP-4G3035/T448; PH-FRL 2712-8]

American Hoechst Corp.; Establishment of Temporary Tolerances

Correction

In FR Doc. 84-16535 beginning on page 26281 in the issue of Wednesday, June 27, 1984, make the following correction:

On Page 26282, first column, last paragraph, last line, "May 4, 1984" should have read "May 4, 1981".

BILLING CODE 1505-01-M

[OPTS-51524; BH-FRL 2612-6]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84-16537 beginning on page 25676 in the issue of Friday, June 22, 1984, make the following corrections:

1. On page 25676, third column, in PMN 84-825, fourth line, insert the word "substituted" in front of "alkane".

2. On page 25677, first column, first line, "<" should have read ">".

3. On the same page, same column, in PMN 84-827, seventh line, "<" should have read ">". In the eleventh line, delete "/1;" near the end of the line.

4. On the same page, third column, in PMN 84-838, eighth line, insert ">" in front of "3,200". In the same line, "<" should have read ">".

5. On page 25678, second column, in PMN 84-847, tenth line, "1,900" should have read "19,000".

BILLING CODE 1505-01-M

[OPP-50618; OPTS-FRL 2613-5]

Pesticides; Issuance of Experimental Use Permits; American Cyanide Co., et al.

Correction

In FR Doc. 84-16816 beginning on page 26284 in the issue of Wednesday, June 27, 1984, make the following corrections:

1. On page 26286, first column, first complete paragraph, sixth line, "silance" should have read "silane".

2. On the same page, second column, first complete paragraph, third line from the bottom, "561.417" should have read "561.427".

BILLING CODE 1505-01-M

[A-5-FRL-2649-3]

Rescission of Permit Under Part C of the Clean Air Act, Applying to Detroit Lime Co., Detroit, MI

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: On June 13, 1979, the U.S. Environmental Protection Agency (EPA) published a permit under Part C of the Clean Air Act applicable to a new lime kiln at Detroit Lime Co., Detroit, Michigan (44 FR 33953). Part C of the Clean Air Act relates to Prevention of Significant Deterioration of Air Quality (PSD).

EPA has determined that the requirements of PSD regulations do not apply to Detroit Lime Co.'s new lime kiln and gives notice that the permit has been rescinded.

FOR FURTHER INFORMATION CONTACT: David M. Taliaferro, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604; phone: (312) 353-2082.

ADDRESSES: The memorandum rescinding the permit, and supporting technical material are available for public inspection during normal business hours at: Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: On April 20, 1979, John McGuire, Regional Administrator, EPA, Region V, under authority duly delegated to him by the Administrator of EPA determined that Detroit Lime Co.'s proposed new rotary lime kiln, located at Detroit Lime Co.'s facility at 124 South Dix, Detroit, Michigan, was a "major modification" pursuant to 40 CFR 52.21 (1978).

Consequently, the Detroit Lime Co. was issued a PSD permit, pursuant to Part C of the Clean Air Act 42 U.S.C. 7470 *et seq.*, and the rules promulgated thereunder at 40 CFR 52.21 (1978). The determination and permit were published on June 13, 1979, at 44 FR 33953-33954. Under the permit the Detroit Lime Co. was required to comply with emission limitations representative of Best Available Control Technology on its new kiln after having demonstrated in its application that the new kiln's emissions would not violate applicable air quality increments under the PSD rules for both suflur dioxide ("SO_2") and total suspended particulates.

On August 9, 1979, the Detroit Lime Co. filed a petition for review of this determination in the United States Court of Appeals for the Sixth Circuit, under Section 307 of the Act, 42 U.S.C. 7607. Subsequent to the filing of that petition, the Detroit Lime Co. and EPA held numerous settlement discussions. As a result of these discussions, EPA has determined that Detroit Lime Co.'s new rotary lime kiln is not a "major modification" under the PSD rules as amended on August 7, 1980, with respect to total suspended particulates, since it is located in a nonattainment area for this pollutant, *see* 40 CFR 52.21(i)(1982). EPA has further determined that Detroit Lime Co.'s new kiln will not be a "major modification" under the PSD rules with respect to SO_2, so long as it maintains compliance with the requirements set out in an administrative Order issued on May 29, 1984, pursuant to Section 167 of the Clean Air Act. Detroit Lime Co. has agreed to be bound by the terms of that Order.

The Administrator may rescind a PSD permit when the source demonstrates that the amended PSD regulations would not apply to them. 40 CFR 52.21(w)(2), 45 FR 52741, August 7, 1980. In view of the administrative Order issued to Detroit Lime Co., EPA has detemined that the new rotary lime kiln is no longer a major modification under the PSD rules, and the permit has therefore been rescinded.

(42 U.S.C. 7475, 7601)

Dated: July 20, 1984.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 84-21118 Filed 8-8-84; 8:45 am]

BILLING CODE 6560-50

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted To OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection

Recordkeeping and Confirmation Requirements for Securities Transactions (OMB No. 3064-0028).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the

Office of Management and Budget a form SF-83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389-4351.

SUMMARY: The FDIC is requesting OMB to extend the expiration date of the recordkeeping and confirmation requirements for securities transactions (OMB No. 3064-0028 which expires September 30, 1984) contained in FDIC regulation 12 CFR Part 344. These requirements ensure that purchasers of securities in transactions effected by an insured state nonmember bank are provided adequate information concerning the transactions. These requirements are also designed to ensure that insured state nonmember banks maintain adequate records and controls with respect to securities transactions they effect. It is estimated that these requirements impose an annual paperwork burden of 13.37 on the average bank.

Dated: July 26, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-21078 Filed 8-8-84; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010270-006.

Title: Gulf-European Freight Association.

Parties:

Atlantic Cargo Services, AB
Compagnie Generale Maritime
Hapag Lloyd AG
Intercontinental Transport (ICT) BV
Lykes Bros. Steamship Company, Inc.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.

Synopsis: The proposed amendment incorporates prescribed model language dealing with independent action, neutral body policing, prohibited acts, consultation and shippers' requests and complaints.

Agreement No.: 221-010629.

Title: San Francisco Marine Terminal Agreement.

Parties:

Port of San Francisco
China Ocean Shipping Co.

Synopsis: Under the terms of the agreement China Ocean Shipping Co. agrees to use the port facilities provided by the Port of San Francisco as its regularly scheduled Northern California port of call. The agreement is for a term of four years.

Agreement No.: 224-010630.

Title: Richmond, California Marine Terminal Agreement.

Parties:

Multi-Terminals Richmond, Inc.
City of Richmond
Richmond Redevelopment Agency

Synopsis: Agreement No. 224-010630 provides for the lease of the Port of Richmond's Container Terminal No. 3 to Multi-Terminals, and appoints Multi-Terminals the exclusive operator of the terminal. The term of the agreement is for five years. The parties have requested a shortened review period by the Commission.

By Order of the Federal Maritime Commission.

Dated: August 6, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-21139 Filed 8-8-84; 8:45 am]

BILLING CODE 6730-01-M

Notice of Termination

Ageement No.: T-3501.

Title: Richmond California Marine Terminal Agreement.

Parties:

The City of Richmond, California
Matson Terminals, Inc.

Synopsis: The parties to the referenced agreement having provided notice of the termination of the agreement, the Commission hereby gives notice of its intent to terminate its previously granted approval of the agreement effective July 24, 1984, the date the Commission received the parties' termination notice.

By Order of the Federal Maritime Commission.

Dated: August 6, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-21138 Filed 8-8-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Schott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 84-0577—E. I. du Pont de Nemours and Company's proposed acquisition of voting securities of Itmann Coal Company.	July 11, 1984.
(2) 84-0588—Standard Oil Company of California proposed acquisition of voting securities of UNC Resources, Incorporated.	Do.
(3) 84-0608—Petrolane Incorporated's proposed acquisition of voting securities of NORPAC Exploration Services, Incorporated.	Do.
(4) 84-0596—W. R. Grace and Compsny's proposed acquisition of voting securities of Ole's Incorporated (KCB Investments, Ltd., UPE).	July 12, 1984.

Transaction	Waiting period terminated effective
(5) 84-0614—Beneficial Corporation's proposed acquisition of assets of Westamerica Bank, N. A., (Westamerica Bancorporation, UPE).	Do.
(6) 84-0644—Thomas McKinnon, Incorporated's proposed acquisition of assets of Manley, Bennett, McDonald Group, Incorporated, UPE.	Do.
(7) 84-0638—Sun Company, Incorporated's proposed acquisition of voting securities of King Kwik Minit Market, Incorporated.	July 13, 1984.
(8) 84-0677—Gearhart Industries Incorporated's proposed acquisition of voting securities of Geoholdings, Incorporated (Aetna Life and Casualty Company, UPE).	Do.
(9) 84-0678—Aetna Life and Casualty Company's proposed acquisition of voting securities of Gearhart Industries, Incorporated.	Do.
(10) 84-0679—Gearhart Industries, Incorporated's proposed acquisition of voting securities of Titan Services, Incorporated (Dresser Industries, Incorporated, UPE).	Do.
(11) 84-0593—Heritage Communications, Incorporated's proposed acquisition of voting securities of Da-Lite Screen Company, Incorporated (Deborah M. Cooley, UPE).	July 16, 1984.
(12) 84-0629—Holiday Inn's Incorporated's proposed acquisition of assets of Wilder Hensley Joint Venture.	Do.
(13) 84-0585—Wheeling Pittsburgh Steel Corporation's proposed acquisition of voting securities of Wheeling Nisshin, Incorporated, a corporate joint venture.	July 17, 1984.
(14) 84-0611—Nisshin Steel Company, Ltd.'s proposed acquisition of voting securities of Wheeling Nisshin Incorporated, a corporate joint venture.	Do.
(15) 84-0650—Plastic Management Corporation's (Philip E. Kamins, UPE) proposed acquisition of voting securities of Franklin Plastics Corporation.	Do.
(16) 84-0612—American Natural Resources Company's proposed acquisition of assets of Utex Oil Company (Kenneth Chattin, UPE).	July 18, 1984.
(17) 84-0662—Establisshments Economiques du Casino's proposed acquisition of voting securities of Thriftimart, Incorporated.	Do.
(18) 84-0664—Sterling Drug, Incorporated's proposed acquisition of assets of Ensign-Bickford Industries, Incorporated.	July 19, 1984.
(19) 84-0665—V. F. Corporation's proposed acquisition of voting securities of Troutman Industires, Incorporated.	Do.
(20) 84-0671—Supermarket General Corporation's proposed acquisition of voting securities of Purity Supreme, Incorporated.	Do.
(21) 84-0631—People's Bank's proposed acquisition of voting securities of Yegen Associates, Incorporated (Yegen Holdings Corporation, UPE).	July 23, 1984.
(22) 84-0649—H. P. Bulmer Holdings PLC's proposed acquisition of assets of Red Cheek, Incorporated.	Do.
(23) 84-0668—Redding, Incorporated's (Robert D. Walter, UPE) proposed acquisition of voting securities of Ellicott Drug Company.	Do.
(24) 84-0685—Sandgate Corporation's proposed acquisition of voting securities of Anglo American Auto Auctions, Incorporated (The British Car Auction Group, PLC, UPE).	Do.
(25) 84-0686—The British Car Auction Group PLC's proposed acquisition of voting securities of Sandgage Corporation.	Do.
(25) 84-0627—InterNorth, Incorporated's proposed acquisition of voting securities of P & O Falco, Incorporated (Peninsular & Oriental Steam Navigation Company, UPE).	July 24, 1984.
(26) 84-0641—The Newark Group, Incorporated's (Edward K. Mullen, UPE) proposed acquisition of assets of Boxboard Mills at Franklin, Ohio and Mobil, Alabama (Stone Contianer Corporation, UPE).	Do.
(27) 84-0648—Dover Corporation's proposed acquisition of voting securities of Sargent Industries, Incorporated.	Do.
(28) 84-0699—Sequoia Forest, Industries (Ronald C. Yanke, UPE) proposed acquisition of assets of Wickes Forest Industires, Incorporated (Wickes Companies, Incorporated, UPE).	Do.
(29) 84-0639—TransCanada Pipelines Limited's proposed acquisition of assets of Rockerfeller Group, Incorporated.	Do.
(30) 84-0640—CBI Industires Incorporated's proposed acquisition of voting securities of Liquid Carbonic Corporation (Houston Natural Gas Corporation, UPE).	July 25, 1984.
(31) 84-0643—C. Wayne Newton's proposed acquisition of voting securities of Trans-Sterling, Incorporated (Allen D. Sachs, UPE).	Do.
(32) 84-0675—Generale Occidentale, S. A., (Sir James Goldsmith, UPE) proposed acquisition of voting securities of Diamond International Corporation (Sir James Goldsmith, UPE).	Do.
(33) 84-0676—Generale Occidentale, S. A., (Sir James Goldsmith, UPE) proposed acquisition of voting securities of Diamond Group, Incorporated (Sir James Goldsmith, UPE).	Do.
(34) 84-0690—Kmart Corporation's proposed acquisition of voting securities of Home Centers of America, Incorporated.	Do.
(35) 84-0706—United Parcel Service of Ameirca, Incorporated's proposed acquisition of assets of Marriott Corporation.	Do.
(36) 84-0661—Greatwest Hospitals Incorporated's proposed acquisition of voting securities of Independence Health Plan, Incorporated.	July 26, 1984.
(37) 84-0670—Banco Popular de Puerto Rico's proposed acquisition of assets of General Electric Credit Corporation (General Electric Company, UPE).	Do.
(38) 84-0680—Sun Company, Incorporated's proposed acquisition of assets of Victory Oil Company.	Do.
(39) 84-0687—Ris Paper Company's (Howard C. Ris, UPE) proposed acquisition of voting securities of The Diem & Wing Paper Company.	Do.
(40) 84-0697—Guardian Industries Corporation's proposed acquisition of voting securities of American International Manufacturing Company (Mrs. W. J. Gourley, UPE).	Do.
(41) 84-0705—General Cinema Corporation's proposed acquisition of voting securities of Southwest Bottlers of Florida Incorporated (Burnup & Sims, Incorporated, UPE).	Do.
(42) 84-0721—CSX Corporation's proposed acquisition of assets of Utex Oil Company (Kenneth Chattin, UPE).	Do.
(43) 84-0632—United Cable Television Corporation's proposed acquisition of voting securities of TCI of Colorado, Incorporated (Tele-Communication, Incorporated, UPE).	July 27, 1984.
(44) 84-0633—Tele-Communications, Incorporated's proposed acquisition of voting securities of United Cable Television Corporation.	Do.
(45) 84-0712—Exxon Corporation's proposed acquisition of assets of Oil Producing Properties in Rain County, Texas (DeltaUs Corporation, UPE).	Do.
(46) 84-0732—Cawal Corporation's proposed acquisition of voting securities of New York Hanseatic Corporation, (Roxboro Investments (1976), Ltd., UPE).	July 30, 1984.

For Further Information Contact: Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 84-20867 Filed 8-8-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84D-0115]

Draft Guideline for the Submission of Supporting Documentation for Stability Studies of Human Drugs and Biologics; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to September 6, 1984, the comment period for the notice announcing the availability of a draft guideline entitled "Draft Guideline for the Submission of Supporting Documentation for Stability Studies of Human Drugs and Biologics." FDA is taking this action in response to several requests for an extension of the comment period.

DATE: Comments by September 6, 1984.

ADDRESS: Requests for a copy of the draft guideline and written comments regarding the draft guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Buford Poet, Center for Drugs and Biologics (HFN-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4330.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of may 7, 1984 (49 FR 19413), FDA issued a notice annnouncing the availability of a draft guideline entitled "Draft Guideline for the Submission of Supporting Documentation for Stability Studies of Human Drugs and Biologics." The guideline if intended to furnish pharmaceutical manufactures with a set of criteria for use in designing stability studies to establish appropriate expiration dates and storage requirements for drug products.

FDA is making the draft guideline available for public comment to assist it in developing a final guideline. The guideline is one of several guidelines FDA is developing to provide assistance to pharmaceutical firms in implementing the proposed revisions of the new drug and antibiotic regulations, published in the **Federal Register** of October 19, 1982 (47 FR 46622), and the proposed revisions of the investigational new drug regulations, published in the **Federal Register** of June 9, 1983 (48 FR 26720).

In response to the notice of availability, FDA has received several requests for a 30-day extension of the comment period.

FDA has determined that its schedule for issuing the guideline in final form would not be unduly delayed by extending the comment period of September 6, 1984, and that such an extension to receive additional comments would be in the public interest. Accordingly, the comment period for submissions by an interested person is extended to September 6, 1984.

Interested persons may, on or before September 6, 1984, submit written comments on the draft guideline to the Dockets Management Branch (**ADDRESS** above). These comments will be considered in determining whether further amendments to or revisions of the draft guideline are warranted. Comments should be in two copies, except that individuals may submit single copies, identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the draft guideline should be sent to the Dockets Management Branch.

Dated: August 3, 1984

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-21079 Filed 8-6-84; 10:12 am]

BILLING CODE 4160-01-M

[Docket No. 78P-0148 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 10 organizations that manufacture and produced laser light shows, laser light show projectors, or both. The projector provides a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under **"SUPPLEMENTARY INFORMATION."**

ADDRESS: The applications and all correspondence on the various applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 10 organizations listed in the table below a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves level of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design, by warnings in the user manual and on the products, and by procedures for personnel who will operate the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Manufacturing organization	Demonstration laser product	Effective date/termination date
78P-0148 (extension).	Laser Media, Inc., 2046 Armacost Ave., Los Angeles, CA 90025	Laser Media, Inc. LM and LMS laser projection system and laser shows assembled and produced by Laser Media, Inc., which incorporate these projectors and/or the Stingray and Chromaray Model projector.	May 8, 1984 to May 8, 1985.
78P-0295 (extension).	Science Faction Corp., 333 West 52d St., New York, NY 10019	Class III or IV Science Faction SFC-2000 Series laser light show projectors and laser light shows assembled and produced by Science Faction Corporation incorporating those projectors.	May 16, 1984 to May 16, 1986.
80P-0037 (extension and amendment).	VIDEO/LASER Projects, School of Music, University of Iowa, Iowa City, IA 52242.	VIDEO/LASER III projection system	Apr. 5, 1984 to May 1, 1986.
80P-0114 (extension).	Laser Fair, Inc., P.O. Box 903, Sterling, CO 80751	Laser Fair, Inc., Laser Lihgt show incorporating a Laser Presentations Class IIIb Laser Projector, Model LP-4 or LP-4K(1).	May 29, 1984 to June 4, 1986.
81P-0361 (extension).	Siegfried & Roy Entertainment, Inc., Frontier Hotel, 3120 Las Vegas Blvd., Las Vegas, NV 89109.	"Beyond Belief" laser show	Apr. 4, 1984 to Feb. 1, 1986.
82P-0012 (extension).	Spectrum, Inc., d.b.a. Euphoria Productions, Suite 223, 3535 Las Vegas Blvd. South, Las Vegas, NV 89109.	"Euphoria" and "Legends in Concert" laser light shows incorporating an InterScience Technology Model 430 Argon and Krypton projector and a Spectrum Fan and Beam projector.	May 16, 1984 to Feb. 2, 1986.
83V-0307 (amendment).	Foursight Visual Systems, Inc., 37521 Larkin Ave., Palmdale, CA 93550.	Foursight Visual Systems, Model 118 and Model 4 projection systems and laser light shows assembled, produced, and performed by the firm.	April. 5, 1984 to Sept. 15, 1985.
83V-0383	Rochester Museum and Science Center, P.O. Box 1480, Rochester, NY 14603.	Laser light shows assembled and produced by Rochester Museum and Science Center incorporating the firm's laser light show projector containing a Class IV ion laser.	May 16, 1984 to May 16, 1986.
84V-0065	Southern California Gas Co., 810 South Flower St., M.L. 202D, Los Angeles, CA 90017.	Southern California Gas Co., laser light show incorporating the Laser Media Stingray laser projector.	May 17, 1984 to May 17, 1986.

Docket No.	Manufacturing organization	Demonstration laser product	Effective date/termination date
84V-0082	Tau Beta Pi Association, California Epsilon Chapter, 5801 Boelter Hall, UCLA Campus, Los Angeles, CA 90024.	LASERAMA laser light show incorporating the LASERAMA laser projector, model 1984-1.	May 11, 1984 to Aug. 11, 1984.

In accordance with § 1010.4, the applications and all correspondence on the various applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 31, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-21082 Filed 8-8-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 78N-0370]

Model Food Salvage Code; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of the 1984 Model Food Salvage Code. The model code was inititated by the Association of Food and Drug Officials (AFDO) and has been jointly developed with FDA to provide the food salvage industry with appropriate standards and guidelines for food salvaging, and State and local governments with a comprehensive model law and recommended enforcement procedures for the regulation of the food salvage industries.

ADDRESSES: Copies of the model code are available from the Association of Food and Drug Officials, P.O. Box 3425, York, PA 17402. See Supplementary Information for prices. Requests for copies should be identified with "Model Food Salvage Code—1984." A copy of the model code is available for viewing at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Prince Harrill, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0097.

SUPPLEMENTARY INFORMATION: AFDO, In conjunction with FDA, developed these guidelines for regulatory control of the food salvage industry. These guidelines, initially prepared by AFDO, are in the form of a Model Food Salvage Code designed for use primarily at the State and local level.

FDA initially announced the availability for comment of a proposed Model Food Salvage Ordinance in a notice published in the **Federal Register** of December 18, 1979 (44 FR 74921). The comment period closed on March 17, 1980. Twenty-three letters, each containing one or more comments, were received.

AFDO and FDA carefully considered each comment and made a number of changes in the code as a result of these comments. The new code was approved by FDA on June 1, 1984 and by AFDO on June 5, 1984.

Copies of the model code are available from the Association of Food and Drug Officials, P.O. Box 3425, York, PA 17402. Current prices prepaid are $2.50 per copy (orders for 1 to 9 copies) and $2.00 per copy (orders for 10 or more copies). Requests for copies should be identified with "Model Food Salvage Code—1984." Checks should be made payable to AFDO. A copy of the model code is available for viewing at the Dockets Management Branch (address above).

Dated: August 3, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-21083 Filed 8-8-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0245]

Morton Thiokol, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Morton Thiokol, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hydrogen peroxide as a sterilizing agent for an adhesive used on a heat-sealable container lid.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Durg, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1788 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3795) has been filed by Morton Thiokol, Inc., Two North Riverside Plaza, Chicago, IL 60606, proposing that § 178.1005 *Hydrogen peroxide solution* (21 CFR 178.1005) be amended to provide for the safe use of hydrogen peroxide as a sterilizing agent for an adhesive used on a heat-sealable container lid.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: July 30, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-21080 Filed 8-8-84; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) covers the Social Security Administration (SSA). Section SW of the SSA statements, as published in the **Federal Register** on June 1, 1983, describe the organization and functions of SSA's Office of Supplemental Security Income (OSSI).

Notice is given that sections SW, SW.10 and SW.20 are amended to reflect the functional and organizational realignment of OSSI and provide improved focus and consolidation for program leadership, the development and issuance of operating policies for the SSA administered supplemental security income program, and to improve accountability and efficiency.

The revised material reads as follows:

Section SW.00 *The Office of Supplemental Security Income*—(Mission):

The Office of Supplemental Security Income (OSSI) provides SSA-wide

leadership and direction for the SSI program and plans, develops, evaluates and issues the operational policies, standards and instructions for the program. Develops and promulgates policies and guidelines for use by State and Federal organizations which implement the supplemental security income provisions of the Social Security Act as amended. Develops agreements with the States that govern State supplementation programs, Medicaid eligibility, data exchange programs, food stamps, energy assistance and fiscal reporting processes. Provides operational policy advice, technical support and management direction to central office, regional office and field components in the administration of the suplemental security income program. Evaluates the effects of proposed legislation being initiated by SSA's Office of Policy, and legislation being considered by Congress to determine the impact on the supplemental security income program. The Office plans and directs a continuing performance eveluation, and an economic and social survey program to evaluate the current impact and future needs of the supplemental security income program. Based on internal and external information sources, provides the Agency with overall program leadership assuring that agencywide activities regarding the SSI program are coordinated.

Section SW.10 *The Office of Supplemental Security Income*—(Organization):

The Office of Supplemental Security Income (OSSI), under the leadership of the Associate commissioner for Supplemental Security Income, includes:

A. The Associate Commissioner for Supplemental Security Income ( ).

B. The Deputy Associate Commissioner for Supplemental Security Income ( ).

C. The Immediate Office of the Associate Commissioner for Supplemental Security Income. ( ).

D. The Division of Program Requirements Policy ( ).

E. The Division of Program Management and Analysis ( ).

F. The Division of Payment Policy ( ).

Section SW.20 *The Office of Supplemental Security Income*—(Functions):

A. The Associate Commissioner for Supplemental Security Income ( ) is directly responsible to the Deputy Commissioner for Programs and Policy for carrying out OSSI's mission and provides general supervision to the major components of OSSI.

B. The Deputy Associate Commissioner for Supplemental Security Income ( ) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Supplemental Security Inocme ( ) provides the Associate Commissioner and the Deputy Associate Commissioner with staff assistance on the full range of their responsibilities, and coordinates the administrative and program activities of OSSI components.

D. The Division of Program Requirements Policy ( ):

1. Is responsible for the development, evaluation and maintenance of the eligibility requirements for in-kind income, living arrangements, special classifications of income and medical and social services.

2. Develops, evaluates and maintains the eligibility requirements for all generic income issues, the deeming of income and resources, the computation of income and certain grandfather clauses.

3. Develops, evaluates and maintains the eligibility requirements for other eligibility factors includng disability, citizenship and residency, dependents, other resources and program to achieve self-support.

E. The Division of Program Management and Analysis ( ):

1. Designs, manages and conducts studies to measure the impact of the supplemental security income program on low-income populations; the impact of SSA policies and legislative proposals on the program and develops cost and workload estimates for the budget process.

2. Establishes, maintains and operates a supplemental security income data base statistical extract system used for processing statistical data requests for internal and external use; develops functional specifications and programs, validates output and assists requestors in verifying final product.

3. Conducts a supplemental security income research program based on a variety of administrative records and State data to formulate and eveluate polices and legislative effects on supplemental security income populations.

4. Develops operational policies, standards and instructions for implementing redetermination rquirements and analyzes data provided by the Office of Assessment to validate policies, reduce errors and improve program implementation. Provides assistance and leadership to other SSA and OSSI components in order to maintain and improve the quality of the SSI program.

5. Provides assistance and leadership to other SSA and OSSI components to ensure cohesive and effective management of the delivery of the SSI program. Develops operational policies, standards and instructions for rules of evidence, adjudicative processes, routing and jurisdiction, field office processes, outreach programs, training, security and integrity and coordination with other SSA programs.

F. The Division of Payment Policy ( ):

1. Develops operational policies, standards and instructions for payment of mandatory and optional State supplemental payments, the pass through of rate increases, the monitoring of fiscal information systems with the states and the maintenance of State agreements and provides guidance to the regions on these issues.

2. Develops operational policies, standards and instructions for related program issues including food stamps, Medicaid, interim State assistance, energy assistance and the State date Exchange system and provides guidance to the regions concerning these issues.

3. Develops operational policies, standards and instructions for postadjudicative issues including suspensions, terminations, overpayments and underpayments, due process and appeals and administrative finality.

Dated: July 25, 1984.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 84-21150 Filed 8-8-84; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-84-1430; FR-2019]

Implementation of OMB Circular A-122 "Cost Principles of Nonprofit Organization," Revised

AGENCY: Office of the Secretary, Department of Housing and Urban Development (HUD).

ACTION: Notice of implementation.

SUMMARY: On April 27, 1984, the Office of Management and Budget (OMB) published the final version of its "Lobbying" revision to Circular A-122, "Cost Principles for Nonprofit Organizations." (49 FR 18260). This notice is to inform the public of HUD's intent to implement the revision to the

Circular and any future amendments to it that OMB publishes in the **Federal Register.**

DATE: August 9, 1984.

FOR FURTHER INFORMATION CONTACT: George Weidenfeller, Office of General Counsel, Room 2148, 451 Seventh Street SW., Washington, D.C. 20410. Telephone: (202) 755-5470 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: OMB Circular A-122, "Cost Principles for Nonprofit Organizations," establishes uniform rules for determining the cost of grants, contracts, and other agreements. The Circular is a management directive addressed to the heads of Federal departments and agencies, and constitutes the legal basis by which they define allowable and unallowable costs and how these costs are calculated. In general, the Circular provides that to be recovered from the Federal Government, costs incurred by grantees and contractors must be necessary and reasonable, and related to the federally sponsored activity. In addition, costs must be legal, proper, and consistent with the policies that govern the organization's other expenses.

The Circular was first published in June 1980, and was revised on April 27, 1984 to address lobbying activity by nonprofit organizations. The revision made unallowable for Federal reimbursement the costs associated with most kinds of lobbying and political activities, but did not restrict lobbying or political activities paid for with non-Federal funds.

HUD is giving notice that it intends to implement OMB Circular A-122, Revised, for all programs that may involve nonprofit organizations as grantees or contractors, as well as subgrantees and subcontractors and all lower tiers below the original grantee and contractor levels. Appropriate modifications will be made to HUD program regulations, and standard form contract terms and conditions will be amended as necessary to reflect the requirements of A-122, Revised. This Notice also states HUD's intent to apply the principles of OMB Circular A-122, Revised, to any new contract, or any extension or renewal of an existing contract, in anticipation of these regulatory modifications.

Dated: August 3, 1984.

Philip Abrams,

Under Secretary.

[FR Doc. 84-21092 Filed 8-8-84; 8:45 am]

BILLING CODE 4210-32-M

Fish and Wildlife Service

Receipt of Application for Permit; John G. Morris

Notice is hereby given that an Applicant has applied in due form for a Permit to take sea otters as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 18).

1. Applicant: John Gilbert Morris, Department of Biological Sciences, Florida Institute of Technology, Melbourne, FL 32901 (APP# 0409AB).

2. Type of permit: Marine Mammal-Scientific Research.

3. Name and number of animals: West Indian Manatee *(Trichecus manatus)* unlimited.

4. Type of Activity: Scientific Research.

5. Location of Activity: Homasassa Springs, Citrus County, FL; Turkey Creek, Crane Creek, and Indian River, Brevard County, FL.

6. Period of Activity: Two years.

The purpose of this application is to obtain photographs of approachable individuals to aid the scar pattern library being compiled by the U.S. Fish and Wildlife Service, which is part of its long-term study of manatee distribution and movement. Fecal samples will also be collected from approachable individuals in order to more fully describe seasonal dietary changes of manatees by the examination of plant fragments contained in the feces.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for copies of the complete application or requests for a public hearing on these applications should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), P.O. Box 3654, Arlington, VA 22203, within 30 days of the publication of this notice. Please refer to the appropriate APP # when submitting comments. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements contained in this notice are summaries of those of the applicants and do not necessarily reflect the views of the U.S. Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review during normal business hours in Room 605, 1000 North Glebe Road, Arlington, Virginia.

Dated: August 6, 1984.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84-20538 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona, Safford District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona, Safford District Advisory Council Meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Safford District Advisory Council will be held September 14, 1984 in Safford, Arizona at 10:00 a.m. at the Safford District Office, 425 East 4th Street, Safford, Arizona.

The agenda for the meeting will include:

1. BLM-Arizona State land exchange.

2. Issue identification and proposed solution with property owners adjacent to Aravaipa Canyon Primitive Area.

3. Proposed objectives for management of Gila Box from Gila Box Steering Committee.

4. BLM management update.

5. Business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Council between 2:00 p.m. and 3:00 p.m., or may file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the above address by September 13, 1984. Depending upon the number of people wishing to make an oral statement, a per person time limit may considered.

Summary minutes of the meeting will be maintained in the District Office and be available for public inspection and reproduction (within regular business hours) within 30 days following the meeting.

Dated: August 3, 1984.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 84-21100 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-32-M

Lewistown District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Lewistown District Advisory Council.

ACTION: Notice of meeting.

SUMMARY: The Lewistown District Advisory Council will meet August 28 and 29, 1984. The Council will tour the Upper Missouri Wild and Scenic River.

DATES: August 28 and 29, 1984.

ADDRESS: Lewistown District Office, Airport Road, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: Glenn W. Freeman, District Manager, Bureau of Land Management, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The Lewistown District Advisory Council is authorized under Section 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739). The Council advises the District Manager concerning the planning for and management of the public lands administered within the Lewistown District. Because space is extremely limited, persons wishing to accompany the Council on the tour should contact the District Manager at the above address by August 20, 1984.

Dated: August 3, 1984.

Glenn W. Freeman,

District Manager.

[FR Doc. 84-21127 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-84-M

[W-81327B]

Direct Sale of Public Lands in Albany County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale of land parcel in Albany County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the land described below is suitable for public sale and will accept bids on these lands. Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) requires the BLM to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land from sale if the sale would not be consistent with FLPMA or other applicable law.

The planning document, environmental assessment/land report, and memoranda and letters of Federal, State, and local contacts concerning the sale are available for review at the Bureau of Land Management, Rawlins District Office. All bids and all requests for information should be sent to BLM, Rawlins, District Office, 1300 North Third Street, P.O. Box 670, Rawlins, Wyoming 82301 (Phone (307) 324-7171).

Parcel

Serial No.	Legal description	Acreage	Appraised value
W-81327B	t. 18 N., R. 70 W., 6th P.M., Sec. 30, Lots 2, 3, and 4.	123.21	$6,200

Sale Procedures

1. The land described above will be offered for sale directly to the adjoining landowner. The adjoining landowner submitting a bid must provide evidence of adjoining landownership before the bid will be accepted. The full purchase price must be received in the Rawlins District office by 11:00 a.m., MDT, on October 17, 1984.

2. Full payment must be by certified check, *postal* money order, bank draft, or cashier's check made payable to the Department of the Interior—BLM. The envelope containing the payment must be marked on the lower land-hand corner with the words, "Public Land Sale, W-81327B, Albany County, Wyoming".

3. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a State, State instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding lands or interests in Wyoming. A statement with respect to citizenship must be included with the bid.

4. If the adjoining landowner does not purchase the land, the land will be reoffered for sale under a competitive bidding process. For reoffered land, bids must be received by 11:00 a.m. on the fourth (4th) Wednesday of each month beginning November 28, 1984. Reoffered land will remain available for sale until sold or until otherwise remove from sale consideration. The procedures outlined in No. 2 and No. 3 above apply.

Patent Term and Conditions

Any patent issued will be subject to all valid existing rights. Specific patent reservation include:

1. A reservation for ditches or canals by authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. A mineral reservation:

a. The United States reserves all minerals in the lands subject to this conveyance in accordance with Sec. 209(a) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743). This includes, without limitation, substances subject to disposition under the general mining laws, the general mineral leasing laws, the Materials Act and the Geothermal Steam Act.

b. The United States reserves to itself, its permittees, licensees, lessees, and mining claimants, the right to prospect for, mine and remove the minerals owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mining, geothermal and mineral leasing, and material disposal laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, open pit, or surface mining operations, storage and transportation facilities deemed necessary and authorized under law and implementing regulations.

c. Mining claimants, permittees, licensees, and lesses of the United States shall only be liable for and shall only compensate owners of the surface estate for damage to the extent prescribed by regulations issued by the Secretary of the Interior.

d. Unless otherwise provided by separate agreement with the surface owner, mining claimants, permittees, licensees and, lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior .

e. By purchase of this land, the owner, pursuant to Section 714 of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1304, gives his "surface owner" consent to the United States and its lessees to enter and commence surface mining operations to extract the United States' reserved coal.

f. All causes of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against mining claimants, licensees, and lessees of the United States; and the United States shall not be liable for the acts or omissions of its mining claimants, permittees, licensees and lessees.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Rawlins District Office, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become

the final determination of the Department of the Interior.

Dated: August 3, 1984.

Michael J. Karbs,

Acting District Manager.

[FR Doc. 84-21097 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-22-M

[W-81327A]

Modified Competitive Sale of Public Lands in Laramie County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Modified competitive sale of land parcel in Laramie County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the land described below is suitable for public sale and will accept bids on these lands. Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) requires the BLM to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land from sale if the sale would not be consistent with FLPMA or other applicable law.

The planning document, environmental assessment/land report, and memoranda and letters of Federal, State, and local contacts concerning the sale are available for review at the Bureau of Land Management, Rawlins District Office. All bids and all requests for information should be sent to BLM, Rawlins District Office, 1300 North Third Street, P.O. Box 670, Rawlins, Wyoming 82301 (Phone (307) 324-7171).

Parcel

Serial No.	Legal description	Acreage	Appraised value
W-81327A	T. 18 N., R. 70 W., 6th P.M., Sec. 8, SE¼NE¼.	40.00	$3,400

Sale Procedures

1. The sale will be conducted by modified competitive bidding, and the parcel will be offered by a sealed bid process to adjoining landowners. All bids must be received in the Rawlins District Office by 1:00 p.m., Wednesday, October 17, 1984, at which time the sealed bid envelopes will be opened and the high bid announced. The apparent high bidder will be required to submit evidence of adjoining landownership before the high bid can be accepted.

2. Sealed bidding is the only acceptable method of bidding. The sealed bid envelope must be marked in the front lower left-hand corner with the words, "Public Land Sale, W-81327A, Laramie County, Wyoming."

All sealed bids must be accompanied by a payment of not less than one-fifth (⅕) of the total bid. Each bid and any final payment must be accompanied by a certified check, *postal* money order, bank draft, or cashier's check made payable to the Department of the Interior-BLM. Failure to pay the remainder of the full price within 30 days of the sale will disqualify the apparent high bidder and the deposit will be forfeited and disposed of as other receipts of sale. If the apparent high bidder is disqualified, the next valid high bid will be accepted or in the event only one bid is received, the land will remain available for sale. If two (2) or more envelopes containing valid bids of the same amount are received, a drawing will be held to determine the high bid. The drawing will will be held to determine the high bid. The drawing will be held following the opening of the sealed bids. The high bidder will be notified in writing within 30 days whether or not the Bureau can accept the bid.

No special form of sealed bid is required, but all bids must show the amount bid for the 40.00-acre parcel, the name and address of the bidder, and the bid must be signed by the bidder or by a person authorized to act for the bidder.

3. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a State, State instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding lands or interests in Wyoming. A statement with respect to citizenship must be included with the bid.

4. If the adjoining landowners do not purchase the land, the land will be reoffered for sale under a competitive bidding process. For reoffered land, bids must be received by 11:00 a.m. on the fourth (4th) Wednesday of each month beginning November 28, 1984. Reoffered land will remain available for sale until sold or until otherwise removed from sale consideration. The procedures outlined in No. 2 and No. 3 above apply.

Patent Terms and Conditions

Any patent issued will be subject to all valid existing rights. Specific patent reservations include:

1. A reservation for ditches or canals by authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. A mineral reservation:

a. The United States reserves all minerals in the lands subject to this conveyance in accordance with Sec. 209(a) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743). This includes, without limitation, substances subject to disposition under the general mining laws, the general mineral leasing laws, the Materials Act and the Geothermal Steam Act.

b. The United States reserves to itself, its permittees, licensees, lessees, and mining claimants, the right to prospect for, mine and remove the minerals owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mining, geothermal and mineral leasing, and material disposal laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, open pit, or surface mining operations, storage and transportation facilities deemed necessary and authorized under law and implementing regulations.

c. Mining claimants, permittees, licensees, and lessees of the United States shall only be liable for and shall only compensate owners of the surface estate for damage to the extent prescribed by regulations issued by the Secretary of the Interior.

d. Unless otherwise provided by separate agreement with the surface owner, mining claimants, permittees, licensees and, lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior.

e. By purchase of this land, the owner, pursuant to Section 714 of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1304, gives his "surface owner" consent to the United States and its lessees to enter and commence surface mining operations to extract the United States' reserved coal.

f. All causes of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against mining claimants, licensees, and lessees of the United States; and the United States shall not be liable for the acts or omissions of its mining claimants, permittees, licensees and lessees.

3. Any patent issued will be subject to oil and gas lease: W-75563.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Rawlins District Office, 1300

Third Street, P.O. Box 670, Rawlins, Wyoming 82301. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: August 3, 1984.

Michael J. Karbs,

Acting District Manager.

[FR Doc. 84-21096 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-22-M

Filing of Plat of Survey; Idaho

August 1, 1984.

1. A plat of survey of the lands described below will be officially filed at the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective at 10:00 a.m. on September 17, 1984:

Bosie Meridian, Idaho

T. 13 N., R. 39 E.,
Sec. 11, 12, 13, 14, 15, 18, 21, 22, 23, and 24.

The area described aggregates 5,597.42 acres of public land.

2. The plat represents a dependent resurvey of portions of the east and west township boundaries and portions of the subdivisional lines; also the survey of a portion of the subdivisional lines and subdivision of the above listed sections.

3. Questions regarding this notice should be addressed to Chief, Branch of Cadastral Survey, Bureau of Land Management, Bosie, Idaho.

Sharron Deroin,

Chief, Land Services Section.

[FR Doc. 84-21095 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-GG-M

[Alaska AA-48534-J]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48534-J has been timely filed for the following lands:

Fairbanks Meridian, Alaska

T. 18 S., R. 1 E.,
Sec. 1, W½.
(320 acres)

The proposed reinstatement of the lease will be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from April 1, 1984, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48534-J as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (3) U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April 1, 1984, subject to the terms and conditions cited above.

Robert W. Arndorfer,

Acting State Director.

[FR Doc. 84-211218 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-JA-M

[Alaska AA-48572-AR]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L 97-451), a petition for reinstatement of oil and gas lease AA-48572-AR has been timely filed for the following lands:

Copper River Meridian, Alaska

T. 10 N., R. 4 W.,
Sec. 12, N½SE¼.
(80 acres)

The proposed reinstatment of the lease will be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from April 1, 1984, the date of termination, have been paid. Having met all the requirements for reinstatment of lease AA-48572-AR as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April 1, 1984, subject to the terms and conditions cited above.

Robert W. Arndorfer,

Acting State Director.

[FR Doc. 84-21129 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-JA-M

Vernal District Advisory Council Meeting To Be Held September 18, 1984

July 31, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR Part 1780 that a meeting of the Vernal District Advisory Council will be held September 18, 1984, beginning at 7:30 p.m. The meeting will be held in the conference room of the Vernal District Office, Bureau of Land Management, at 170 South 500 East, Vernal, Utah.

The agenda for the meeting will include a review of public comments concerning the Book Cliffs Resource Management Plan.

The meeting is open to the public. Interested persons may present oral comments to the Council or file a written statement for the Council's consideration. Anyone wishing to make oral comment to the Council must notify the District Manager, Bureau of Land Management, 170 South 500 East, Vernal, Utah, by September 11, 1984.

Summary minutes of the Council's meeting will be maintained in the District Office and will be available for public inspection during regular business hours.

Dated: July 31, 1984.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 84-21111 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-DQ-M

[F-81560]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 12(b)(6) of the Act of January 2, 1976 (89 Stat. 1151) and I.C.(2) of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, as clarified August 31, 1976 (90 Stat. 1935) will be issued to Cook Inlet Region, Inc., for approximately 145 acres. The lands involved are within T. 4 S., R. 4 E., Fairbanks Meridian, Alaska (Partially Surveyed).

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the *Fairbanks Daily News-Miner* upon issuance of the decision. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by the decision, an agency of the Federal Government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the

regulations in 43 CFR Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from the receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which is not certified, return receipt requested, shall have until September 10, 1984 to file an appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of Conveyance Management.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alaska 99509

Retained Lands Unit—Easements, Division of Land and Water Management, Alaska Department of Natural Resources, Pouch 7–005, Anchorage, Alaska 99510

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84–21137 Filed 8–8–84; 8:45 am]

BILLING CODE 4310–JA–M

Arizona; Intent To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: Notice is hereby given in accordance with 40 CFR 1508.22 that the Phoenix and Safford Districts are jointly starting the preparation of an EIS. The purpose of the EIS is to analyze the natural resource, social, and economic effects of implementing a rangeland management program on 1,040,000 acres of public lands managed by the Bureau of Land Management (BLM) in Eastern Arizona. The lands involved are located in Apache, Coconino, Cochise, Gila, Graham, Maricopa, Mohave, Navajo, Pima, Pinal and Yavapai Counties.

SUPPLEMENTARY INFORMATION: Scoping was conducted by interdisciplinary groups from each district and preliminary issues developed. Clarification of these issues and identification of additional ones will be sought from the public through letters, press releases, solicitations and public meeting workshops. The meetings are scheduled at the following locations:

Tuesday, October 23, 1984: Board of Supervisors Room, County Annex Building, 79 Cleveland, St. Johns, Arizona

Wednesday, October 24, 1984:
San Jose Lodge, Bisbee, Arizona
Phoenix District Office, 2015 W. Deer Valley Rd., Phoenix, Arizona

Thursday, October 25, 1984: Benson City Hall, Benson, Arizona

Tuesday, October 30, 1984: Tucson Community Center, 260 South Church, Coconino Room, Tucson, Arizona

All meetings will begin at 7:00 p.m. Notices of all public meetings will be distributed to local media at least two weeks prior to meeting dates.

Preliminary issues identified by BLM District Staff are as follows:

—Existing grazing levels may have impaired wildlife and wildlife habitat.
—Improper grazing is creating some areas of accelerated erosion and poor watershed conditions.
—Livestock grazing use has created changes in species composition and plant vigor.

A full range of reasonable alternatives will be addressed in the EIS. They include: no grazing, no action (continue present livestock numbers), adjusted livestock use, rangeland improvement. An interdisciplinary team will evaluate the alternatives in the EIS.

The draft EIS is scheduled for publication in May, 1985. A notice of availability will be published in the **Federal Register** and publicized through the media.

FOR FURTHER INFORMATION CONTACT: All inquiries on the EIS should be directed to Jerrold Coolidge, EIS Team Leader, Bureau of Land Management, 425 East 4th Street, Safford, Arizona 85546, phone (602) 428–4040, (FTS) 8–762–6384, or to James Andersen, EIS Assistant Team Leader, Bureau of Land Management, 2015 W. Deer Valley Rd., Phoenix, Arizona 85027, phone (602) 863–4464, (FTS) 8–764–0501.

Dated: August 2, 1984.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 84–21109 Filed 8–8–84; 8:45 am]

BILLING CODE 4310–32–M

Colorado; Filing of Plat of Survey

July 31, 1984.

The plat of survey of the following described lands will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., July 31, 1984.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, a portion of the subdivision of section 18, and the survey of the subdivision of section 18, T. 38 N., R. 18 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted July 27, 1984.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 84–21098 Filed 8–8–84; 8:45 am]

BILLING CODE 4310–84–M

[Serial No. AA–52562]

Lease of Public Land in Gustavus, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, FPMA Section 302 Lease.

SUMMARY: The following described tract of land has been examined and through land use planning identified as suitable for lease pursuant to section 302 of the Federal Land Policy and Management Act.

Copper River Meridian, Alaska

T. 40 S., R. 59 E.,
Sec. 19, Metes and bounds within unsurveyed acretted lands. Totaling approximately 1.0 acre.

This Notice of Realty Action proposes a one year lease on lands under the

jurisdiction of the Bureau of Land Management. The action will authorize spill prevention countermeasures (improvements) enabling the operation of fuel holding tanks which are already in place.

This action is a non-competitive offering at Fair Market Value to the owner of existing improvements.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action, including the land report and environmental documentation, is available for review at the Anchorage District Office, 4700 East 72nd Avenue, Anchorage, Alaska 99507, or call Don Hinrichsen at (907) 267-1308.

For a period of 45 days from the date of publication of this Notice, interested parties may submit comments at the above address. Any adverse comments will be evaluated by the Anchorage District Manager who may cancel or modify this action and issue a final determination. In the absence of any adverse action by the Anchorage District Manager, this will become the final determination of the Department of the Interior.

Wayne A. Boden,

District Manager.

[FR Doc. 84-21136 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-JA-M

Meeting and Field Trip of Rock Springs District Advisory Council

DATE: September 27-28, 1984.

ADDRESS: Rock Springs District Office, Bureau of Land Management, U.S. Highway 191 North, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, U.S. Highway 191 North, Rock Springs, Wyoming 82902-1869, (307-382-5350).

SUPPLEMENTARY INFORMATION: A field trip to review implementation of the Sandy Rangeland EIS area in the District's Big Sandy Resource Area will leave the District Office at 8:00 a.m., Thursday, September 27 and return about 5:00 p.m. the same day. The tour is open to the public, but BLM will not provide transportation. A four-wheel drive vehicle is recommended.

The meeting Friday, September 28, will convene at 8:00 a.m. in the District Office Conference Room.

The agenda items are:

Discussion of the Field Trip
Update on the Kemmerer Resource Management Plan
Cooperative Management Agreements
Public Comment Period
Arrangements for the Next Meeting.

Gene C. Herrin,

Associate District Manager.

[FR Doc. 84-21135 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-22-M

Montrose District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Montrose District Grazing Advisory Board Meeting Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that the Montrose District Grazing Advisory Board will meet on September 11, 1984. The Board will convene at 10:00 a.m. in the conference room of the Bureau of Land Management District Office, 2465 South Townsend, Montrose, Colorado. The business meeting will include the following topics:

1. Review FY 85 Range Improvement Project Proposals;
2. Review any new applicants nominated for Cooperative Management Agreements;
3. Update on the Montrose District Planning efforts;
4. Advisory Board expenditures for Range Improvement Work;
5. Arrangements for the next meeting.

The meeting is open to the public. Anyone wishing to make an oral statement, must notify the District Manager, BLM, 2465 South Townsend, Montrose, Colorado 81401 by September 3, 1984. Depending on the number of persons requesting time, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

Paul W. Arrasmith,

District Manager.

[FR Doc. 84-21102 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-JB-M

Sale of Public Lands in Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands in Imperial County, California.

SUMMARY: The following described lands have been examined and found suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value:

Parcel No.	Legal description	Acres	Value
Parcel 4 CA-14345	T. 14 S., R. 15 E., SBM, Tr. 171A (S-7)	66.03	$3,300
Parcel 7 CA-14348	T. 15 S., R. 13 E., SBM, Tr. 149 (S-5)	80.00	4,000
Parcel 11 CA-14352	T. 15 S., R. 16 E., SBM, Sec. 2, lots 8 and 9, Sec. 11, lot 1	18.39	920
Parcel 12 CA-14353	T. 15 S., R. 16 E., SBM, Sec. 14, lot 6	6.61	330
Parcel 14 CA-14355	T. 16 S., R. 12 E., SBM, Tr. 58 (S-23)	40.00	2,000
Parcel 17 CA-14358	T. 16 S., R. 12 E., SBM, Sec. 10, E½NE¼	80.00	4,000
Parcel 18 CA-14359	T. 16 S., R. 12 E., SBM, Sec. 16, lot 1	13.72	685
Parcel 25 CA-14366	T. 16 S., R. 13 E., SBM, Sec. 36, lot 53	0.53	50

These parcels aggregate 305.28 acres in Imperial County, California. The land has not been used for and is not required for any Federal purpose. The location and physical characteristics of each parcel make them difficult and uneconomical to manage as public lands. Disposal is consistent with planning, would not have any significant negative effect on resource values, and would best serve the public interest.

The following landowners are offered the opportunity to purchase the parcel(s) specified:

Parcels 4, 7, 14, 17, and 25: Imperial Irrigation District, ATTN: Mr. Donald Twogood, 333 E. Main Street, Imperial, California 92251.

Parcel 11: Betty L. Maggio c/o Joe Maggio, P.O. Box 27, Holtville, California 92250.

Parcel 12: Earle Sperber, 930 Walnut Avenue, Holtville, California 92250.

Parcel 18: Francis C. Tomlinson, 6032 S. Painter, Whittier, California 90601; George Lerno, 667 W. Main Road, El Centro, California 92243

All parcels, except parcel 18, will be offered by direct sale at the appraised fair market value 60 days after publication of this notice and no bids will be accepted. Parcel 18 will be offered by modified competitive bidding to only the surrounding landowners, George Lerno and Francis C. Tomlinson, at no less than the fair market value. Upon notification of the sale date the

purchaser will be given 180 days to pay the full purchase price.

Sale terms and conditions are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States (26 Stat. 391; 43 U.S.C. 945).

2. All minerals will be reserved to the United States as required by Section 209(a) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2757; 43 U.S.C. 1719). However, under Section 209(b) of said Act the new landowner may apply to purchase the mineral interest.

3. The patent will be subject to all valid existing rights and reservations of record.

4. All purchasers must be United States citizens, or in the case of corporations, be authorized to own real estate in the State of California. Political subdivisions of the States and State instrumentalities must be authorized to hold property. Proof of meeting these requirements shall accompany the bid.

5. The BLM will reject or accept any and all offers, or withdraw any land or interest in land from sale, if in the opinion of the Authorized Officer consummation of the sale would not be in the best interest of the United States.

6. Patent for the following parcels will be subject to those rights granted under the Geothermal Steam Act of 1970 (84 Stat. 1566; 30 U.S.C. 1001–1025) and/or the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.):

Parcel No.	Geothermal	Oil and gas
4	N/A	5/83 Sim. list.
7	CA-9684 appl	5/83 Sim. list.
11	N/A	CA-9912 lease.
12	N/A	CA-9912 lease.
14	N/A	CA-9726 lease.
17	N/A	CA-9726 lease.
18	N/A	CA-9726 lease.
25	N/A	N/A.

Upon publication of this notice in the **Federal Register** as provided in 43 CFR 2711.1–2(d), the aforementioned lands will be segregated from appropriation under the mining laws, but excepting the mineral leasing laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent or other document of conveyance to these lands, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

Parcel 18 will be offered by sealed bid only to George Lerno and Francis C. Tomlinson, being designated the sole bidders. Sealed bids will be opened at 10:00 a.m. on October 15, 1984, at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashiers check made payable to the Department of Interior-BLM for not less than one-fifty of the bid. The sealed bid envelopes must be marked on the front lower left corner "Land Sale, Parcel 18, October 15, 1984." After opening the bids, if both contain valid bids of the same amount, the determination of which is to be considered the highest bid shall be by drawing. This drawing shall be held by the authorized officer immediately following the opening of the sealed bids. Failure to submit the balance of the full bid within the above specified time limit shall result in forfeiture of the deposit and the other bid will be honored.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale, including the land report and environmental assessment, is available for review at the California Desert District Office at 1695 Spruce Street, Riverside, California 92508.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the State Director, California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination.

Dated: August 1, 1984.

Gerald E. Hillier,

District Manager.

[FR Doc. 84–21105 Filed 8–6–84; 8:45 am]

BILLING CODE 4310–40–M

Ukiah District, California, Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR 1780 that a meeting of the Ukiah District Advisory Council will occur on August 29 and 30, 1984.

The itinerary includes a two-day on-the-ground inspection of the King Range and Chemise Mountain Wilderness study areas in northen Mendocino and southern Humboldt Counties. The council will depart from Garberville Wednesday, August 29, at 7:30 a.m. and conclude in Shelter Cover on Thursday, August 30, at 12:00 noon. A subsequent notice will be published in the **Federal Register** to announce a formal meeting of the advisory council for the purpose of evaluating a recommendation they will receive from a council-appointed technical review team on the wilderness suitability of the areas.

For additional information contact: Barbara Gibbons, Bureau of Land Management, P.O. Box 940, 555 Leslie Street, Ukiah, California 95482–0940, telephone (707) 462–3873.

Dated: August 3, 1984.

Van W. Manning,

District Manager.

[FR Doc. 84–21134 Filed 8–8–84; 8:45 am]

BILLING CODE 4310–84–M

[N–39140]

Realty Action—Competitive Sale Public Lands in Washoe County, NV

The following described lands comprising 342.85 acres have been identified as suitable for disposal through sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701, 1713, at no less than fair market value:

Parcel	Legal Description	Acreage
A	T. 17 N., R. 20 E., Mt. Diablo Mer., NV	
	Sec. 18: NW¼N¼ lot 1 SW¼, E½SW¼N½ lot 1 SW¼, N½SW¼S½ lot 1 SW¼, lots 3, 4, 5, 6, 7, 8, 9, 11	92.85
B	T.17 N., R. 20 E., Mt. Diablo Mer., NV	
	Sec. 18: E½N½ lot 1 SW¼, NE¼S½ lot 1 SW¼, E½NE¼NW¼SE¼, E½NW¼NW¼SE¼, S½NW¼SE¼, NE¼SW¼SE¼, S½SW¼SE¼	90
C	T. 17N., R. 20 E., Mt. Diablo Mer., NV	
	Sec. 18: E½E½	160
	Total	342.85

The lands are being offered for sale through competitive bidding. The sale is consistent with Bureau planning and is compatible with county plans. The lands are not needed for any federal purpose and would best serve the public interest in private ownership to allow for community expansion.

Patent for each parcel when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; U.S.C. 945.

2. The United States reserves all minerals in the lands subject to this conveyance, including, without limitation, substances subject to disposition under the general mining laws, the general mineral leasing laws, the Materials Act and the Geothermal Steam Act.

The United States reserves to itself, its permittees, licensees, lessees and mining claimants, the right to prospect for, mine and remove the minerals

owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mining, geothermal and mineral leasing, and material disposal laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, open pit or surface mining operations, storage and transportation facilities deemed necessary and authorized under law and implementing regulations.

Mining claimants, permittees, licensees, and lessees of the United States shall only be liable for and shall only compensate owners of the surface estate for damages to the extent prescribed by regulations issued by the Secretary of the Interior.

Unless otherwise provided by separate agreement with the surface owner, mining claimants, permittees, licensees and lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior.

By purchase of these lands, the owners, pursuant to Section 714 of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1304, give their "surface owner" consent to the United States and its lessees to enter and commence surface mining operations to extract the United States' reserved coal.

All causes of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against mining claimants, permittees, licensees and lessees of the United States; and the United States shall not be liable for the acts or omissions of its mining claimants, permittees, licensees and lessees.

There are no known values for locatable and saleable minerals. The only leasable mineral having a known value is geothermal steam and associated resources. All of Parcels A and B are affected by Geothermal Lease N-16800A, Phillips Petroleum, except Lot 11, Section 18, T. 17 N., R. 20 E., M.D.M., NV. In accordance with section 209(b)(1) of Pub. L. 94-579, mineral interest except geothermal steam and related resources will be conveyed simultaneously with the surface estate upon submission of an application pursuant to 43 CFR Part 2720.

And will be subject to:

1. An easement 60' in width along the northern boundary of the S½NW¼SE¼, Section 18, T. 17 N., R. 20 E., Mt. Diablo Mer., NV, beginning at U.S. Highway 395. The easement will provide ingress and egress to Parcel C.

2. Those rights for highway purposes which have been granted to the State of Nevada, Department of Transportation, its successors or assigns, by Right-of-Way CC-018418.

3. Those rights for access road purposes which have been granted to William E. and Eleanor F. Buck, their successors or assigns, by Right-of-Way N-29993.

Detailed information concerning the sale is available for review at the Carson City District Office, 1050 E. William Street, Suite 335, Carson City, Nevada.

The lands will not be offered for sale sooner than 60 days after the date of this notice. For a period of 45 days from the first publication of this notice, interested parties may submit comments to the District Manager, Carson City District Office of the Bureau of Land Management, 1050 E. William Street, Suite 335, Carson City, Nevada 89701. Any adverse comments will be evaluated by the District Manager and forwarded to the Nevada State Director, Bureau of Land Management, who may vacate or modify the realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

Dated this 28th day of June, 1984.

Thomas J. Owen,

District Manager, Carson City District.

[FR Doc. 84-20970 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operation coordination document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5551, Block 178, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Amelia, Louisiana.

DATE: The subject DOCD was deemed submitted on August 3, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 3, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-21125 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, September 15, 1984, at 1:00 p.m. at the American Legion in Hancock, Maryland.

The Commission was established by Pub. L. 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Miss Carrie Johnson, Chairman, Arlington, Virginia
Mr. Carl L. Shipley, Washington, D.C.
Ms. Polly Bloedorn, Bethesda, Maryland
Mr. James B. Coulter, Annapolis, Maryland
Mrs. Constance Lieder, Baltimore, Maryland
Mr. William H. Ansel, Jr., Romney, West Virginia
Mr. Silas Starry, Shepherdstown, West Virginia
Ms. Bonnie Troxell, Cumberland, Maryland
Mr. John D. Millar, Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, D.C.
Mr. Barry Passett, Washington, D.C.
Ms. Barbara Yeaman, Brookmont, Maryland
Ms. Joan LaRock, Lovettsville, Virginia
Ms. Elise Heinz, Arlington, Virginia
Ms. Marjorie Stanley, Silver Spring, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. R. Lee Downey, Williamsport, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland

Matters to be discussed at this meeting include:

1. Old and new business.
2. Superintendent's Report.
3. Committee Reports, Plans and Projects Committee, Recreation Policies and Issues Committee, Resource Protection Committee.
4. Public Comments.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: August 2, 1984.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 84-21140 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware National Scenic and Recreational River

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 24, 1984, 7:00 p.m.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159, (717) 729-7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include items regarding draft river management plan rewrite. The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159. Minutes of meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: August 1, 1984

Don H. Castleberry,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 84-21141 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

64 Acres at the Truckee River Outlet to Lake Tahoe, CA; Order To Transfer Administrative Jurisdiction

By virtue of the authority vested in the Secretary of the Interior by section 7(c) at the Act of July 9, 1965 (79 Stat. 216), and the delegation of authority to the Commissioner of Reclamation dated January 17, 1967, and reconfirmed by release of March 25, 1983, jurisdiction over the following described lands acquired by the Bureau of Reclamation for the Newlands Project, California and Nevada, and located within the boundary of the Lake Tahoe National Forest, is transferred to the Secretary of Agriculture, for recreational and other National Forest System purposes. The lands to be transferred are described as follows:

A parcel of land in Section Seven (7), Township Fifteen (15) North, Range Seventeen (17) East, Mount Diablo Meridian, Placer County, California, having an area of 64 acres, more or less, and being all of that certain parcel of land described in the deed dated August 9, 1904, from Mercantile Trust Company to United States of America, recorded in Book 86 of Deeds at page 23, records of Placer County, as follows:

Beginning at a point on the west boundary of the Northeast Quarter of the Northwest Quarter (NE¼NW¼) of said Section, situate 450 feet south from the northwest corner thereof, and running thence as follows: South 2190 feet, more or less, to the south line of the Northwest Quarter (NW¼) (NW¼) of said Section, thence East 1978.8 feet, more or less, to the meander line of Lake Tahoe; thence with meander line, N. 19°00′ W., 110.1 feet, N. 12°30′ E. 165 feet, N. 8°15′ E., 237.5 feet; thence N. 40°04′ W., 1062.8 feet, thence N. 51°00′ W., 463 feet to a point twenty feet easterly from the easterly bank of the Truckee River; thence S. 52°00′ W., 463 feet, more or less, to the south boundary of the Northeast Quarter of the Northwest Quarter (NE¼NW¼) of Section Seven (7); thence West along said south boundary of Northeast Quarter of Northwest Quarter (NE¼NW¼) of Section 7,204 feet. Thence North 870 feet; thence West 400 feet to place of beginning.

As provided in Section 7(c) of the Act of July 9, 1965 (79 Stat. 216) the above described lands shall become National Forest lands. This order is effective on the date of this publication in the **Federal Register.**

Access over or on the above described lands necessary for any project purpose shall continue to be exercised by the Secretary of the Interior through the Bureauu of Reclamation in such a manner as may be mutually acceptable.

Dated: July 26, 1984.

Robert A. Olson,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 84-20845 Filed 8-8-84; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-200)]

Burlington Northern Railroad Company—Abandonment and Discontinuance of Trackage Rights Over the Union Pacific Railroad Company—In Yakima County, WA; Findings

The Commission has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its rail line between milepost 63.60 near Granger and milepost 80.21 near Parker and discontinuance of trackage rights over a line of railroad owned by the Union Pacific Railroad Company between milepost 79.10 and milepost 79.24, in Yakima County, WA. The certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10-day period.

Information and procedure regarding financial assistance for continued rail service are continued in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 84-21144 Filed 8-8-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30496]

Chicago and North Western Transportation Company—Exemption—Acquisition and Operation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the acquisition and operation by the Chicago and North Western Transportation Company of a 3.53-mile rail line in Mahaska County, IA from the requirement of prior approval under 49 U.S.C. 10901.

DATES: This exemption shall be effective on August 9, 1984. Petitioners to reopen must be filed by August 29, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30496 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Myles L. Tobin, One North Western Center, Chicago, IL 60606

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 1, 1984.

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

James H. Bayne,

Secretary.

[FR Doc. 84-21143 Filed 8-8-84; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 3rd day of August 1984 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman

Assistant Director, Export-Import and International Safeguards, Office of International Programs.

NRC IMPORT/EXPORT APPLICATIONS

Name of applicant, date of application, date received, application No.	Material type (percent)	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Exxon Nuclear Co., Inc., June 27, 1984, July 5, 1984 XSNM02161.				Consolidation of six export licenses for EURATOM countries	West Germany, Belgium, and France.
Exxon Nuclear Co., Inc., July 17, 1984, July 20, 1984, XSNM02043, Amend. No. 01.				Amend license to include Blaysis 3 as an additional ultimate consignee.	France.
Mitsui & Co. (USA), Inc., July 19, 1984, July 23, 1983, XSNM02163.	3.95	11,139	351	Reload fuel for Fukushima I, Unit 3	Japan.

NRC IMPORT/EXPORT APPLICATIONS—Continued

Name of applicant, date of application, date received, application No.	Material type (percent)	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Mitsui & Co. (USA)., July 24, 1984, July 26, 1984, XSNM02164	3.95	15,327	481	Reload fuel for Fukushima I, Unit 5	Do.

[FR Doc. 84-21175 Filed 8-8-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power and Light Company; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption from the requirements of 10 CFR 50.44(c)(3)(iii) to GPU Nuclear Corporation and Jersey Central Power and Light Company (the licensees) for the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

Environmental Assessment

Identification of Proposed Action: The exemption would grant the licensees a schedular deferment from the requirements to provide isolation condenser high point vents during the current Cycle 10 refueling outage to the Cycle 11 refueling outage. The proposed schedular exemption is in accordance with the licensees' request for exemption dated August 2, 1982.

The Need for the Proposed Action: 10 CFR 50.44(c)(3)(iii) requires a licensee authorized to operate a nuclear power reactor to provide improved operational capability to maintain adequate core cooling following an accident by the end of the first scheduled outage beginning after July 1, 1982 of sufficient duration to permit required modifications. Each light-water reactor shall be provided with high point vents for the reactor coolant system, reactor vessel head, and for other systems required to maintain adequate core cooling if the accumulation of noncondensible gases would cause the loss of function of these systems.

The licensees' letter of August 2, 1982 as supplemented December 15, 1982, March 27, and May 8, 1984 requested a schedular exemption for the installation of high point vents on the isolation condenser. The licensees' requested that the vents be installed during the Cycle 11 refueling (1985) outage, stating that the plant's overall margin of safety would not be reduced by this deferral.

Even though the current outage has been extended, the licensee does not have the capability to install new isolation condenser vents within the currently projected outage schedule. Portions of the engineering remain to be completed and additional equipment, including Class IE electrical switches, remain to be procured. The licensees plan to resume the engineering and procurement activities on a schedule consistent with installation of this modification during the Cycle 11 refueling outage.

In addition, the level of modification work associated with the current outage does not permit significant additional work to be added to the outage work scope without delaying restart of the plant. It should be noted that the extension of the present outage has been caused by additional work scope which was developed during the outage and thus does not represent an opportunity to add still more work. Some of the additional work scope was in response to NRC requirements, such as post-accident sampling and masonry block wall modifications which GPUN had earlier proposed to defer.

Environmental Impacts of the Proposed Action: The proposed exemption would provide schedular relief for the installation of isolation condenser high point vents. In the present configuration, Oyster Creek has the capability to vent the isolation condensers to the main steam header downstream of the main isolation valves. This is done to prevent the accumulation of noncondensible gases during startup and normal plant operation. An accumulation could result in a blockage such that steam from the reactor coolant system will not be able to pass through the isolation condenser. However, in an accident situation this vent path is isolated condenser. However, in an accident situation this vent path is isolated. Therefore, the concern is that in a situation where sufficient noncondensibles are produced, the isolation condensers may become unavailable, for achieving pressure reduction. To produce this amount of noncondensibles, the core would have to be degraded beyond what is calculated for the design basis events.

In order to degrade the core, water level would have to be lost. Recent studies have shown that significant hydrogen generation will not begin until the two phase level has dropped so as to uncover at least half the core. Along the way, all ECCS setpoints would have been passed and emergency procedures would be in force. The importance of this is that:

- The isolation condensers will be functional from the point of their initiation (low-low level–7'2" above the top of the active fuel) to the point where half the core is uncovered.
- The Automatic Depressurization System (ADS) will automatically open the five safety-related emergency relief valves (ERV) on low-low-low level (4'8" above the top of the active fuel) as long as other coincident signals are present. This is to ensure depressurization of the RCS.
- By procedure, the operators are instructed to manually open the ERVs from the control room if level has dropped to the top of the active fuel and if they are not already open.

In the case of a large break LOCA, where level will be lost very quickly, depressurization is not a concern since it is the event itself that depressurizes the vessel. Thus, there are methods, other than using the isolation condensers, available to achieve depressurization prior to, and in the event of core degradation, that do not affect the risk of facility accidents. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption. Since we have concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative will either have no environmental impact or greater environmental impact. The principal alternative to the schedular exemption would be to require literal compliance with 10 CFR 50.44(c)(3)(iii). Such an action would not

enhance the protection of the environment and would result in extending the current refueling/maintenance outage.

Alternative Use of Resources: The proposed exemption involves no use of resources not previously considered in the Oyster Creek Final Environmental Statement dated December 1974.

Agencies and Person Consulted: The NRC staff has reviewed the licensee's request as discussed above. The NRC staff did not consult any other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated August 2, 1982 and supplemental submittals dated March 27, and May 8, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Oyster Creek Local Public Document Room, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Bethesda, Maryland, this 2d day of August 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-21177 Filed 8-8-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-321]

Georgia Power Co., et al.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the withdrawal of an application dated May 25, 1984, filed by Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the Licensees). The application requested amendment to Facility Operating License No. DPR-57 for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 1, located in Appling County, Georgia. The proposed amendment would have revised the provisions in the Technical Specifications for a one-time extension of the surveillance internal on containment spray testing. The Commission issued a Notice of Consideration of Issuance of Amendment in the **Federal Register** on June 4, 1984 (49 FR 23131). By letter dated June 11, 1984, the licensees withdrew the application for the proposed amendment. The Commission has considered the licensees' June 11, 1984, letter and has determined that permission to withdraw the May 25, 1984, application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendment dated May 25, 1984; (2) the licensees' letter dated June 11, 1984, withdrawing the application for license amendment, and (3) our letter to Georgia Power Company dated August 1, 1984.

All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Maryland, this 1st day of August, 1984.

For the Nuclear Regulatory Commission.

John F. Stolz, Chief,

Operating Reactors Branch No. 4 Division of Licensing.

[FR Doc. 84-21176 Filed 8-8-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co. (Prairie Island Nuclear Generating Plant Unit Nos. 1 and 2; Exemption

I

The Northern States Power Company (the licensee) is the holder of Facility Operating License Nos. DPR-42 and DPR-60 which authorize operation of the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises two pressurized water reactors at the licensee's site located in Goodhue County, Minnesota.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Two of these fifteen subsections, III.G. and III.O, are the subject of this exemption request. Specifically, Subsection III.G.2 requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by: "Separation of cable and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards." This requirement is applicable because the fire areas being considered are inside a noninerted containment.

Subsection III.O requires that the reactor coolant pumps shall be equipped with an oil collection system capable of collecting lube oil from all potential pressurized and unpressurized leakage sites and drained to a vented closed container that can hold the entire lube oil system inventory.

III

By letter dated January 23, 1984 as supplemented by letters dated April 5 and May 22, 1984, the licensee requested an exemption from the requirement of Subsection III.G.2 of Appendix R in two (2) fire areas as follows:

—Fire Area 1 containment Unit 1 all elevations

—Fire Area 71 containment Unit 2 all elevations.

In the same submittals, the licensee also requested an exemption from the requirements of Subsection III.O related to draining the reactor coolant pump lube oil leakage to a vented closed container.

IV

Fire Area 1 (Unit 1 Containment) and Fire Area 71 (Unit 2 Containment)

The licensee requested an exemption from Subsection III.G.2 to the extent that these areas have intervening combustibles between components of redundant trains needed for safe shutdown. In addition, except for the redundant cabling associated with the pressurizer level transmitters for unit 2 (Fire Area 71), all other redundant components are separated by twenty feet or more. The redundant cabling associated with the pressurizer level transmitters is separated by ten feet. For this cabling the licensee has committed to protecting one division with a one-hour fire barrier.

The combustibles in these fire areas are lubricating oil and cable insulation having a total fuel load of 22,520 Btu/ft^2

for Fire Area 1 (Unit 1 containment) and 22,915 Btu/ft² for Fire Area 71 (Unit 2 containment). Approximately 50% of this fuel load consists of the reactor coolant pump lube oil that, if a leak should occur, would drain to the containment sump. The ignition of the lube oil would result in fire damage to only one of the redundant trains since in the area of the sump fire the other train is protected by an 18 inches thick concrete floor spanning the entire horizontal plane of the containment building except for the stairwell at the perimeter of the building. The only other combustible existing within the spacing of the redundant trains in Fire Area 1 is cable insulation representing a fuel load of 9,965 Btu/ft² with no areas of concentrated combustibles. This fuel, if totally consumed, would correspond to a fire severity of 7.5 minutes on the ASTM E-119 standard temperature curve. Similarly, in Fire Area 71, the only other combustible existing within the spacing of the redundant trains is insulation cabling representing a fuel load of 10,320 Btu/ft². This fuel, if totally consumed, would yield a fire severity of 7.7 minutes on the ASTM E-119 standard time temperature curve. In addition, as stated by the licensee, all cabling in both fire areas is qualified to IEE-Std-383. The cable has a high resistance to flame propagation and excellent flame retardant qualities.

The fire protection in these areas consists of ionization smoke detectors on all floor levels with alarms to the control room and standpipe hose stations on each floor level. In addition, access to these fire areas is restricted during power operation due to existing high radiation fields during these periods.

We agree with the licensee that, because of the relatively small amount of intervening combustibles in the areas between redundant trains, and because all cables in the fire areas are IEEE-383 qualified, any postulated fire of potentially hazardous size would be caused by transient combustibles. Hazardous quantities of transient combustibles would not be expected in these fire areas for the reason mentioned above (restricted during operation). Transient combustibles are not normally allowed in containment. On rare occasions, when a limited amount of transient combustibles is permitted, administrative controls require, as a minimum, a dedicated fire watch armed with a fire extinguisher. The existing passive protection is adequate for redundant cabling until the fire brigade can extinguish the fire.

Based on our evaluation, the level of existing protection for Fire Areas 1 and 71 provides a level of protection equivalent to the requirements specified in Subsection III.G.2 of Appendix R. Therefore, the exemption from the requirements specified in Subsection III.G.2 for these fire areas is granted.

Reactor Coolant Pump Lube Oil Collection System—Subsection III.O of Appendix R

The licensee requested an exemption from Subsection III.O to the extent that the reactor coolant pump lube oil collection system is piped to the sump inside containment. The contents of the sump can be pumped to a closed vented container located in the auxiliary building. The licensee states that the sump in the basement of the containment is a concrete pit having a capacity of 990 gallons, which is more than the capacity needed to contain the total inventory of lube oil for the two reactor coolant pumps for each unit. There is no safe shutdown equipment in the area. The sump is designed to automatically pump down at a prescribed sump level and an alarm will sound in the control room if this level is exceeded. The operator can initiate manual control of the sump pump at any time, overriding the automatic control of sump level. The sump is normally drained to vented containers in the auxiliary building having a total capacity of 2600 gallons. The basis for the design of this collection system is to collect any contaminated water from the pump seal leakage as well as any oil leakage.

In addition, the pipe from the sump to the vented container in the auxiliary building has been designed to seismic category Class III which meets the requirement of Regulatory Guide 1.29, paragraph C-2. If failure of this pipe were to occur during a seismic event, the functions of plant features described in paragraph 1 (a through q) of Regulatory Guide 1.29 will not be affected and the plant can be brought to cold shutdown. This is based on a review conducted by the licensee and confirmed by letter dated May 22, 1984.

We agree with the licensee that, although lube oil leakage is collected in the sump before it is pumped to a vented container, the sump design at this plant assures us that oil collected there will not lead to fire during normal or design basis accident conditions. The capacity of the sump and the vented containers is adequate to safely contain any anticipated lube oil leakage and the existing controls provide reasonable assurance that any lube oil collected in the sump can be safely pumped to the vented container in the auxiliary building.

Based on our evaluation, the existing lube oil collection system for reactor coolant pumps provides a level of protection equivalent to the requirements specified in Subsection III.O of Appendix R. Therefore, the exemption from the requirements specified in Subsection III.O for the lube oil collection system is granted.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or common defense and security and is otherwise in the public interest and hereby grants an exemption from the requirements of Subsections III.G.2 and III.O of Appendix R to 10 CFR Part 50 to the extent discussed in Section IV above.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (49 FR 29169).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 31st day of July, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-21178 Filed 8-8-84; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

Bloom City, WI (James F. Tydrich, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: August 3, 1984.

Before Commissioners: Janet D. Steiger, Chairman; John W. Crutcher, Vice-Chairman; Simeon M. Bright; James H. Duffy; Henry R. Folsom.

[Docket No. A84-12; Order No. 571]

Docket Number: A84-12

Names of affected Post Office: Bloom City, Wisconsin 54617

Name(s) of petitioner(s): James F. Tydrich

Type of determination: Closing

Date of filing of appeal papers: July 20, 1984

Categories of Issues Apparently Raised

1. Effect on Service [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed, or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders:

(A) The record in this appeal shall be filed on or before August 6, 1984.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

July 20, 1984—Filing of Petition

August 3, 1984—Notice and Order of Filing of Appeal

August 14, 1984—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

August 24, 1984—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].

September 13, 1984—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

September 28, 1984—(1) Petitioner's Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)].

October 5, 1984—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].

November 19, 1984—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 84-21126 Filed 8-8-84; 8:45 am]

BILLING CODE 7715-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Advance notice of proposed modification to an existing system of records.

SUMMARY: The purpose of this document is to provide information for public comment concerning the Postal Service's proposal to add a new temporary routine use to system USPS 050.020, Finance Records—Payroll System.

DATE: Any interested party may submit written comments regarding the proposed new routine use. Comments on this notice must be received on or before September 8, 1984.

ADDRESS: Comments may be mailed to Records Office, U.S. Postal Service, 475 L'Enfant Plaza West, SW, Washington, DC 20260-5010, or delivered to Room 8121 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may be inspected in Room 8121 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Records Office, (202) 245-5568.

SUPPLEMENTARY INFORMATION: The Postal Service plans to assist the U.S. Department of Housing and Urban Development in its efforts to collect overdue debts from current postal employees. These debts are based upon Title I home improvement or manufactured home loans administered by the Secretary of Housing and Urban Development (HUD). Under the arrangements established by the two agencies, the Postal Service will provide to HUD a computer tape containing USPS employees' names and social security account numbers. HUD will match that tape against its file of Title I defaulted debtors and will return the uncopied computer tape to the USPS immediately after the match has been run. Upon written request, for verification purposes, the USPS will provide the home addresses to HUD of those matched individuals, as specifically identified (by name and social security account number) in the request.

Proposed System Modification To Add Temporary Routine Use

Accordingly, the Postal Service is proposing a new temporary routine use for system USPS 050.020, Finance Records—Payroll System to disclose the names, social security account numbers and home addresses for the limited purpose of enabling HUD to identify the indebted postal employees; to notify them of their indebtedness to the United States; and to take subsequent action, if necessary, to collect the debts. If adopted, the routine use will be in effect for a period of five years from its effective date. System 050.020 last appeared in 49 FR 24835 dated June 15, 1984.

As provided in 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments concerning the proposed new routine use. After any comments submitted have been considered, final notice of the routine use will be published.

Accordingly, it is proposed to modify system USPS 050.020, Finance Records—Payroll System, to add a new temporary routine use to allow this disclosure as follows:

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System 050.020.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

31. (Temp.) To provide to the Department of Housing and Urban Development the names, social security account numbers and home addresses of postal employees for the purpose of notifying those individuals of their indebtedness to the United States under programs administered by the Secretary of Housing and Urban Daevelopment and for taking subsequent actions to collect those debts.

Note: This routine use will be in effect for a period of five years from its effective date.

* * * * *

W. Allen Sanders,

Associate General Counsel, Office of General Law & Administration.

[FR Doc. 84-21122 Filed 8-8-84; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Procedures for Special Delivery Packages

Official Filings or Amendments

Individual employees of the Securities and Exchange Commission are not authorized to receive official filings or amendments thereto. Such filings made at the Commission's home office must be addressed as follows: Securities and Exchange Commission, 450 5th Street NW., Attention: Filing Desk, Stop 1-4, Washington, D.C. 20549-1004.

Time-Urgent Matters

Correspondence as well as extra copies of time urgent filings, such as price amendments and proxy contest

materials, may be addressed to appropriate staff members and delivered in separate packages. The following procedures are now in effect with regard to these deliveries to members of the Commission.

1. All couriers who want to deliver material in person to staff members will be directed by the SEC receptionist to the Commission mail room (room 2C53).

2. Mail room personnel will call the addressee and inquire as to whether the courier should be admitted.

3. The staff member will admit couriers with time sensitive material or for whom prior arrangements have been made.

4. Couriers being admitted will be required to sign a log.

5. Couriers not being admitted must leave their material in the mail room for regular Commission staff delivery.

For further information please contact James Chapman at (202) 272–7030.

Dated: August 3, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-21181 Filed 8-8-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14079; 812-5804]

Den Danske Corp., Filing of Application

August 3, 1984.

Notice is hereby given that Den Danske Corporation ("Applicant"), c/o Andrew C. Quale, Jr., Sidley & Austin, 520 Madison Avenue, New York, New York 10022, a wholly-owned subsidiary of Den Danske Bank at 1871 Aktieselskab ("DDB"), a bank organized and existing under the laws of Denmark, filed an application on March 27, 1984, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable sections.

According to the application, Applicant was incorporated in Delaware in 1983 with an initial capitalization of $10,000, in order to obtain funds in the commercial paper market and provide these funds to DDB and DDB's subsidiaries. According to the application, DDB, on December 31, 1982, was the largest commercial bank in Denmark in terms of assets and deposits. Applicant states that as of December 31, 1982, DDB's total assets were $6,194,118,616 (at the rate of exchange prevailing on December 31, 1982); its total deposits were $5,356,687,653; and its capital funds (including reserves and capital debt) were $531,678,299. The application states that approximately 62% of DDB's liabilities consists of deposits from private and corporate customers. The application also states that DDB's loans total approximately $2.4 billion, or approximately 39% of DDB's total assets and its debt instruments (chiefly short-term government bonds and mortgage bonds traded on the Copenhagen stock exchange) totaled $898,823,435 or 15% of DDB's total assets. It is asserted that DDB is subject to a regulatory structure comparable to, and in certain respects more restrictive than, that applicable to banks in the United States. Commercial paper issued by DDB is currently sold in the United States under an order granted to DDB by the Commission pursuant to section 6(c) of the Act exempting it from all provisions of the Act. (Investment Company Act Rel. No. 11347, September 10, 1980).

Applicant proposes to issue and sell in the United States unsecured prime quality negotiable promissory notes of the type generally referred to as commercial paper ("Notes"). Applicant represents that DDB will unconditionally guarantee the payment of the principal, interest and premium, if any, on the Notes. Applicant states that the Notes will be denominated in United States dollars, and no Note will be in a denomination smaller than $100,000. Applicant also states that the maturities of the Notes will not exceed 270 days, nor will they contain any provisions for automatic roll-over or for renewal at the option of the holders thereof or Applicant. The aggregate principal amount of the Notes outstanding at any one time is not intended by Applicant to exceed $200,000,000. Applicant states that the funds received by DDB and its subsidaries will be used to repay maturing DDB commercial paper and as a source of supply of U.S. dollars for use in funding their current transactions, particularly short-term U.S. dollar-denominated credits.

Applicant states that the Notes will be direct liabilities of Applicant and will rank *pari passu* among themselves. Applicant also states that the guarantee of DDB will rank *pari passu* with all other unsecured unsubordinated indebtedness of DDB, including DDB's liabilities to depositors, and prior to DDB's subordinated indebtedness and share capital. Applicant does not presently contemplate that it will issue any securities other than the Notes. However, if it does issue other securities the Notes will rank equally with any other unsecured unsubordinated indebtedness and prior to Applicant's subordinated indebtedness and capital stock.

Applicant states that the Notes will be issued and sold to a commercial paper dealer or dealers in the United States which, as principal, will reoffer them to institutional and other sophisticated investors who ordinarily buy commercial paper. Applicant undertakes to ensure that the Notes will not be advertised or otherwise offered for sale to the general public. Applicant further undertakes to ensure that the dealer will provide each offeree who has indicated an interest in the Notes with a memorandum prior to purchase, which describes the business of DDB and Applicant and contains DDB's most recent audited public annual financial statements, including a balance sheet and profit and loss statement. The memorandum will also describe the material differences, if any, between the accounting principles applied in the preparation of DDB's financial statements and generally accepted accounting principles applicable to United States commercial banks. Applicant states that the memorandum will be at least as comprehensive as those customarily used in offering commercial paper in the United States, and will be updated periodically to reflect material changes in the financial condition of DDB and its subsidiaries.

Applicant represents that the terms and manner of offering the Notes will be such that the Notes will qualify for the exemption from registration under the Securities Act of 1933 ("1933 Act") provided by section 3(a)(3) of the 1933 Act. Applicant further represents that it will not offer, issue or sell the Notes until it has received an opinion of its United States counsel to the effect that the Notes would be entitled to exemption under section 3(a)(3) of the 1933 Act. Applicant does not request Commission review or approval of the opinion letter and the Commission expresses no opinion concerning the availability of any such exemption.

Applicant represents that the proposed issue of Notes and any future issuance of Notes by Applicant shall have received prior to issuance one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that its United States counsel will certify that such rating has been received.

Applicant represents that it will appoint a bank in the United States as its authorized agent to issue the Notes from time to time. Applicant states that

it has appointed The Corporation Trust Company as agent in the United States to accept service of process in any action based on DDB's guarantees of the Notes instituted in any state or federal court by a holder of any of the Notes. Applicant expressely accepts the jurisdiction of any state or federal court located in the City and State of New York in respect of any such action. Applicant states that the appointment of an agent to accept process and the consent of jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes have been paid.

Applicant represents that it does not presently intend to issue any securities other than the Notes. However, in the event that Applicant does in the future offer other securities (other than shares of its capital stock) for sale in the United States, the offerings will be made only pursuant to registration statements under the 1933 Act or pursuant to an applicable exemption, the availability of which will be confirmed by an opinion of special United States counsel. Applicant represents that any such offering will be made on the basis of disclosure documents at least as comprehensive as those customarily used by United States issuers in similar offerings. Applicant undertakes to ensure that each offeree of such securities will be provided with such disclosure documents, except that where an offering is made pursuant to a registration statements under the 1933 Act, such disclosure documents will be provided to such persons and in such manner as may be required by the 1933 Act and the rules and regulations thereunder. Any such future offerings will be made with due regard to the provisions of Rule 146 and the "integration" rules of the Commission. In connection with any future offering in the United States of its securities, Applicant undertakes to appoint an agent to accept any process which may be served in any action based on such securities and instituted in any state or federal court by any holder of these securities. Applicant further undertakes that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect of any such action. Applicant states that the appointment of an agent and the consent to jurisdiction will be irrevocable so long as the securities remain outstanding and all amounts due on the securities have been paid.

Applicant consents to any order granting this application being expressly conditioned on the Applicant's compliance with the undertakings set forth above and in the application.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 27, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-21184 Filed 8-8-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-4415]

Park Electrochemical Corp. Common Stock, $.10 Par Value; Application To Withdraw From Listing and Registration

August 3, 1984.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of Park Electrochemical Corporation ("Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on April 13, 1984, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock.

Any interested person may, on or before August 24, 1984, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-21187 Filed 8-8-84; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

August 3, 1984.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

Sea-Land Corporation

Common Stock, No Par Value (File No. 7-7749)

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 24, 1984 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc 84-21185 Filed 8-8-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23385; 70-6997]

Self-Regulatory Organization, Central and South West Corp.; Proposal To Create Credit Subsidiary; Exception From Competitive Bidding

August 3, 1984.

Central and South West Corporation ("CSW"), 2121 San Jacinto Street, Dallas, Texas 75266-0164, a registered holding company, has filed an application-declaration with this Commission pursuant to sections 6, 7, 9, 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50 thereunder.

CSW proposes to organize a new corporation, CSW Credit, Inc. ("Credit") to be wholly owned by CSW. The initial purpose of Credit will be the purchase of accounts receivable (factoring) of its operating companies, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company and Transok, Inc., at a discount and the financing of these purchases with debt. It is anticipated that all activities of Credit will be directed by existing CSW personnel or operating company personnel.

Credit will be incorporated in Texas with an authorized capital of 1,000 shares of common stock without par value. CSW will subscribe to all of Credit's common stock at a price of $1.00 per share. Credit will be leveraged at a debt-equity ratio anticipated to average 80% debt and 20% equity.

CSW presently intends that Credit will initially obtain the requisite funds for the accounts receivable financing transactions pursuant to lines of credit or loan agreements in an aggregate amount of up to $320 million which borrowings will be negotiated and obtained on a non-recourse basis to CSW and its subsidiaries, other than Credit, as required to fund accounts receivable transactions. CSW will provide additional capital through equity contributions in an amount up to $80 million to maintain the desired debt-equity ratio for Credit. In no event, without further authority from the Commission, would the aggregate of borrowings by Credit exceed $320 million or equity contributions in Credit by CSW exceed $80 million. Authorization to incur such levels of capitalization and borrowings is requested through December 31, 1985.

Credit's borrowings will be secured by an assignment of accounts receivable purchased by Credit. The specific terms and conditions of these borrowings by Credit will be subject to negotiation with the particular lender or lenders. However, without prior approval of the Commission, such terms and conditions will be no less favorable than the following: (1) The principal amount of such borrowings from time to time outstanding shall bear interest at the prime commercial rate of the lending bank; (2) Credit will be required either (a) to keep an amount equal to 5% of the commitment amount in the form of a depository relationship with the lending bank or (b) to pay to the lending bank a commitment fee of ½% per annum of the amount of the commitment of such lending bank (assuming the full commitment of $320 million and a prime rate of 13%, the effective cost to the company will range from 13.5% to 13.69%); (3) Credit will be allowed to prepay at any time all or any part of the outstanding principal amount of such borrowings without penalty; (4) no such borrowings would have a term in excess of 10 years; and (5) the other terms and conditions of the borrowing will be substantially equivalent to those authorized with respect to the CSW Money Pool (File No. 70-6725). After an appropriate period of experience, Credit intends to apply for a commercial paper rating which will enable it to sell commercial paper.

Credit will puchase the accounts receivable from the respective operating companies on the day that such operating company prepares the bill and will pay such operating company a percentage of the total amount of bills rendered in any given day. Such percentage or discount is designed to provide the requisite earnings coverage for Credit's indebtedness and to cover the expenses of Credit's operation. The primary expenses anticipated for Credit are interest expenses, bad debt charge-offs, income tax expenses and administrative expenses. The discount factor will be established based on an analysis of the anticipated expenses which will be periodically renegotiated with the operating companies depending primarily on the levels of interest expense and bad debts. Based upon preliminary discussions with a number of commercial banks, CSW believes that with an interest coverage ratio of approximately two times interest charges, non-recourse debt can be secured by Credit. Consequently, the return on equity before taxes to CSW will be equal to four times the interest rate charged on Credit's borrowing assuming the aforementioned capital structure of 20% equity and 80% debt.

CSW anticipates that Credit would enter into an agreement with each of the operating companies and pay a fee to the operating companies (either by a direct payment or by a reduction of the discount) to have the operating companies function as the collection agents for Credit with respect to their accounts. Any such payment or reduction would be included as an administrative expense of Credit in determining the applicable discount. It is anticipated that Credit would purchase the receivables from the operating companies daily and would receive under the agreements collections made by the operating companies for it. The operating companies, under the agreements, would also be responsible for, among other things, taking actions to collect delinquent receivables. While it is impossible to predict exactly how much of the accounts receivable financing will be undertaken, Credit initially anticipates financing all of the operating companies accounts receivable subject to the limits relating to the capitalization of and borrowings by Credit.

CSW states that the proposed transactions will result in benefits to both the operating companies (as a result of reduced capitalization requirements) and to CSW shareholders (as the result of net earnings of Credit).

Since the borrowings undertaken by Credit will fluctuate in relation to the amount of accounts receivable outstanding on any given day, CSW has requested that the financings of Credit be excepted from the requirements of Rule 50 as inappropriate.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 1, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application-declaration, as filed or as it may be

amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-21182 Filed 8-8-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21200; SR-NASD-84-15]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

August 3, 1984.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, D.C. 20006, submitted on June 14, 1984, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Parts VII and VIII of Schedule D of the NASD's By-Laws regarding NASDAQ Complaints. The proposal would amend Part VII to raise the fine ceiling that a Trading Committee may impose for violations of Schedule D from $5,000 to $15,000 per violation. The proposal further would amend Part VIII, regarding the NASDAQ Summary Complaint Procedure, to raise the fine ceiling from $1,000 to $2,500. The NASD believes that these fine ceilings should be raised to bring them into conformance with the fine ceilings for violations of the Rules of Fair Practice.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 21111, June 28, 1984) and by publication in the **Federal Register** (49 FR 27866, July 6, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

[1] *See* SR-NASD-84-7, Securities Exchange Act Release No. 20909 (April 30, 1984), 49 FR 19425 (May 7, 1984) and SR-NASD-84-11, Securities Exchange Act Release No. 21124 (July 9, 1984), 49 FR 28798 (July 16, 1984) (approval orders).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-21183 Filed 8-8-84; 8:45 am]

BILLING CODE 8010-01-M

[SR-NASD-84-12; Release No. 21202]

Self-Regulatory Organization; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

August 3, 1984.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, submitted on June 12, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to permit NASD members to aggregate or "bunch" several trades in National Market System ("NMS") Securities of less than 10,000 shares into one transaction report. The rule change also permits members to bunch transactions that have been initiated by the reporting member if executed at the same price and reported within 90 seconds of the initial bunched trade.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 21104 published in the **Federal Register** (49 FR 27230, July 2, 1984). No comments were received with respect to the proposed rule filing.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

[1] The National Security Traders Association ("NSTA"), however, in its comment letter on the rulemaking proposal to change the NMS Securities designation criteria (Securities Exchange Act Release No. 20902 (April 30, 1984), 49 FR 19314), stated that "[l]ast sale reporting is now functioning smoothly and efficiently. This process will be made ever more efficient with much greater capacity when the proposal to bunch trade reports under certain circumstances and SOES comes on line. These two events would significantly reduce a firm's trade reporting burden." Letter to George A. Fitzsimmons, Secretary, SEC, from Morton N. Weiss, President, NSTA, dated June 14, 1984.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-21188 Filed 8-8-84; 8:45 am]

BILLING CODE 8010-01-M

[SR-PSE-84-14; Release No. 21206]

Self-Regulatory Organization; Pacific Stock Exchange, Inc.; Filing and Order Granting Accelerated, Partial Approval of Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 31, 1984, the Pacific Stock Exchange, Inc. ("PSE"), 618 South Spring Street, Los Angeles, CA 90014, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The PSE is proposing to amend two of its stated policies and practices pertaining to its securities communication order routing and execution system ("SCOREX"). As described in Rule III, Section 12(a) of the PSE rules, the SCOREX system currently is available to all member organizations and provides automatic executions of market orders up to 599 shares at the best available price represented by all Intermarket Trading System ("ITS") participants. The PSE is proposing to increase the size of market orders which may be automatically executed in the SCOREX system from 599 to 1,099 shares. The PSE states in its filing that proposed amendments will not affect the current PSE policy permitting limit orders of up to 300 shares to be accepted by a specialist for automatic execution.

SCOREX orders are generally transmitted directly from a member firm to the Exchange computer system and displayed on the appropriate specialist's CRT screen.[1] Round-lot market orders currently received after the primary market opening are displayed on the appropriate specialist's screen, identifying the name of the member firm entering the order, whether the order is a buy or sell, the number of shares represented by the order, the stock symbol, and the price at which SCOREX will execute the order should the specialist take no action within thirty seconds. The PSE is proposing to

[1] An order received before the opening of trading in the security on the primary market is recorded on an adjacent printer.

decrease the time during which the specialist may remove the order from the system for manual execution from the current thirty second exposure time to fifteen seconds. In addition, the Exchange has stated that if a specialist elects to remove an order from the system for manual execution, the specialist will be obligated, as is currently the practice, to provide a price which is at least as good as the price assigned by the system at the time the order is removed.

In its filing, the Exchange has stated that the proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act") in that it will facilitate transactions in securities traded on the PSE.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR–PSE–84–14.[2]

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

The Commission finds good cause for approving the portion of the proposed rule change relating to the increase in the size of market orders which may be automatically executed on the SCOREX system, prior to the thirtieth day after the date of publication of notice of filing. The PSE is currently prepared to implement enhancements to permit the increase in size of executable market orders through SCOREX. In addition, small order execution systems of the other exchanges currently provide for executions of market orders up to 1099 shares.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the portion of the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–21189 Filed 8–8–84; 8:45 am]

BILLING CODE 8010–01–M

[2] In this release, the Commission is approving on an accelerated basis only that portion of the proposed rule changes relating to the increase in size of market orders that may be automatically executed through the SCOREX system. The Commission takes no action in this release with respect to PSE's proposed decrease in order exposure time from thirty to fifteen seconds.

The PSE's filing requested summary effectiveness of the proposed rule changes pursuant to Section 19(b)(3)(A) of the Act. The Commission, however, is considering the proposed changes under Section 19(b)(2) notice and comment procedures. *See* letter from Jim Gallagher, President, PSE, to Richard T. Chase, Assistant Director, Division of Market Regulation, SEC, dated July 30, 1984.

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

August 3, 1984.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12 (f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the common stock of:

Home Federal Savings and Loan Association

Common Stock, 1¢ Par Value (File No. 7–7750)

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 24, 1984 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–21188 Filed 8–8–84; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2163]

Declaration of Disaster Loan Area; Colorado

Delta and Eagle Counties and the adjacent Counties of Gunnison, Montrose, Mesa, Routt, and Garfield in the State of Colorado constitute a disaster loan area because of damage from flooding, erosion, and mudslide which occurred on May 20, 1984, through June 15, 1984. Applications for loans for physical damage may be filed until the close of business on October 4, 1984, and for economic injury until May 3, 1985, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Sacramento, CA 95825.
or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 216306 for physical damage and for economic injury the number is 619900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 3, 1984.

Rene Castillo,

Acting Administrator.

[FR Doc. 84–21199 Filed 8–8–84; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2158; Amdt. No. 2]

Nebraska

The above numbered declaration (49 FR 28500) and Amendment #1 (49 FR 30391) are amended in accordance with the amendment to the President's declaration of July 3, 1984, to include Howard County in the State of Nebraska as a result of damage from tornadoes, severe storms, and flooding beginning on or about June 11, 1984. All

other information remains the same, i.e., the termination date for filing applications for physical damage is the close of business on September 4, 1984, and for economic injury until the close of business on April 3, 1985.

(Catalog of Federal Domestic Assistance Programs No. 59002 and 59008)

Dated: July 23, 1984.

Robert L. Belloni,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-21196 Filed 8-8-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0227

Texas State Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On February 7, 1984, a notice was published in the **Federal Register** (Vol. 49, No. 26), stating that Texas State Capital Corporation, located at 900 Austin Avenue, Georgetown, Texas 78626, had file an application with the Small Business Administration pursuant to 13 CFR 107.102(1984), for a license as a small business investment company under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on February 22, 1984, and no significant comments were received.

Notice is hereby given that considering the application and other pertinent information, SBA has issued License No. 06/06-0227 to Texas State Capital Corporation.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 2, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-21197 Filed 8-8-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 910]

Amendment of Public Notices on Maritime Boundaries and Fisheries Conservation Zone

SUMMARY: The Department of State announces amendments to Public Notices previously issued by the Department. The text below shall be appended to footnote 1 of Public Notice 506, 41 FR 48619 at 48620 (1976), and footnote 1 shall be deemed to apply also to the coordinates describing the boundary in Dixon Entrance. The text shall also be appended to footnote 2 of Public Notice 536, 42 FR 12937 at 12940 (1977), and footnote 2 shall be deemed to apply also to paragraph 3 of the description of the U.S. Pacific Coast at 42 FR 12938.

"Where the claimed boundaries published by the United States and Canada leave an unclaimed area within Dixon Entrance, the United States will exercise its fishery management jurisdiction to the Canadian claimed line where that line is situated southward of the United States claimed line, until such time as a permanent maritime boundary with Canada is established in Dixon Entrance."

Dated: August 1, 1984

Davis R. Robinson,

Legal Adviser.

[FR Doc. 84-21085 Filed 8-8-84; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice CM-8/755]

National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 6, 1984 starting at 10:00 a.m. in Room 2925, Department of State, 2201 C Street, N.W., Washington, D.C. If a further meeting of this series is required, it will be held on September 27 starting at 10:00 a.m., also in Room 2925, Department of State.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration.

The National Committee will continue it examination of issues related to the upcoming VIIIth CCITT Plenary Assembly now scheduled for October 8-19, 1984 in Malaga-Torremolinos, Spain. The Committee will receive and discuss the reports of the various ad hoc groups which were established at previous meetings to advise the Committee on issues relating to the upcoming Plenary Assembly such as election of international Study Group chairmen/vice chairmen; review the CCITT Study Group structure; develop positions with regard to the World Administrative Telegraph and Telephone Conference; examine available CCITT Plenary contributions; review the new Study Group Questions, etc. It is requested that all U.S. and international CCITT chairmen and vice chairmen be in attendance.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to the meeting, persons who plan to attend, so advise Mr. Earl Barbely, Department of State; telephone (202) 632-3405. All attendees must use the C Street entrance to the building.

Dated: July 27, 1984.

Earl S. Barbely,

Director, Office of International Communications Policy.

[FR Doc. 84-21099 Filed 8-8-84; 8:45 am]

BILLING CODE 4710-07-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments; Certain Plastic Food Storage Containers

On July 13, 1984, the United States International Trade Commission referred to the President for review its determination that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, and in the sale, of certain plastic food storage containers because of trademark infringement, false designation of source, false advertising, and passing off. The Commission found that these unfair methods of competition and unfair acts injured or tended to injure substantially an efficiently and economically operated United States industry. The Commission directed the U.S. Customs Service to exclude from entry into the United States any of respondents' packaging bearing infringing marks. The Commission also ordered respondents to cease and desist using the complainant's trademarks on their packaging, using the trademarks in advertising, claiming their products as interchangeable with complainant's and encouraging others to use the trademarks or claim interchangeability.

Under section 337(g), the President, for policy reasons, may disapprove the Commission's determination within sixty days following receipt of the determination and record. If disapproved by the President, the determination, and any order issued under its authority, would be without force or effect. The President also may approve the determination, making it, and any order issued under its authority, final on the date the Commission receives notice. The determination and related orders become final automatically following the sixty day review period, if the President has not disapproved.

Interested parties may submit comments concerning foreign or domestic policy issues that should be considered by the President in making his decision regarding this case. Parties commenting on domestic policy issues should refer to the portion of the Commission's record related to that issue. Parties should provide a rationale if the domestic policy issue was not raised before the Commission.

Comments may not exceed 15 letter-sized pages, including attachments. Twenty copies of the submission must be provided. Comments must be delivered by the close of business, Friday, August 24, 1984, to the Secretary, Trade Policy Staff Committee, 600 17th Street, N.W., Washington, D.C. 20506. For further information, call Alice Zalik (202) 395-3432.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 84-21094 Filed 8-8-84; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. IP84-10; Notice 1]

Grumman Allied Industries, Inc.; Receipt of Petition for Inconsequential Noncompliance

Grumman Olson Division, Sturgis, Michigan, a division of Grumman Allied Industries, Inc., 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 571.101, Motor Vehicle Safety Standard No. 101, *Controls and Displays*. The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

The notice of receipt of a petition is published under section 157 of the Act (15 U.S.C. 1417) and does not represent any agency decision or exercise of judgment concerning the merits of the petition.

Paragraph S5.3.1 of Standard No. 101 requires that the identification of certain controls be capable of being illuminated when the headlamps are activated. Grumman Olson has furnished identification in the form of both the required symbol and the optional wording but has reported that only the optional wording is capable of illumination. This condition is said to exist on 188 walk-in parcel delivery vans manufactured in April and May 1984.

Petitioner argues that the noncompliance is inconsequential because all the vans are owned by a single company with trained operators, who speak English and understand the illuminated wording, and that many of the controls are located as close as possible to the device it operates to minimize confusion and simplify the panel area. Finally, the vehicles comply with requirements in effect before September 1, 1980.

Interested persons are invited to submit written data, views and arguments on the petition of Grumman Olson described above. Comments should refer to the docket number and be submitted to Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 10, 1984.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on August 3, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-21180 Filed 8-8-84; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular Public Debt Series—No. 22-84]

Treasury Notes of August 15, 1987; Series P-1987

August 2, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $6,500,000,000 of United States securities, designated Treasury Notes of August 15, 1987, Series P-1987 (CUSIP No. 912827 RB 0). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate or the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated August 15, 1984, and will bear interest from that date, payable on a semiannual basis on February 15, 1985, and each subsequent 6 months on August 15 and February 15 until the principal becomes payable. They will mature August 15, 1987, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $5,000, $10,000,

$100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, August 7, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, August 6, 1984, and received no later than Wednesday, August 15, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10 %. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in section 3.5 must be made or completed on or before Wednesday, August 15, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, August 13, 1984. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, August 15, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (and individual's social security number or an employer identification number) is not furnished. When payment is made in

securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and form as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securtites have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issued such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 84-21210 Filed 8-7-84; 10:51 am]

BILLING CODE 4810-40-M

[Department Circular; Public Debt Series—No. 23-84]

Treasury Notes of August 15, 1994; Series B-1994

August 2, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $5,500,000,000 of United States securities, designated Treasury Notes of August 15, 1994, Series B-1994 (CUSIP No. 912827 RC 8). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated August 15, 1984, and will bear interest from that date, payable on a semiannual basis on February 15, 1985, and each subsequent 6 months on August 15 and February 15 until the principal becomes payable. They will mature August 15, 1994, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, August 8, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 7, 1984, and received no later than Wednesday, August 15, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, not make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above, Federally-insured savings and loan associations; States, and their

political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and lowest accepted price above the original issue discount limit of 97.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection or their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5. must be made or completed on or before Wednesday, August 15, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, August 13, 1984. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, August 15, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 84-21211 Filed 8-7-84; 10:51 am]

BILLING CODE 4810-40-M

[Department Circular; Public Debt Series—No. 24-84]

Treasury Bonds of 2009-2014

August 2, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $4,750,000,000 of United States securities, designated Treasury Bonds of 2009-2014 (CUSIP No. 912810 DL 9). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated August 15, 1984, and will bear interest from that date, payable on a semiannual basis on February 15, 1985, and each subsequent 6 months on August 15 and February 15 until the principal becomes payable. They will mature August 15, 2014, but may be redeemed at the option of the United States on and after August 15, 2009, in whole or in part, at par and accrued interest on any interest payment date or dates, on 4 months' notice of call given in such manner as the Secretary of the Treasury shall prescribe. In case of partial call, the securities to be redeemed will be determined by such method as may be prescribed by the Secretary of the Treasury. Interest on the securities called for redemption shall cease on the date of redemption specified in the notice of call. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale of Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving Time, Thursday, August 9, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, August 8, 1984, and received no later than Wednesday, August 15, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield (to maturity) with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield (to maturity) bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield (to maturity) of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield Tenders received from Government accounts and Federal Reserve Banks

will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in section 3.5. must be made or completed on or before Wednesday, August 15, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, August 13, 1984. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, August 15, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 84-21212 Filed 8-7-84; 10:51 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions, a revision and a reinstatement and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 3, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extensions

1. Department of Medicine and Surgery
2. Claim for Payment of Cost of Unauthorized Medical Services
3. VA Form 10-583
4. Recordkeeping Requirement
5. Individuals or households, Businesses or other for-profit; Non-profit institutions
6. 63,350 responses
7. 15,837 hours
8. Not applicable

Extensions

1. Office of Construction
2. Schedule of Costs
3. None
4. Schedule submitted at contract award
5. Businesses or other for-profit; Small businesses or organizations

6. 230 responses
7. 1,840 hours
8. Not applicable

1. Department of Veterans Benefits
2. Request for Approval of School Attendance
3. VA Forms 21-674 and 21-674c
4. On occasion
5. Individuals or households
6. 135,000 responses
7. 33,750 hours
8. Not applicable

1. Department of Veterans Benefits
2. Application for Reimbursement of Headstone or Marker Expense
3. VA Form 21-8834
4. On occasion
5. Individuals or households
6. 39,600 responses
7. 6,600 hours
8. Not applicable

1. Department of Veterans Benefits
2. Request for Employment Information in Connection with Claim for Disability Benefits
3. VA Form Letter 21-4192
4. On occasion
5. Businesses or other for-profit
6. 65,000 responses
7. 16,250 hours
8. Not applicable

1. Department of Veterans Benefits
2. Veteran's Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant
3. VA Form 21-4555
4. On occasion
5. Individuals or households
6. 4,800 responses
7. 800 hours
8. Not applicable

Revision

1. Department of Veterans Benefits
2. Application for Benefits Under the Provisions of Section 156, Public Law 97-377
3. VA Form 21-8924
4. On occasion
5. Individuals or households
6. 12,000 responses
7. 4,000 hours
8. Not applicable

[FR Doc. 84-21124 Filed 8-8-84; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 155
Thursday, August 9, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Civil Aeronautics Board	1–3
Federal Deposit Insurance Corporation	4–6
Federal Election Commission	7
Federal Maritime Commission	8
Securities and Exchange Commission	9

1

CIVIL AERONAUTICS BOARD

Short Notice Addition of Item, to the August 9, 1984 Board Meeting

TIME AND DATE: 10:00 a.m., August 9, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 4a. Docket 41244, *First American Bank of Virginia Enforcement Proceeding*, Petition of Enforcement Division for Review. (Memo 2071–A, OGC).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673–5068.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-21293 Filed 8-7-84; 3:50 pm]

BILLING CODE 6320-01-M

2

CIVIL AERONAUTICS BOARD

TIME AND DATE: 10:00 a.m., August 9, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of Items Adopted by Notation.
2. Docket 42199, Petition for Emergency Rule and Docket 41875, Enforcement Complaint Concerning Sharing of Airline Designator Codes. Request for Instructions. (BIA)
3. Docket 40269, *Visit USA Fare/Export Inland Contract Rate Investigation;* Opinion and Order on Discretionary Review. (Memo 2443, OGC)
4. Docket 42060, *Complaint of Japan Air Lines Company, Ltd. v. United Air Lines, Inc.* (Memo 2417–A, OGC)
5. Docket 41987, *Las Vegas-Alberta Service Case.* (Memo 2210–A, OGC)
6. Docket 32484, Recovery of the federal income tax allowances paid carriers under Class Rate IX of the Local Service Class Subsidy Rate. (Memo 1928–A, BDA, OCCCA, OGC, OC)
7. Discussion of profit elements for 419 Subsidy Rates. (BDA, OGC)
8. Docket 40992, Essential air service for Brownwood, Texas. (BDA, OCCCA)
9. Docket 39162, Essential air service for Beloit/Janesville, Wisconsin. (BDA, OCCCA, OC)
10. Docket 42050, Agreement CAB 1175A–49, Agreements adopted by the International Air Transport Association relating to the Traffic Conferences. (Memo 2442, BDA, OGC)
11. Docket 40960, Intercarrier fare agreement establishing currency adjustment factors applicable to sales of one-way passenger transporation from France. (Memo 1511–U, BIA)
12. Docket 42217, Joint Motion of the City of St. Louis and Trans World Airlines, Inc. for a designation under the U.S.–U.K. Air Services Agreement. (BIA)
13. Docket 41171, Application of Aeronaves de Puerto Rico for certificate under section 401 to provide scheduled combination air service between New york, San Juan/Borinquen, Puerto Rico, and Santo Domingo/Puerto Plata, Dominican Republic. (Memo 2189–A, BIA)
14. Report on Dominican Republic. (BIA)
15. Discussion of Upcoming U.K. Consultations. (BIA)
16. Discussion on Upcoming Japan Consultations. (BIA)
17. Discussion on Peru. (BIA)
18. Discussion on Canada. (BIA)

STATUS: 1–13 Open, 14–18 Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673–5068.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-21294 Filed 8-7-84; 3:50 pm]

BILLING CODE 6320-01-M

3

CIVIL AERONAUTICS BOARD

Notice of Addition and Closure of Item to the Closed Session of the August 2, 1984 Meeting

TIME AND DATE: 10:00 a.m., August 2, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 26. Negotiations with Dominican Republic. (BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673–5068.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-21295 Filed 8-7-84; 3:50 pm]

BILLING CODE 6320-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, August 13, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Household Aurora Industrial Bank, an operating noninsured industrial bank located at 15335 East Colfax Avenue, Aurora, Colorado.

Household Weld County Industrial Bank, an operating noninsured industrial bank located at 1111 7th Avenue, Greeley, Colorado.

Household Longmont Industrial Bank, an operating noninsured industrial bank located at 2130 North Main Street, Longmont, Colorado.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: Metropolitan Bank and Trust Company, Tampa, Florida

Memorandum and Resolution re: Seminole State National Bank, Seminole, Texas

Memorandum and resolution re: Proposed amendments to Parts 332 and 337 of the Corporation's rules and regulations, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law," and "Unsafe and Unsound Banking Practices," respectively, which would allow banks:

(1) To issue check guaranty cards, and (2) to sponsor customers in credit card agreements with other banks.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Proposed amendments to Parts 303 and 308 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," and "Rules of Practice and Procedures," respectively, which would: (1) Permit establishment of additional remote service facilities and relocation of existing remote service facilities after notice to the appropriate FDIC regional director, provided that the regional director does not object to the proposal; (2) expand the Director of the Division of Bank Supervision's and regional directors' delegated authority to act on additional remote service facilities applications and remote service facilities relocation applications; (3) provide that the regional director (and, in certain instances, the General Counsel) may grant or deny petitions for reconsideration of a previously denied application, petition, or request; (4) specify the content of petitions for reconsideration; (5) specify who within the FDIC will reconsider denied applications, petitions, or requests; and (6) shorten the time period during which comments on merger applications may be filed from 45 days to 30 days.

Memorandum re: Approval of funding and award of contract for new FDIC payroll system.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: August 6, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-21226 Filed 8-7-84; 1:34 pm]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, August 6, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendation regarding a proposal for financial assistance to facilitate a voluntary merger of savings banks: Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Application of Main Bank of Chicago, Chicago, Illinois, for consent to merge, under its charter and title, with Wheeling Trust and Savings Bank, Wheeling, Illinois, and for consent to establish the main office and sole facility of Wheeling Trust and Savings Bank as branches of the resultant bank, and to redesignate the main office of the resultant bank to the present main office location of the Wheeling Trust and Savings Bank.

Recommendation regarding the Corporation's assistance agreement involving an insured bank pursuant to Section 13 of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 6, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-21228 Filed 8-7-84; 11:41 am]

BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, August 13, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance and for consent to exercise limited trust powers:

Merrill Lynch Bank and Trust Company, a proposed new bank to be located at Merrill Lynch Corporate Campus, Princeton Forrestal Center, Plainsboro Township, New Jersey.

Notice of acquisition of control:

Name and location of bank and name of acquiring party authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases,

reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6), of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meetings will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: August 6, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-21229 Filed 8-7-84; 11:41 am]

BILLING CODE 6714-01-M

7

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 14, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, August 16, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for Candidates to receive Presidential Primary Matching Funds
Draft Advisory Opinion #1984-32
David A. Myers, Pease for Congress Committee
Draft Advisory Opinion #1984-34
Clarice Smith on behalf of the Jackie McGregor for Congress
Draft Advisory Opinion #1984-38
Pat Forciea, Campaign Manager, Oberstar U.S. Congress 1984
Review of 11 C.F.R. 9007 and 9038
Final Rule and Transmittal to Congress
Non-discrimination on the basis of handicap
Final Rule and Transmittal to Congress
Finance Committee Report
FY '86 final budget request
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-21265 Filed 8-7-84; 2:22 pm]

BILLING CODE 6715-01-M

8

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—August 15, 1984.

PLACE: Hearing Room One—1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Docket No. 84-19: Licensing of Ocean Freight Forwarders—Consideration of comments submitted in response to notice of interim rules and request for comments and proposed final rules.

2. Freight Forwarder Agreements: Consideration of proposed rule that would reinstate the recently removed requirement that ocean freight forwarders file their agreements with the Commission.

Portion closed to the public:

1. Agreement No. 204-010066-005: Extension of the U.S. Atlantic and Pacific/Colombia Equal Access Agreement.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Assistant Secretary, (202) 523-5725.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 84-21271 Filed 8-7-84; 2:51 pm]

BILLING CODE 6730-01-M

9

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the securities and Exchange Commission will hold the following meetings during the week of August 13, 1984, at 450 Fifth Street, NW., Washington, D.C.

A closed meeting will be held on Tuesday, August 14, 1984, at 10.:00 a.m. Open meetings will be held on Wednesday, August 15, 1984, at 2:30 p.m. and, as previously announced in 49 FR 31192, on Friday, August 17, 1984, at 10:00 a.m., in room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9) (A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Cox and Peters voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 14, 1984, at 10:00 a.m., will be be:

Formal orders of investigation.
Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Litigation matter.
Consideration of amicus participation.
Opinions.

The subject matter of the open meeting scheduled for Wednesday, August 15, 1984, at 2:30 p.m., in Room 1C30, will be:

1. Consideration of an application by Jurika & Voyles ("Applicant"), a partnership to be registered under the Investment Advisers Act of 1940 ("Act"), requesting an order pursuant to Section 206A of the Act (1) exempting the performance fee arrangements between Applicant and certain limited partnerships from the prohibitions of Section 205(1) of the Act and (2) granting certain additional, ancillary relief. For further information, please contact Lewis Reich at (202) 272-3033.

2. Consideration of what action, if any, the Commission should take with respect to the reopening of trading in a security after the primary market for that security halts trading due to pending news. For futher information, please contact Michael Simon at (202) 272-2405.

At times changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Wescoe at (202) 272-2092

George A. Fitzsimmons

Secretary.

August 6, 1984.

[FR Doc. 84-21200 Filed 8-7-84 8:47 am]

BILLING CODE 8010-0-M

federal register

Thursday
August 9, 1984

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

Manufactured Home Construction and Safety Standards; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

[Docket No. R-84-1068; FR 1637]

Manufactured Home Construction and Safety Standards

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: HUD is revising its Manufactured Home Construction and Safety Standards to improve the safety and quality of manufactured homes. Standards limiting permissible amounts of formaldehyde emissions from plywood and particleboard are being added. Standards relating to fire safety are being revised.

EFFECTIVE DATE: October 29, 1984.

FOR FURTHER INFORMATION CONTACT: Richard A. Mendlen, Manufactured Housing Standards Division, Office of Manufactured Housing and Regulatory Functions, Room 9154, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755-5798. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

A. General

The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401-5427 (Act), authorizes the Secretary of Housing and Urban Development (Secretary) to establish and amend the Manufactured Home Construction and Safety Standards, 24 CFR Part 3280 (Standards). The stated purposes of the Act are "to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents and to improve the quality and durability of manufactured homes." Changes to the fire safety standards and the addition of standards on formaldehyde emissions from particleboard and plywood are being adopted in accordance with these purposes. In accordance with the Act, these rules will take effect 180 days from the date of this publication. 42 U.S.C. 5403(c).

B. Advance Notices of Proposed Rulemaking

The Department published an Advance Notice of Proposed Rulemaking (ANPR) on June 7, 1979, soliciting comment concerning revision of the Standards (44 FR 32711). Generally, the industry responded that cost effectiveness and clarity of objectives should be the Department's primary concerns in evaluating the need for change in the safety and durability areas cited in the ANPR. Consumers and associated groups expressed the view that manufactured homes lacked the qualities necessary to make the homes as durable and safe as they desire.

Another ANPR, directed solely at the issue of formaldehyde emissions in manufactured homes, was published on August 28, 1981. That ANPR solicited comment on 21 different aspects of formaldehyde outgassing, including adverse health effects, test methods, and the economic impact of regulation. Comments were submitted by individual consumers and consumer organizations, manufactured home builders, wood product producers, trade associations, government agencies, universities, and the chemical industry. The major issues raised in the comments included the need for a formaldehyde standard and whether a standard should regulate the amount of formaldehyde in the total home environment or the amount emitted from the major sources of formaldehyde in the home. Other issues addressed in the comments included the adverse health effects associated with exposure to formaldehyde, sensitization, test methods, regulatory alternatives, and warning notices.

C. Proposed Rule

On August 16, 1983, the Department published a proposed rule revising all Subparts of the Standards (48 FR 37136). The comment period was held open until 30 days after a Cost Impact Analysis was made available for public inspection. On March 9, 1984, a Notice of the availability of the Coast Impact Analysis was published (49 FR 8946). Accordingly, the comment period closed on April 9, 1984. The Department received 253 comments, many of them quite extensive. To expedite the implementation of those standards which would have the greatest effect on public health and safety, the Department determined that the regulations concerning fire safety and formaldehyde should be separated from the other proposed revisions and published for effect as soon as possible. The comments on the fire safety and formaldehyde standards are discussed below. The Department is continuing its review of the remaining comments and will take appropriate action on the other proposed standards when the analysis of the comments is complete.

D. The National Manufactured Home Advisory Council

The Act provides for a National Manufactured Home Advisory Council comprised of 24 members divided equally among the industry, government agencies, and consumer groups. The Act directs the Secretary to consult with the Advisory Council, to the extent feasible, before establishing, amending, or revoking any Standard (42 U.S.C. 5404).

In September 1983, the Council was convened to review the proposed revisions which had been published in August. Subcommittees of the Council met in workshop sessions for three days and then presented reports which were voted upon by the full Council. Several changes were made to the rule based upon the Council's recommendations. Copies of the Advisory Council Subcommittee reports are part of the Department's rulemaking record and are available for public inspection.

II. Formaldehyde Regulation

A. General

The Department has concluded that a Federal Standard designed to limit formaldehyde emissions in manufactured homes should be adopted. The formaldehyde rule is a product standard which limits the level of formaldehyde emitted from particleboard floor decking and cabinetry and from interior plywood installed in manufactured homes. The rule requires that formaldehyde emissions not exceed 0.2 parts per million (ppm) from plywood and 0.3 ppm from particleboard as measured by a specified air chamber test. Generally, manufactured home manufacturers must use only particleboard and plywood that comply with these emission standards and are certified as meeting the standards.

B. Regulatory Alternatives

There were a substantial number of comments concerning whether the HUD formaldehyde standard should limit formaldehyde emissions from specific products installed in the home (product standard) or the overall amount of formaldehyde in the home environment (ambient standard). In choosing a product standard, the Department considered effectiveness, quality control, and ease of enforcement.

1. Ambient Standard

Many commenters, especially State agencies, endorsed the use of an ambient standard that would limit the level of formaldehyde in the home despite variations in temperature, humidity, ventilation, and living habits. These sources stated that an ambient standard would ensure the maintenance of a safe level of formaldehyde in the home by limiting outgassing from all sources of formaldehyde used in the home's construction. Some of the commenters expressed concern that a product standard would protect home manufacturers from claims regarding homes that have high levels of formaldehyde but that are built with products certified as meeting a product standard. Other commenters indicated that a product standard would unfairly single out the wood products industry, which is not responsible for the ultimate construction of the home.

According to some of these commenters, an ambient standard would not be difficult to enforce. They stated that there are ambient test methods available which are accurate and inexpensive. One such method cited was a formaldehyde dosimeter used by several States and Canada. Proper ambient test procedures, stated these sources, can eliminate homeowner contribution and compensate for differences in temperature and humidity. Some suggested that, to enforce the standard, ambient testing could be done on prototype or randomly selected homes.

Of those commenters urging the adoption of an ambient standard, levels from 0.1 ppm to 0.4 ppm were suggested. Many commenters indicated that a 0.4 ppm standard could be met using currently available technology. Some sources recommended that a 0.4 ppm standard be adopted now and that lower levels be designated to take effect over the next few years, thus gradually phasing in a 0.1 ppm standard. Others argued that, to protect the health of manufactured home occupants, no greater than a 0.1 ppm standard should be adopted. (Health effects associated with formaldehyde exposure are discussed below.)

Finally, several commenters suggested that an ambient standard could be used in conjunction with a product standard. These commenters stated that an end result specification is necessary as a cross-check to any product standard.

2. Product Standard

Many commenters, especially those from the manufactured home industry, endorsed the use of a product standard. These commenters cited the unreliability of ambient measurements because of differences in temperature, humidity, ventilation, and lifestyle of the home occupants. Consumers, they said, could bring other formaldehyde contributors into the home over which the manufacturer has no control. Several of these sources also cited the Department's research study conducted by Clayton Environmental Consultants, the National Particleboard Association, and the Hardwood Plywood Manufacturers Association ("Evaluation of the Relationship Between Formaldehyde Emissions From Particleboard Mobile Home Decking and Hardwood Plywood Wall Paneling in Experimental Mobile Homes" (March 1982)). This study determined that a wood product standard can effectively reduce the amount of formaldehyde in the home environment. Finally, these commenters also stated that ambient test methods are more costly and less reliable than test methods.

3. Selection of a Product Standard

The Department has decided to adopt product standards. The Clayton study cited above establishes that a product standard can be effective and that product test values reasonably correlate to formaldehyde levels in homes. Products can be tested easily under standardized conditions, which will avoid the problem of compensating for variations in home temperature and humidity levels. Also, a product standard has the advantage of allowing for early detection of a potential formaldehyde problem. Unlike the violation of an ambient standard, which can be established only after a manufactured home has been completely assembled, violation of a wood product standard can be discovered before the wood is shipped by its supplier or installed in a home. Therefore, based on its effectiveness, the availability of reliable test methods, and the potential to prevent formaldehyde problems before the homes are sold, the Department has concluded that a product standard is appropriate.

The standards will cover particleboard and plywood, two of the major emitters of formaldehyde in manufactured homes. HUD's objective in implementing these standards is to reduce the level of formaldehyde within the home environment. It is HUD's intention that these standards preempt State and local formaldehyde standards in accordance with the Act (42 U.S.C. 5403(d)).

C. The Adopted Product Standards (§ 3280.309(a))

The formaldehyde standards will limit emissions from plywood and particleboard produced with resins or surface finishes containing formaldehyde. The standards do not apply to wood products that cannot be characterized as plywood or particleboard, most notably medium density fiberboard (MDF). Rulemaking is being initiated to determine the extent to which MDF and similar products contribute to formaldehyde levels in manufactured homes and how these products should be regulated, if at all.

1. Plywood Standard

The proposed rule would have prohibited the use of plywood that emits more than 0.2 ppm formaldehyde when tested in a large air chamber in manufactured homes. A significant number of commenters from the wood products industry urged that the permissible limit be raised from 0.2 to 0.25 ppm. These commenters said that 0.25 ppm reflects current technology and provides a sufficiently wide margin to meet the Department's anticipated ambient result. (See Targeted Ambient Level, below.) Further, they said that a 0.2 ppm standard is too restrictive because it would require too much costly retesting under the testing protocol proposed. Several of these commenters stated that an appropriate means of changing the proposed plywood standard to 0.25 ppm and of regulating formaldehyde in general would be to incorporate by reference the Hardwood Plywood Manufacturers Association's voluntary standard.

Other representatives from both the wood products and manufactured home industries supported the 0.2 ppm level and said that it is being met at this time. A major manufacturer of manufactured homes stated that it was certain, based on information obtained from its wood product suppliers, that the proposed level was being achieved. One commenter stated that plywood that emits at only 0.15 ppm formaldehyde is being produced.

A number of consumers and academic sources stated that it was imperative that the plywood standard be lowered. These commenters expressed the opinion that the industry could produce plywood that would emit at levels below 0.2 ppm and stated that a lower standard is necessary to protect the health of manufactured home occupants.

The Department has decided to adopt a 0.2 ppm plywood standard. The 0.2 ppm standard is reasonable, can be met

consistently in production, and gives a margin for error in achieving the 0.4 ppm targeted ambient level in the home. The Department does not have adequate information or data upon which to base a decision to lower the plywood standard below 0.2 ppm. The proposed testing procedures have been revised to avoid the high cost of retesting that may be necessary to meet the 0.2 ppm standard. (See Testing Requirements, below.)

2. Particleboard Standard

The proposed rule would have prohibited the use of particleboard in manufactured homes that emits more than 0.3 ppm formaldehyde when tested in a large air chamber. Virtually all of the industry representatives who commented on the particleboard standard approved the 0.3 ppm level. Generally, these commenters stated that the technology to consistently produce particleboard that meets this standard is currently available. Recently, the National Particleboard Association (NPA) adopted a voluntary standard of 0.3 ppm. According to the NPA, major producers of particleboard already comply with the 0.3 ppm standard.

The response from consumers and several other sources on the particleboard standard was much like the response to the plywood standard. Basically, these commenters objected to the 0.3 ppm level as being too high. Some consumers and representatives from the wood products industry stated that the industry could produce lower-emitting particleboard at this time. A few consumers felt that urea-formaldehyde-based particleboard was so significant an emitter that it should be banned from use in manufactured homes.

The Department has decided to adopt a 0.3 ppm particleboard standard. This level was endorsed by the Advisory Council when it met in September 1983. Further, this standard can consistently be met in the production of particleboard. Finally, the Department does not have sufficient verifiable information or data to justify lowering the particleboard standard below this level.

3. Phenol-Formaldehyde Resin Exemption

The proposed formaldehyde standard would have covered all particleboard and plywood which contain formaldehyde.

Most of the plywood and particleboard used in manufactured homes is produced with urea-formaldehyde resins. Manufacturers of phenol-formaldehyde-based wood products, which are used in some manufactured homes, objected to the application of the standard to their materials. They submitted information demonstrating that phenol-formaldehyde resin is much more stable than the urea-based resins and that products made with phenol-based resins emit formaldehyde at a much lower rate. The phenol-based products emit such small quantities of formaldehyde that the standards for both plywood and particleboard are met easily. Thus, requiring that these products be tested and certified is not necessary.

Therefore, the Department has decided to exempt products that are formulated exclusively with phenol-formaldehyde resins and surface finishes from the testing and certification provision of the rule.

4. Medium Density Fiberboard (MDF)

The proposed rule did not specifically mention medium density fiberboard or any other formaldehyde-based wood product except plywood and particleboard.

There was some confusion expressed in the comments as to precisely which wood products were to be covered by the proposed rule. One manufacturer of wood products stated that the terms "plywood" and "particleboard" are generic and include medium density fiberboard and other wood products. Other industry sources simply questioned the coverage of the rule and requested clarification. Still other commenters assumed that MDF was not covered and recommended that HUD initiate rulemaking on this product.

The proposed rule would have covered all forms of plywood and particleboard including waferboard, flakeboard, and chipboard. MDF is a product which is not generally accepted by the industry as either plywood or particleboard. Since the publication of the proposed rule, the Department has learned that MDF is used in manufactured homes, particularly in cabinetry, and that it is a high emitter of formaldehyde unless properly sealed. When used unsealed in a manufactured home, MDF could be a major contributor to the home's overall formaldehyde level. Therefore, the Department is preparing an Advance Notice of Proposed Rulemaking (ANPR) on MDF and any other formaldehyde-emitting wood products which are used in manufactured homes and which were not covered by the proposed rule. The ANPR will solicit comment on the identity of such products, the extent to which they emit formaldehyde, and how they could be regulated.

D. Targeted Ambient Level

The Department has concluded that an indoor ambient formaldehyde level of 0.4 ppm provides reasonable protection to manufactured home occupants. The Department has determined that the plywood and particleboard standards will result in indoor ambient formaldehyde levels of not greater than 0.4 ppm when: (1) The indoor temperature does not exceed 77° F; (2) the indoor relative humidity level does not exceed 50%; (3) the home's ventilation rate is at least 0.5 air change per hour (ACH); and (4) there are no other major emitters of formaldehyde, such as MDF, installed in the home.

1. Home Conditions

There was a considerable amount of disagreement in the comments concerning how often the 0.4 ppm level would be exceeded in the home. Many commenters stated that, given the conditions which must exist to achieve a 0.4 ppm ambient level, it is likely that homes constructed with plywood and particleboard that meet the standard will, at times, exceed 0.4 ppm. Some of these commenters said that the 0.4 ppm target would be exceeded quite often, especially in the summer months. One source expressed the opinion that, even if the stated environmental conditions are met, the ambient level in the home will be 0.5 ppm. Still other commenters said that the proposed product standards leave an adequate margin to achieve 0.4 ppm in the home, even if there are other sources of formaldehyde present or if the air exchange rate is less than 0.5 ACH.

(a) *Temperature and humidity conditions.* There was general agreement in the comments that increases in temperature and humidity increase formaldehyde emission rates. This was of particular concern to commenters from the southern States. They stated that 77° F and 50% relative humidity are exceeded often in their States. A major consumer organization reported that these temperature and humidity conditions would be exceeded most often in States with the highest manufactured home populations, citing Florida, Texas, and California specifically. One State claimed that the Department was ignoring its statutory mandate by not considering the geographical location of the regulated homes in developing the formaldehyde rule. (*See* 42 U.S.C. 5403(f)(3).)

The Department realizes that the selected temperature and humidity conditions will not be met in all homes at all times. These conditions are

reasonable, however, and do reflect typical living conditions. The Department does not have sufficient data at this time to substantiate that there is a particular problem in the southern part of the country. Once the formaldehyde rule takes effect, the Department will monitor homes and evaluate complaints to determine whether there is a greater problem in the South and to assess the effectiveness of the standards generally. Further, the health notice which must be posted in all manufactured homes specifically warns purchasers about the effects of heat and humidity on formaldehyde emissions. (See Air Quality Notice, below.)

(b) *Ventilation.* Other commenters concentrated more on the 0.5 ACH condition. The comments demonstrated that, while not as significant as temperature and humidity, reduced air changes also raise the level of formaldehyde in the home. According to some sources, the 0.4 ppm level will not be achieved unless ventilation also is controlled. These commenters stated that the average air exchange rate in manufactured homes is 0.3 ACH with the heating/cooling system operating. One source said that in the spring and fall, when no such system is used, air changes can fall to 0.1 and 0.2 ACH.

The Department does not have adequate information about the effect of ventilation on air quality to require mandatory air change requirements. However, HUD does recognize that, generally, better ventilation results in reduced formaldehyde levels. Therefore, the Department has decided to require that a ventilation improvement option be offered with each manufactured home. (See Ventilation and Other Options, below.)

(c) *Other sources of formaldehyde.* There was some concern expressed in the comments about the introduction of sources of formaldehyde other than plywood and particleboard into the home by either the manufacturer or purchaser. One commenter said that other formaldehyde contributors typically raise the indoor level to over 0.7 ppm. Another commenter stated that the formaldehyde-emitting products brought into the home by the occupants are not a significant problem. This source relied on a widely recognized theory that the highest emitter present in the home is the most significant determinant of the home's overall formaldehyde level and concluded that it is usually the manufacturer who installs the highest formaldehyde emitters in the home.

A related concern expressed in the comments is that the installation of unusually large amounts of plywood and particleboard in the home could cause the ambient response to be higher than 0.4 ppm. According to these sources, by increasing the loading rates of these products in the home, a manufacturer can push the home's formaldehyde level beyond 0.4 ppm but still be in compliance with the HUD standard. One commenter suggested that, to address this problem, the Department regulate the loading rate of plywood and particleboard in manufactured homes.

The Department believes that the product standards of 0.2 ppm and 0.3 ppm for plywood and particleboard, respectively, will themselves, under test conditions, result in emissions of sufficiently less than 0.4 ppm to allow for a certain amount of formaldehyde contribution from other sources. Therefore, even if carpets, drapes, or furniture which contain formaldehyde are installed in the home, the Department believes that the 0.4 ppm target will not be exceeded if the requisite temperature, humidity, and ventilation conditions exist. However, the Department realizes that levels higher than 0.4 ppm will result when other major emitters of formaldehyde that are not covered by the rule, such as MDF, are used in the home. For this reason, HUD is initiating rulemaking to identify these products and to determine how they should be regulated. (See Medium Density Fiberboard, above.) Further, the Department believes that the loading rates of particleboard and plywood do not typically vary enough to affect formaldehyde levels significantly. Again, the margin for error allowed by the product standards is sufficient to permit loading rates greater than usual.

2. Health Effects

There was considerable disagreement in the comments regarding the adequacy of 0.4 ppm to protect manufactured home occupants from discomfort and from acute and chronic health effects. Some commenters stated generally that this level is too high to protect home occupants' health. Others said that there is ample medical and scientific evidence to support the 0.4 ppm level. Several commented that the target 0.4 ppm level is obsolete, pointing out that the Department's product standards do not reduce levels below those voluntarily achieved by the industry.

HUD believes that the product standards will result in a 0.4 ppm indoor level under the specified conditions and that this level, given economic considerations, is reasonable. The Department realizes that this targeted level will not be achieved at all times. However, the currently available medical and scientific evidence does not adequately establish the effect on health benefits of a level below 0.4 ppm. In any event, it is not possible to implement a formaldehyde standard that will protect the entire population.

(a) *Acute health effects and threshold levels.* The extent, intensity, and duration of symptoms caused by exposure to formaldehyde vary, depending on the individual and the level of formaldehyde in the home. Common complaints include eye, nose, and throat irritation, persistent cough, skin irritation, nausea, headache, dizziness, and respiratory distress. The symptoms usually diminish or disappear when the individual leaves the home.

Several commenters stated that the 0.4 ppm target ambient level is too high to protect the majority of manufactured home occupants from odor and irritation. Consumers wrote letters relating their personal experiences with formaldehyde, in some cases attaching letters from physicians and results of tests measuring the levels of formaldehyde in their homes. These letters chronicled the occurrence of acute symptoms at levels as low as 0.15 ppm. A comment from one State agency reported that the agency receives many complaints from people in homes where formaldehyde levels were measured between 0.1 ppm and 0.4 ppm. Another State agency submitted the results of a study it funded that preliminarily analyzed acute symptomatology and found no association with formaldehyde concentrations in indoor air.

Other commenters submitted evidence showing varying degrees of functional disturbance and response to low levels of formaldehyde. Several commenters stated that 20% of the population will experience slight irritation at levels from 0.05 ppm to 0.5 ppm. A major industry trade association said that the irritation threshold is between 0.8 ppm to 1.2 ppm and that the general population will not experience adverse effects from exposure to 0.5 ppm formaldehyde.

The Department has concluded that there is insufficient medical and scientific evidence to substantiate more than minimal health benefits when formaldehyde levels are reduced below 0.4 ppm. Studies of human exposure to formaldehyde still do not conclusively establish whether there is a level of formaldehyde that will not cause acute symptoms. Therefore, HUD continues to rely on the Committee on Toxicology's conclusion that there is no population threshold for the irritant effect of formaldehyde in humans (Report, Committee on Toxicology, National Academy of Sciences, Formaldehyde—

An Assessment of Its Health Effects, NTIS Doc. No. ADA-08785g, April 1980).

(b) *Sensitization and Susceptible Groups.* Exposure to formaldehyde gas causes sensitization in certain individuals. Sensitized persons exhibit allergic reactions when exposed to formaldehyde. Also, certain groups are more susceptible to the acute irritant effects of formaldehyde than the general population. These include persons with a history of allergies or respiratory diseases, elderly persons, and children, especially infants.

Commenters disagreed strongly as to whether formaldehyde gas is a sensitizer and, if so, how many people were likely to become sensitized. One commenter stated that sensitization can occur in 1–5% of the population; another maintained that there is little evidence that exposure to formaldehyde produces any pulmonary sensitization reaction. A few consumers submitted histories of their own or their families' sensitization, including confirmation from their doctors.

Virtually all commenters agreed, however, that certain populations seem to be particularly susceptible to formaldehyde's irritant effects. Several commenters emphasized that the groups that are most sensitive to formaldehyde are those who are most likely to stay in the home for extended periods of time, such as the elderly, the infirm, and infants. One source said that a 0.4 ppm ambient air level will expose these persons to a cumulative formaldehyde exposure in excess of the National Institute for Occupational Safety and Health's recommended occupational exposure of 1.0 ppm per 40-week. Another commenter said that a State has estimated that nearly two million high-risk, particularly susceptible persons now live in manufactured homes.

The Department realizes that there are people who will react adversely to extremely low levels of formaldehyde and who are unusually sensitive to formaldehyde's irritant effects. The Committee on Aldehydes of the National Academy of Sciences stated that 10–12% of the population may have some degree of airway hyperactivity which will result in a more severe response to the effects of formaldehyde exposure. (Formaldehyde and Other Aldehydes, Committee on Aldehydes, Board on Toxicology and Environmental Health Hazards, Assembly of Life Sciences, National Research Council, 1981.) To alert those people who may be sensitive to formaldehyde, the Department is requiring that a health notice be posted in every manfactured home and placed in each home's consumer manual. (See Air Quality Notice, below.)

(c) *Chronic health effects and carcinogenicity.* Respiratory illnesses reported to be caused by chronic formaldehyde exposure include difficulty in breathing and other asthma-like symptoms, persistent cough, and chest congestion. Further, statistically significant incidences of nasal cancer (squamous cell carcinoma) occured in rats exposed to 15.0 ppm formaldehyde gas (Final Report: A Chronic Inhalation of Toxicology Study on Rats and Mice Exposed to Formaldehyde, CIIT/Batelle Laboratories, 1981).

In terms of chronic health effects, the comments primarily focused on the carcinogenic risk posed by exposure to formaldehyde. Generally, the Commenters were divided into those who believe that formaldehyde should be presumed to be a human carcinogen and those who maintain that there are sufficient human epidemiological and animal studies to conclude that formaldehyde presents a cancer risk to humans. A State Attorney General criticized the Department for failing to take a position on this issue, citing a report from the Congressional Office of Technology Assessment which concluded that, in the absence of epidemiological data concerning a substance's effect on humans, bioassays on carcinogenicity in animals should be used to identify potential human carcinogens.

Among those commenters who presumed that formaldehyde is a human carcinogen, there was disagreement regarding the extent of the risk presented by exposure to a level of 0.4 ppm. Some commenters said that, using the highest level of exposure in the CIIT study, 15.0 ppm, and applying a safety factor of 100, there is a significant level of risk at 0.15 ppm. These commenters asserted that this method of calculation is conservative because, when no threshold is known, a 1000-fold or greater safety factor often is used. This conclusion was used as a basis for recommending that the appropriate ambient formaldehyde level is no more than 0.1 ppm. Other commenters said that the animal and human studies performed to date establish that the cancer risk at 0.4 ppm formaldehyde is virtually nonexistent. A large compilation of studies and reports was submitted by the Formaldehyde Institute showing that there is no basis, at this time, for treating formaldehyde as a human carcinogen.

On May 23, 1984, the Environmental Protection Agency designated formaldehyde for expedited regulatory action under section 4(f) of the Toxic Substances Control Act (TSCA) (49 FR 21870). In the publication, EPA stated that there may be a reasonable basis to conclude that formaldehyde presents a significant risk of widespread harm to humans from cancer. The EPA determined that there are animal data on formaldehyde that can be used to assess the human cancer risk. One of the exposure categories to which the section 4(f) decision applies is the exposure associated with residence in manufactured homes.

In addition, the Executive Office of the President, Office of Science and Technology Policy, issued a draft document containing guidelines to be used by regulatory agencies in assessing cancer risks from chemicals (49 FR 21594) (May 22, 1984). The Department has reviewed these guidelines and will evaluate them further when the final report is issued.

The Department will monitor the EPA's regulatory progress closely. In its May 23rd publication, the EPA clearly stated that its decision does not mean that the agency believes that formaldehyde presents short-term emergency risks. Further, the EPA stated that "information available to the Agency does not indicate that people should substantially change their habits if they are being exposed to some level of formaldehyde." Therefore, the Department does not believe it would be appropriate to change the formaldehyde product standards in response to the section 4(f) designation. The Department will reevaluate the formaldehyde standards when the EPA reaches a final regulatory decision and may change the standards if the basis for EPA's findings show that these standards are not adequate to protect the health of manufactured home occupants.

Because the scientific community has not resolved the human carcinogenic issue, HUD has not taken a position as to whether formaldehyde causes cancer in humans. (See the discussion of this issue in the proposed rule (48 FR 37136, 37138).)

E. Ventilation and Other Options (§ 3280.710(g))

The Department received many comments which suggested methods by which formaldehyde levels could be reduced. Some suggested methods of reducing the amount of formaldehyde emitted from the wood products so that the product standards could be met or bettered. These methods included using sealants, such as varnishes, paints, sealers, and liquid fire-retarding saturants; coating systems, including water-based finishing coats; scavengers,

such as wax, ammonia, and other chemicals; low mole resin (low formaldehyde-to-urea ratio); pretreatment of particles; and covers or veneers.

Other commenters suggested ways to reduce the overall formaldehyde level in the home. These methods included substituting other products for urea-formaldehyde-based particleboard and plywood, venting wall and floor cavities, specifying a maximum loading ratio for particleboard and plywood, and installing vapor barriers.

The Department has limited information on most of the methods of reducing formaldehyde levels suggested in the comments. The commenters did not provide and the Department does not have sufficient data on the cost or effectiveness of any methods to mandate the use of any one in particular. The Department will seek further comment on methods of reducing formaldehyde levels in the home in the ANPR which is being prepared. (See Medium Density Fiberboard, above.) A significant number of comments recommended ventilation as an effective means of reducing indoor formaldehyde levels. Many of these were comments which generally stated that better ventilation will lead to improved air quality. Other commenters expressed opinions on specific methods of ventilating the home. One source stated that the addition of outside air will provide a modest reduction in short-term formaldehyde levels but that there is a more significant impact on long-term levels.

The Department agrees that, generally, improved ventilation reduces the amount of formaldehyde in the home. Therefore, the Department is requiring that manufacturers offer a ventilation improvement option with each home. The fresh air inlet which was proposed to be installed in the heating system will be one of the acceptable options which a manufacturer may offer. As alternatives to the fresh air inlet, a manufacturer may offer a passive, mechanical, or a combination of mechanical and passive ventilation system. The ventilation system offered must improve the ventilation in the manufacturered home's occupied living space. A device which is designed to vent the ceiling cavity alone, for example, is not acceptable.

A ventilation improvement sheet must be given to every purchaser before a sales agreement is signed. The information sheet will contain a description of the available ventilation option(s) and, for mechanical systems, the ventilation capacity expressed in air changes per hour or cubic feet per minute.

F. Testing Requirements (§§ 3280.308(b) and 3280.406)

The testing requirements contained in the proposed rule generated a lot of comment, particularly from industry sources. The proposed rule set forth a detailed scheme for certifying wood products and for production testing using a specified desiccator test and frequent air chamber retesting to maintain the certification.

1. Test Method

There was general support in the comments for the use of the large air chamber test. Commenters agreed that the air chamber test can provide an excellent prediction of actual formaldehyde levels in manufactured homes. Several commenters did say, however, that testing wood under controlled conditions has little practical application to emissions in homes.

2. Certification Testing

Most commenters agreed that certification is appropriate and that the large air chamber test is a reasonable test method upon which to rely. Certification will take place on a plant-by-plant basis. Since the rule no longer specifies that exceeding a desiccator test value will trigger an air chamber test, the certification process does not mandate the performance of a desiccator test. Production testing methods are to be determined by the certifying agency. (See Production Testing, below.) However, air chamber testing must be conducted on a quarterly basis, rather than semiannually as proposed.

Some commenters recommended that HUD incorporate by reference the air chamber test developed by the Hardwood Plywood Manufacturers Association and the National Particleboard Association, FTM-2-1983. These commenters stated that the industry test includes provisions for prehandling of boards, background formaldehyde levels, and sample spacing, and therefore is more complete than the proposed test. They also preferred the industry's selection of a seven-day preconditioning period, in lieu of the two-day period proposed, and the 75° F plus or minus 2° chamber temperature as opposed to the 77° F plus or minus 2° proposed by HUD.

Other commenters addressed the conditions in the chamber selected by the Department. Ventilation rate, temperature, and humidity were all criticized in the comments as not accurately reflecting home conditions. Ventilation was most often criticized by commenters saying that the specified 0.5 ACH was substantially higher than the 0.3 ACH rate commonly found in manufactured homes.

Still other commenters were concerned about the chamber itself, addressing such issues as sample air collection, methods of analysis, and chamber size. There were recommendations for specific and technical changes, such as lining the chamber and sampling tubes with Teflon, using the Lawrence Berkely Laboratory pararosaniline method of analysis, and increasing the range of permissible chamber sizes from 800 to 1500 cubic feet.

The Department has decided to incorporate the industry test method for Manufactured Housing Components, FTM-2-1983, except that the temperature conditions will remain as proposed. The Department has selected chamber test conditions based on the experience of HUD's contractor, Clayton Environmental Consultants, "Evaluation of the Relationship Between Formaldehyde Emissions From Particleboard Mobile Home Decking and Hardwood Plywood Wall Paneling" (March 1982). The large air chamber was chosen as the method best suited for product assessment because its results correlate closely to actual use. Clayton's correlation data are based on 77° F plus or minus 2° and, therefore, this level has been retained.

Through incorporating the industry test method, the preconditioning period has been increased from two to seven days. This increase will not affect test results when the boards are stored as required and will allow for much more efficient use of air chambers by the industry. Preconditioning will be at 75° F plus or minus 5° and 50% RH plus or minus 5%.

The final rule no longer specifies relative humidity and air change rate conditions in the air chamber. The incorporated test method specifies 50% plus or minus 4% RH and 0.5 ACH in the chamber. The Department believes that these conditions are appropriate.

In addition, as part of the certification process, the testing laboratory must approve a written quality control plan for each plant where the particleboard is produced or finished or where the plywood is finished. The quality control plan must establish procedures to assure that the panels meet the Standard and to identify specified production changes which may increase formaldehyde emissions. The testing laboratory also must periodically visit the wood products plant and monitor these quality

control procedures to ensure that all certified panels meet the standard.

3. Production Testing

Most of the criticism in the comments was directed toward production testing requirements. Generally, most commenters said that the small-scale testing and air chamber retesting requirements were costly, burdensome, and not necessary to ensure quality control. In addition, these commenters stated that quality control should be the responsibility of the nationally recognized testing laboratory. The commenters objected to the specification of a desiccator test as the only acceptable small-scale test method, saying that other reliable small-scale tests were, or could become, available. Some of the commenters suggested requiring the testing laboratory to monitor production or conduct small-scale tests between air chamber certification tests. Under such a system, air chamber retesting would be conducted only when a production change or small-scale test result indicates that the standard may be exceeded. Still other commenters suggested tests in addition to those proposed. These commenters recommended that, besides testing the products, an air quality test be performed in each manufactured home after production or that a system be developed for randomly testing finished homes.

The Department has reevaluated the production testing requirements and has decided to revise these provisions substantially. The proposed rule would have limited small-scale testing to the desiccator method; however, the Department understands that there may be other methods which correlate well to air chamber test results. Under the final rule, the testing laboratory will determine how to monitor production. Therefore, the proposed rule's requirement that an air chamber test be performed whenever the desiccator test value established at the initial certification is exceeded has been deleted.

Futher, the production changes which will trigger an air chamber test have been narrowed considerably. The air chamber test is costly and time-consuming. The production changes identified in the proposed rule occur frequently and, therefore, an inordinate amount of air chamber testing would have to take place under that scheme. Therefore, the Department has decided that air chamber tests must be performed whenever the certified particleboard's resin formulation is changed to contain more formaldehyde or, in the case of either particleboard or plywood, when the finishing coat is changed, unless it is a change from a finishing coat containing formaldehyde to one which contains no formaldehyde. The Department believes that these requirements, combined with the quarterly air chamber testing required for certification, will ensure better quality control and will provide an ongoing check on the reliability of the small-scale test method selected by the testing laboratory for production testing.

If a product fails the air chamber test, for whatever purpose it is performed, then the certification for that product immediately lapses. None of the plywood or particleboard which was produced on the same day or any subsequent day as the failed boards may be installed in manufactured homes unless the product is treated with a scavenger, sealant, or other means of reducing formaldehyde emissions and randomly selected panels of the treated boards are retested in the air chamber with satisfactory results. The product may not be recertified until an air chamber test is passed. An air chamber test for recertification may be performed on plywood or particleboard produced on any day subsequent to the production date of the failed samples, provided that the storage and preconditioning requirements of the rule are met.

4. Treatment After Certification

Although there were no comments on this issue, the Department has learned that certified plywood or particleboard may be subsequently treated with a finish or glue which contains formaldehyde in the production of furniture or cabinetry for manufactured homes. Therefore, the Department has decided that, if such treatment takes place, the board's certification is no longer valid and the stamp or label which identifies each panel as certified must be obliterated. Of course, if the products are finished with a paint or varnish which contain no formaldehyde, then the certification of the plywood or particleboard remains effective and the cabinets or furnishings may be used in manufactured homes.

G. Air Quality Notice (§ 3280.309)

The proposed rule solicited comment on whether a warning alerting the public to possible problems associated with formaldehyde should be posted in manufactured homes. The idea of a health notice received overall support by all commenters. Commenters basically said that the notices should be prominently displayed, list the health effects associated with formaldehyde exposure, identify particularly susceptible populations, and reference a source for further information. Several commenters also said that the notice should contain information about ventilation and a warning about formaldehyde's having caused cancer in laboratory animals. The Manufactured Housing Institue (MHI) and the Consumer Federation of America (CFA) jointly developed a notice which was submitted for consideration. Several commenters specifically endorsed the use of the MHI/CFA notice.

The Federal Trade Commission (FTC) submitted an extensive comment on this issue. They concurred with the other commenters regarding the content of the notice. The FTC also suggested that manufacturers whose homes are built with floor and wall materials which do not contain urea-formaldehyde resins be permitted to post a different notice. This notice would tell prospective purchasers that these homes use substitute products which emit lower levels of formaldehyde or, where appropriate, none at all.

The Department has decided that it is appropriate to require that a health notice be posted in manufactured homes. The product standards will limit, but not eliminate, formaldehyde from manufactured homes. The levels of formaldehyde which will be achieved by the product standards will not fully protect every manufactured home occupant. The health notice, therefore, will inform prospective purchasers that there are products in the home which emit formaldehyde and will describe the most common acute symptoms caused by formaldehyde exposure. The notice will be especially beneficial to those persons who are aware of their sensitivity to formaldehyde or who have histories of respiratory ailments. Particularly susceptible groups are identified in the notice. The notice also indicates the benefits of added ventilation and refers to physicians and local health departments as sources for additional information. The notice is modeled, in large part, on the NHI/CFA notice submitted as a comment.

This notice must be prominently displayed in the kitchen and be included in the consumer manual provided with each home.

H. Cost Assessment

The Act requires that the Secretary consider the probable effect of any standard on the cost of the manufactured home to the public (42 U.S.C. 5403(f)(4)). Several sources commented on this obligation. Some generally criticized the Department's efforts to assess the costs of all the proposed revisions. Others focused on

the cost associated with the formaldehyde standards. One commenter stated that the Department's cost analysis had two major deficiencies: Health impacts which could not be quantified were given little, if any, weight, and a number of potentially viable control technologies were not considered. Another stated that the HUD proposed standards would do little to reduce formaldehyde levels below those voluntarily achieved by the industry and that it is HUD's obligation to promulgate regulations which will further reduce formaldehyde levels to the extent feasible within economic constraints. A similar comment said that the cost of the proposed standard is essentially zero and that, therefore, a considerable amount could be spent without pricing manufactured homes out of their current market. Another commenter said that is is not possible to develop an appropriate formaldehyde standard because the costs are not known and the benefits are not ascertainable.

Some commenters addressed the targeted 0.4 ppm level, several saying that there was no apparent economic or technical justification for choosing this level. The manufactured home industry disagreed and provided specific cost information which showed that the cost of the proposed standard would be $27.04 for the average single-section home and $36.48 for the average multi-section home. These figures were based on a cost study funded by the Formaldehyde Institute which calculated that the annual costs of testing as proposed would result in cost increases of $26.66 per 1000 square feet of plywood and $5.20 per 1000 square feet of particleboard. According to the Formaldehyde Institute's contractor, this would raise the cost of the average manufactured home $268.

Finally, other commenters concentrated on the costs of lowering the formaldehyde standard to achieve less than 0.4 ppm in the home. Several commenters generally stated that the Department had not demonstrated that further reducing or eliminating formaldehyde in the home would be significantly more expensive. One source said that plywood wall paneling which emits 0.15 ppm formaldehyde currently is available at no additional cost. Other commenters stated that particleboard which emits less than 0.3 ppm formaldehyde currently is available. However, a major wood products producer said that significantly reducing levels below those proposed would require the use of high-cost scavengers, the installation of ammonia-treating-process equipment, or the substitution of phenol-formaldehyde-based wood products.

The Department has obtained information from the wood products industry which establishes that there is a cost associated with improving plywood to meet a 0.2 ppm standard. According to the Hardwood Plywood Manufacturers' Association (HPMA), it would cost $15.00 per single-section manufactured home for plywood paneling which emits formaldehyde at this level and $20.00 per multi-section home. However, approximately 50% of the plywood producers already make plywood for manufactured homes which meets this standard. Therefore, the average increased cost of plywood to home manufacturers will be $7.50 per single-section and $10.00 per multi-section home. Based on the information received from the National Particleboard Association (NPA), there is no material cost associated with meeting a 0.3 ppm particleboard standard.

The certification costs submitted by industry commenters were based on the comprehensive air chamber and desiccator test protocols contained in the proposed rule. Certification costs now involve quarterly air-chamber testing, production monitoring by the testing laboratory, and insurance costs incurred by the testing laboratory. (See Testing Requirements, above.) Based on information received from the HPMA and the NPA, the Department has determined that it will cost $1.74 to certify the plywood and $.69 to certify the particleboard installed in single-section homes. It will cost $2.32 and $1.01 to certify the plywood and particleboard, respectively, installed in multi-section homes.

There also is a nominal cost to print and post the required health notice on formaldehyde. (See Air Quality Notice, above.) The Department has estimated that cost to be $.50 to the manufacturer.

To assess the cost to the public as required by the Act, the Department used a mark-up factor of 2.22, represented by the Manufactured Housing Institute as typical. The cost of improved plywood to the consumer, therefore, is $16.65 for a single-section home, $22.20 for a multi-section home. Again, there is no material cost for particleboard which meets the standard. Certification will add $5.39 to the price of a single-section and $7.39 to the price of a multi-section home. Finally, the health notice will add $1.11 to the cost of all manufactured homes. The typical total cost of the formaldehyde rule to the purchaser, therefore, is $23.15 for a single-section home and $30.70 for a multi-section home. Of all manufactured homes sold, 70% are single-section and 30% are multi-section. The latest figures show an annual production of 300,000 manufactured homes.

The Department also assessed the costs of achieving lower formaldehyde standards. A targeted ambient level of 0.3 ppm may be achieved by substituting phenol-formaldehyde floor decking for urea-formaldehyde floor decking. The costs to the purchaser for this product substitution is $205 for a single-section manufactured home and $298 for a multi-section home. The Department has been advised by a major producer of manufactured home decking that it is now possible to reduce formaldehyde emission levels from urea-formaldehyde particleboard to a level which is comparable to some phenol-based particleboard without affecting the floor's structural properties and with no significant increase in cost. Other particleboard manufacturers stated that, while they do have the technology to consistently produce particleboard which emits 0.2 ppm formaldehyde, the increase in cost would be substantial. The Department has not obtained adequate, reliable information concerning the cost of lowering the particleboard standard and, therefore, does not have sufficient data upon which to base such a requirement.

The benefits which are associated with formaldehyde reduction in homes are primarily medical. The Department realizes that the analysis of benefits which was used in developing the proposed formaldehyde rule is limited and, in large part, outdated. (Cost/Benefit Analysis and Mobile/Manufactured Home Regulations, Technology & Economics, Inc., 1982.) The Act directs the Secretary to consider the cost of each standard to the public and, in so doing, the Department believes that the statutory requirement has been satisfied.

III. Fire Safety

A. General

One of the stated purposes of the Act is to reduce deaths, injuries, and property damage resulting from manufactured home accidents (42 U.S.C. 5401). Fire-related accidents in manufactured homes are a major cause of such losses. Therefore, the Department is adopting certain changes to standards concerning the following issues: Egress windows, flame spread, foam insulation, firestopping, fire detection equipment, kitchen cabinet protection, and fire testing.

B. Emergency Egress Windows (§§ 3280.106 and 3280.404)

1. Latch height. The Department is changing the height requirement for emergency egress window latches. The standards formerly required latches to be no more than 60 inches from the finished floors of manufactured homes. This final rule changes the latch height requirement to 54 inches above the floor.

As a result of this change, more children will be able to reach the window latch. Where a latch is located 60 inches above the floor, 95% of ten-year olds can reach it, whereas if a latch is located 54 inches above the floor, 95% of eight-year olds can reach it. See July 24, 1981, letter from Sanford C. Adler, Research Engineer for the National Bureau of Standards, U.S. Department of Commerce, to Conrad Arnolts, U.S. Department of Housing and Urban Development.

One commenter noted that, even if the latch height were lowered, these younger children might not be able to operate the latches. Nevertheless, the Department has concluded that an average eight-year old child is capable of operating the latch on an egress window.

Other commenters objected to this change on the basis of cost, stating that the change was unwarranted, not cost-effective, and would require costly redesign changes. However, the Department has data which indicate that this change will have no cost impact on manufactured homes. See Cost/Benefit Analysis of Mobile/Manufactured Home Regulations, Appendix B, Item No. 13, p. B4, dated June 1, 1982, published by Steven Winter Associates, Inc.

One commenter suggested that we lower the latch even further, to 48 inches, to provide even greater accessibility. The Department does not have adequate data to support making such a change at this time.

2. Built-ins. The proposed rule stated that built-ins placed in front of operable sections of egress windows must be at least as wide as the operable section and installed at or below the bottom of the window. The Department has concluded, based in part upon comments received, that this requirement may be unnecessarily restrictive and requires further study. Therefore, we are not finalizing the rule with respect to this issue at this time.

3. Window dimensions. The Department received a number of comments on the proposal that emergency egress window dimensions be changed from 22" x 22" to 20" in width and 24" in height. We have determined that this issue requires further study, and therefore we are not finalizing the rule with respect to this issue at this time.

4. Installation of egress windows. The standard currently in effect states that window manufacturers shall provide home manufacturers with written installation instructions. The Department had proposed changing this provision to state that the window or egress device shall be installed in accordance with the manufacturer's instructions. The public comments had suggested that this provision be changed to require simply that egress windows and devices shall be installed in a manner allowing proper operation of the window. The industry stated that some of its installation practices may not be in accordance with the window manufacturer's instructions but are, nevertheless, safe and appropriate for manufactured homes. They also pointed out that the manufacturer's instructions may have been written primarily for other types of homes and that some of the instructions are included solely for the purpose of protecting window manufacturers against warranty liability. HUD will continue to study this issue. Therefore, we are not finalizing the rule with respect to this issue at this time.

5. Architectural Aluminum Manufacturers Association standards for egress windows and devices. The Department is continuing to evaluate the issue of performance standards for egress windows, and therefore we are not finalizing the rule with respect to this issue at this time.

6. Operational check for egress windows. The proposed standards would have required that an operational check be made at the factory and that any window or device failing this check be removed and a replacement window that passes the operability check be installed. The public comments received fell into two categories. First, the industry objected to the provision requiring that egress windows that fail the operational check be replaced. They said that this requirement was unreasonable and would cause unnecessary expense to both consumers and manufacturers. The industry wanted an opportunity to repair the windows before resorting to replacement. After reviewing the public comments on this issue, we decided to change the section to allow for repair of the windows. The final rule requires that, if a repair is made, it shall conform to the certification of the window or device. Any repaired or replaced window still must pass the operational check.

Additionally, some commenters said that the proper place for an operational check of egress windows is on site after the manufactured home has been set up. However, the Department believes that this check will be more effective at the factory because of the presence and duties of the Production Inspection Primary Inspection Agencies (IPIAs). Also, manufacturers will have access to replacement windows and parts, and will be able to more easily repair or replace a window that fails the operational check.

7. Additional comments. One commenter suggested that crawl spaces would be more appropriate than egress windows in general because many handicapped persons and invalids would be unable to escape through egress windows. While this may be true, there are manufacturers who offer homes with egress devices designed for such persons. Thus, we did not feel it appropriate to require such a feature in all manufactured homes.

C. Flame Spread (§§ 3280.202 and 3280.203)

The present rule requires that interior finish materials on ceilings and walls have a maximum flame spread rating of 200. The proposed rule would have required that the maximum flame spread of interior finish materials used on ceilings be lowered to 75. That proposed change has been adopted in the final rule. No change was proposed and none has been made concerning the flame spread of interior finish materials used on walls. In addition to the change concerning ceiling flame spread, the final rule makes some changes concerning the items exempted from the definition of interior finish.

1. New definitions. The proposed definitions of "combustible," "limited combustible," and "noncombustible" have been adopted as part of the final rule. The definitions are consistent with those contained in the Standard on Types of Building Construction, NFPA-220, 1979, published by the National Fire Protection Association. (*See* Sections 2-3 and 2-6.) One comment was received concerning these additional definitions. The commenter criticized the term "limited combustible" as vague and meaningless. However, the definition provides a specific example of a material which meets the definition of "limited combustible", and the Department has concluded that it would be useful to include this definition in the rule.

2. Exemptions. A number of materials and applications are excluded from the definition of "interior finish." The

proposed rule would have exempted trim and sealant 2 inches or less in width from the definition. Some commenters said it was not clear how this exemption would affect the requirements governing the use of trim and sealant in furnace or water heater spaces and adjacent to cooking ranges. Consequently, the Department has clarified the exemption in the final rule. (*See* § 3280.202(a)(3)(i).) The final rule makes it clear that trim and sealant less than 2 inches in width and located adjacent to the cooking range or in furnace or water heater compartments are exempt from the definition of interior finish only if they are installed in a specified way.

Many manufacturers requested either that certain additional materials be exempted from the definition of interior finish or that the current 200 flame spread requirement for ceilings be retained. These commenters stated that mandating a flame spread of 75 for ceiling without exempting certain decorative items would be overly burdensome. Many manufacturers argued that the proposed rule would preclude many design features and options which contribute significantly to the marketability of manufactured housing. In response to these concerns, the Department has chosen to retain the 75 flame spread requirement for ceilings while exempting some additional features from the definition of interior finish. The additional items which will be exempted include coverings and surfaces of exposed wood beams and decorative items including nonstructural beams not exceeding 6 inches in depth and 6 inches in width and spaced not closer than 4 feet on center; nonstructural lattice work; mating and closure molding; and other items not affixed to the home's structure.

3. Additional comments. One commenter argued that our proposed flame spread requirements were stricter than any of the model building codes. Although some codes may require less stringent flame spread ratings, the Department believes that progressive improvements in flame spread will contribute to reduction of loss of life, injury, and property damage. See "Mobile Home Fire Studies: Summary and Recommendations," NBSIR 79–1720, prepared by Center for Fire Research, National Engineering Laboratory, U.S. Department of Commerce, NBS, p. 15 and Figures 1, 2, and 3.

Another commenter suggested that flame spread for interior walls be reduced from 200 to 75. This commenter said that walls comprise greater surface area in a home and are more likely to catch fire first. While we recognize that, in general, reductions in flame spread ratings will result in improved fire safety, the Department has information which indicates that changing wall flame spread would significantly affect the cost of manufactured homes. See "Survey of Differential Costs of Mobile Homes Constructed With 5/16" Gypsum Wallboard as Compared to 3.6 mm Hardwood Plywood Wall Panels," published by the Mobile Home Life Safety Task Force, April 1980, Table 3. We do not have sufficient data on the benefits of such a change to justify lowering wall flame spread at this time.

Several commenters were concerned that, although our proposed rule regulates flame spread, it does not regulate the smoke development ratings of products used in manufactured homes. The Department does not have any test data for setting maximum levels for smoke emissions at this time. Therefore, no change has been made in the final rule.

One commenter stated that § 3280.203(b)(3) would prohibit alcove furnaces. It was not our intention to prohibit alcove furnaces and, to clarify our intention, the Department has reworded this section of the final rule.

One commenter suggested that bottom board should be included in § 3280.203(a) as a material which should not have a flame spread exceeding 200. The Department does not have adequate data upon which to base such a requirement. We will continue to study external fire data.

Several commenters were of the opinion that most or all of the changes to §§ 3280.202 and 3280.203 are unnecessary because of the improved fire safety record of manufactured housing since the standards were established in 1976. Some commenters stated that fire safety has improved dramatically since 1976. Others said that data exist which show only one fire fatality in a manufactured home since 1976. Still other commenters stated that studies of fire-related deaths and property damage show that manufactured housing currently has a better safety record than site-built housing.

HUD has no data showing that fire-related deaths and property damage in post-1976 manufactured homes are better than in site-built homes. It is not true that there has been only one fire-related death in post-1976 manufactured homes; however, it is true that the HUD standards have substantially improved fire safety. See "Evaluation of Mobile Home Fire Safety, 1979–1980," by Phyllis S. Schaenman and Cheryl L. Herrin, of TriData, March 1982. The Department will continue to monitor available fire data to assess the adequacy of its standards.

4. Cost. Minimal costs would be involved in changing ceiling flame spread to 75. A Manufactured Housing Institute telephone survey indicated that less than 5% of manufacturers surveyed are currently using ceiling panels that may not meet a flame spread rating of 75. Thus, this revision reflects current industry practice. Additionally, the "Cost/Benefit Analysis of Mobile/Manufactured Home Regulations," Steven Winters Associates, June 1, 1982, indicates that the cost of lowering ceiling flame spread to a maximum of 75 is negligible. (See p. B.7 and Table 3–1, p. 55.)

D. Kitchen Cabinet Protection (§ 3280.204)

Few public comments were received in response to the proposed changes in kitchen cabinet protection. One commenter said that the requirement that the bottom and sides of kitchen cabinets be fire-protected to a horizontal distance of 6" from the range was ineffective and inconsistent with other codes. Fire tests conducted by the National Bureau of Standards support the conclusion that protecting the bottom and sides of the kitchen cabinet adjacent to the range is effective. See "Evaluation of Fire Hazard in a Mobile Home Resulting From an Ignition on the Kitchen Range," E. Budnick, NBSIR 75–711. While it may be true that other building codes do not require such fire protection adjacent to kitchen ranges, conventionally built homes customarily have gypsum board walls adjacent to the range that provide the same or greater protection than do our standards.

Several commenters questioned the need for the provision in § 3280.204(c)(2) which would have established an exception to the requirement for metal hoods above ranges. A metal hood would not have been required where there were no exposed burners. Since such a configuration is unlikely, the proposed § 3280.204(c)(2) has been eliminated from the final rule.

E. Carpeting (§ 3280.205)

The proposed rule would have required that carpets and rugs be listed as meeting the surface flammability criteria of any mandatory Federal regulation. Since the Consumer Product Safety commission already regulates the flame spread of carpeting, the Department has determined that this provision is unnecessary and

duplicative. Therefore, it has been deleted from the final rule. Section 3280.205(b), regarding carpeting in spaces containing furnaces or water heaters, has been retained in the final rule as § 3280.205(a).

F. Firestopping (§ 3280.206)

Commenters on this issue were primarily concerned with where firestopping is necessary and what materials must be used. Several commenters addressed the proposed requirement that 1-inch nominal lumber or equivalent firestopping be located in any concealed space so that the maximum vertical dimension of the space does not exceed 8 feet and that 2-inch nominal lumber or equivalent firestopping be installed in vertical spaces over 8 feet. Some commenters said that the maximum height should be increased from 8 to 10 feet. Others endorsed the Department's selection of 8 feet as the maximum, but requested clarification of the proposed rule's language and its application in specific circumstances. One source suggested that firestopping also be required in any floor space penetrations. Another source said that firestopping is not necessary in concealed spaces of single-story manufactured homes. Another commenter stated that if a space is closed off by any material, it is no longer a draft opening, and asked whether such an opening would have to be firestopped.

Several commenters addressed the proposed rule's requirement that 1-inch nominal lumber or equivalent be used to firestop. Some commenters questioned the need for firestopping of greater resistance than the materials used in constructing the home. Others wanted to know what materials were "equivalent" to 1-inch nominal lumber. One of these commenters suggested that .019" or thicker metals, 5/16" or thicker gypsum board, 3.6 mm or thicker plywood, 7/16" of thicker fiberboard or hardwood, cement asbestos board and mineral board be included in the rule as acceptable firestopping materials.

The purpose of the firestopping requirements is to retard the spread of fires, particularly the vertical movement of fire. To serve this purpose, the Department has decided that floor-to-ceiling concealed spaces must be firestopped, without regard to the vertical dimensions of such spaces. Therefore, the 8-foot maximum height requirement has been deleted, and the rule simply states that concealed draft openings must be constructed so that floor-to-ceiling concealed spaces on one floor do not communicate with concealed spaces on other floors, the roof cavity, or concealed spaces in the floor.

Firestopping must be of at least 1-inch nominal lumber, 5/16"-thick gypsum board, or the equivalent. Equivalent firestopping is that which will provide equivalent or greater resistance to burn-through than is provided by 1-inch nominal lumber. The Department has data which establish that 5/16"-thich gypsum board meets this standard, and so the use of this material is specifically permitted in the rule. The Department does not have sufficient data on the performance of any of the other materials suggested in the comments to specifically permit its use at this time.

To prevent communication between adjacent concealed spaces, a barrier must be installed. When this barrier is installed vertically, it must be made of material which is equivalent to that used on the nearest exposed wall surface. This will occur when one concealed space is located in a horizontal direction in relation to another concealed space. In all other cases, the barrier must be made of 1-inch nominal lumber, 5/16"-thich gypsum board or the equivalent. Such cases occur when one concealed space is located above or below another. The final rule makes it clear that a concealed draft opening does not lose its character as such if it is filled with insulation or other material or if it is blocked by a barrier which does not meet the standard's firestopping requirements.

The Department has determined that all openings for pipes and vents and other penetrations in the walls, floors, and ceilings of furnace and water heater spaces must be tight-fitted or firestopped. The Department does not believe that firestopping is necessary at other floor penetrations, such as those made for the installation of a washer or dryer. A provision has been added to the rule to clarify that tight-fitted means that pipes, vents, or other penetrations cannot move freely in the opening.

G. Foam Plastic Thermal Insulating Materials (§ 3280.207)

The standard now in effect allows foam plastic insulation to be used when specifically approved by HUD. It also permits the use of foam plastic as a siding backerboard or sheathing under certain specified conditions. The proposed rule would have altered considerably the requirements for foam plastic thermal insulating materials. This final rule specifies the conditions under which foam plastic insulation may be used and specifies performance criteria for foam used in wall and ceiling assemblies.

The proposed revisions to this section of the rule generated numerous public comments on a wide range of issues.

1. Foam plastic sheathing or backerboard. The present regulation permits the use of foam plastic having a flame spread rating of 75 or less as a siding backerboard or sheathing with a maximum 3/8" thickness when separated by a minimum of 2 inches of mineral wool insulation or equivalent fire protective material. The proposed rule would have changed this section (§ 3280.207(b)) to delete the 2-inch mineral wool insulation requirement. Several commenters were concerned about the proposed deletion of this requirement. Upon further analysis and in response to the concern raised in the comments, the Department has concluded that 2 inches of mineral insulation or the equivalent would provide added safety protection. Therefore, this requirement has been added to the final rule.

The fact that the proposed standard did not contain any requirements for smoke development rating when foam plastic is used as a sheathing or siding backerboard concerned some commenters. They pointed out that building codes generally require both 75 maximum flame spread and a smoke-development rating of 450 or less. Accordingly, we have revised § 3280.207(a)(2) to require a smoke-development rating of 450 or less.

2. Foam plastic insulation protected by gypsum board. Except as indicated above, the present rule prohibits the use of foam plastic insulating materials unless specifically approved by HUD. The final rule, which adopts the proposed rule, allows the use of foam plastic insulation without full-scale fire testing when protected by an interior finish of 5/16"-thick gypsum board or equivalent material. This change was based upon the recommendation of a September 30, 1980, ITT Research Institute Report which reviewed proposed revisions to the fire safety standards.

Some commenters were concerned that the protection provided by 5/16"-thick gypsum board would be inadequate. They also pointed out that the requirement was inconsistent with model codes; 5/16"-thick gypsum board is commonly used in manufactured homes, and the Department believes that it provides adequate safety protection. The adequacy of 5/16"-thick gypsum board has been validated by the Illinois Institute of Technology Research Institute (IITRI) Report, "Development of Mobile Home Fire Test Methods to

Judge the Fire-Safe Performance of Foam Plastic, J-6461."

3. IITRI test. The proposed rule would have provided that a foam plastic thermal insulating material could be used within the cavity of walls or ceilings but not doors if it passed tests conducted in accordance with the IITRI report. Although the use of this test generated much discussion in the comments, the Department has decided to adopt a final rule which maintains the IITRI test as the primary method for testing foam plastic insulation.

Some commenters argued that the IITRI test procedures have not been validated as reproducible. The extensive IITRI research and testing associated with prior evaluations support the use of the procedures. In addition, reproducibility is of less importance with the IITRI test procedures than with other test procedures because IITRI requires that the results of each foam plastic test module be compared to the results obtained from testing of a control module. (*See* IITRI J-6461, pp. 132-33.) This control module permits interpretation of the IITRI test results on a case-by-case basis. The Department believes that the IITRI test procedures provide adequate results concerning the impact of foam plastic insulation.

Other commenters questioned why HUD could not establish the levels for the control modules for both ceiling and wall assemblies. The Department believes that it would be unduly restrictive to standardize control modules. Differences in such things as configurations of homes, availability of materials, environmental test conditions, and testing parameters would make this a cumbersome task.

One commenter criticized the wood moisture content range in the IITRI test as being too broad. The test requires that, before testing, each crib shall be conditioned to a maximum moisture content of 8%. Wood moisture content is a variable that is difficult to control. The Department has concluded that an 8% maximum wood moisture content is acceptable.

Other commenters suggested possible use of other tests. One commenter stated that International Conference of Building Officials (ICBO) Test 17-5 is a test which is nationally recognized for this purpose. The Department has determined that the ICBO test would not be suitable for manufactured homes. This test incorporates materials used in conventional, not manufactured, homes. The materials used in manufactured homes tend to generate fires of higher intensity than those in site-built homes. Therefore, the impact or contribution of foam insulation cannot be adequately measured by the ICBO test.

In addition, suggestions were made to incorporate provisions of other model codes and other types of tests, including small-scale tests. The Department is not aware at this time of any such tests that it believes are adequate. Therefore, no other test method has been specified in the rule. However, the Department has included in the final rule a provision that will permit the use of other full-scale tests if approved by the Department as equivalent to the IITRI test.

One commenter questioned the proposed requirement that only one valid test module would be required with respect to walls, while three test modules would be required with respect to ceilings. The Department has decided to maintain this difference in the final rule because of variability in the performance of nonmetallic sheathed cable under fire conditions. (*See* IITRI J-6461, p. 195.) Nonmetallic cable is used in conducting the ceiling tests, but is not used in conducting the wall tests.

4. Previously approved tests. Under the present rule, the Department has approved the use of some foam plastic insulation materials. The materials were evaluated in accordance with tests approved by the Department. Some commenters said that the Department should continue to allow the use of such insulation. Upon examination of this issue, the Department has concluded that previously approved materials were tested by a method which is similar to the IITRI test method. Consequently, we have added a provision to the final rule which permits the use of previously accepted materials.

5. Other comments. One commenter was concerned that the foam plastic insulating materials might give off toxic gases during a fire even though they passed the IITRI test. The Department has no data which justify a change in the rule based upon the presence of toxic gas during a fire. Consequently, no change has been made in the final rule in response to this comment.

H. Fire Detection Equipment (§ 3280.208)

Several changes were proposed to the section of the standards dealing with fire detection equipment. The UL standard was updated to reference UL Standard 217-1980 instead of UL Standard 217-1976. This updated reference generated no public comments and is adopted as proposed.

The proposed standard required that smoke detectors be located on a wall 4-12" below ceiling level. The present standard requires that detectors be located 5-7" from the ceiling on an interior wall. Some commenters observed that listings of some smoke detectors require that they be located not more than 4-6" below the ceiling. In response, the final rule has been revised to require that each smoke detector be installed on any wall between 4" and 12" below the ceiling and in accordance with its listing. In addition, since the detector may now be located on an exterior wall, the Department is reinstating its former requirement that the smoke detector, when located in the hallway, shall be placed between the living space and the first bedroom door.

The standards currently in effect require that, where practicable, the smoke detector shall be located between the return air intake and the living area. The proposed rule had omitted the phrase "where practicable." The comments stated that, with some floor plans, it is not possible to locate the detector between the return air intake and the living area. In response to these concerns, the Department has revised this section of the final rule to require that, when smoke detectors are located in hallways, the detectors shall be placed between the return air intake and the living area. In other cases, this requirement does not apply.

The proposed rule mandated that when a home is equipped or designed for a roof-mounted evaporative cooler or other equipment discharging air through a ceiling grille into the living space, the detector closest to the air discharge shall be located no closer than six horizontal feet from any discharge grille. A number of commenters found the 6-foot distance provision to be burdensome and overly restrictive. It was brought to our attention that many coolers discharge into hallways less than 6 feet long and with upflow furnaces it would be impossible to maintain a 6-foot separation from all registers. Several manufacturers felt that this requirement would eliminate many popular floor plans. In response to these concerns, the final rule has been revised to require only a 3-foot separation between the discharge grille and the smoke detector.

One commenter complained that the provision that would have prohibited the placement of a smoke detector in a location which would impair its effectiveness was vague (§ 3280.208(b)(4)). The Department is aware of the fact that the rule's general requirement would have to be interpreted on a case-by-case basis. This provision is intended to assure that smoke detectors are located so that they will be effective. For example, the proposed provision would have

prohibited the location of a smoke detector between the return air grille and the bedroom end of all hallways. In response to the comment, the provision has been redrafted to clarify the Department's intent.

I. Testing Laboratories (§ 3280.209)

The proposed rule contained a new § 3280.209 which would have governed laboratories that conduct fire testing under the standards. It would have required that such laboratories be independent and have expertise in fire technology. In the final rule, the section has been redrafted. Laboratories will be required to have expertise in fire testing, but the requirement that they be independent has been deleted from the section.

In the final version of § 3280.209, the Department deleted the requirement that testing laboratories be independent after concluding that such a requirement would be more appropriately located in the definition of "national recognized testing laboratory." (*See* proposed § 3280.2(n).) This issue will be evaluated when that section of the proposed rule is finalized.

IV. Small Manufactured Homes

On October 8, 1980, the Act was amended to change the definition of "manufactured home." As a result of the change, all manufactured homes larger than 320 square feet are now covered by the Act. On June 29, 1982, the Department published a final rule which exempts from the Standards certain homes, between 320 and 400 square feet, until appropriate standards are developed (47 FR 28091).

The Department sought comments on which of the proposed Standards are appropriate for small manufactured homes (those between 320 and 400 square feet) and on whether any different design and construction standards are necessary because of size considerations. Comments were received on this topic but have not yet been evaluated. We have not yet had the opportunity to evaluate these comments. The Department is continuing to study these issues and, if appropriate, will propose standards for small manufactured homes at a later date. This final rule does not regulate these small manufactured homes.

V. Miscellaneous

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Please send any comments regarding these requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, attention: Desk Officer for HUD.

No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when it is assigned, will be announced by a separate notice in the **Federal Register**.

This final rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. The rule does not: (1) Have an annual effect on the economy of one hundred million dollars or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) have 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.

In addition, analysis of this rule shows a likely total impact of less than $10 million per year. Even if considered together with the other proposed changes, the Draft Regulatory Impact Analysis (RIA) showed a cost impact below the level considered major by Executive Order 12291. More recent information and changing industry practices indicate cost impacts could be less than the Draft RIA estimate. The Department will re-estimate impacts as it reviews the remaining proposed changes.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While there are some costs associated with the rule that will affect small businesses, particularly the formaldehyde certification testing requirements, the Department has done a cost analysis which demonstrates that the economic impact is not significant.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of Rules Docket Clerk at Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule was listed as item H-46-82 in the Department's Semiannual Agenda of Regulations published at 49 FR 15902, 15938, on April 19, 1984, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR 3280

Fire prevention, Housing standards, Manufactured homes.

Accordingly, 24 CFR Part 3280 is amended as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. Section 3280.106 paragraphs (a) and (c) are revised and paragraphs (d) and (e) are added to read as follows:

§ 3280.106 Exit facilities; egress windows.

(a) Every room designed expressly for sleeping purposes, unless it has an exit door (see § 3280.105), shall have at least one outside window or approved exit device which meets the requirements of § 3280.404, the "Standard for Egress Windows for Use in Manufactured Homes."

(b) * * *

(c) The bottom of the window opening shall not be more than 36 inches above the floor.

(d) Locks, latches, operating handles, tabs, and any other window, screen or storm window devices which need to be operated in order to permit exiting, shall not be located in excess of 54 inches from the finished floor.

(e) Integral rolled-in screens shall not be permitted in an egress window unless the window is of the hinged type.

2. Sections 3280.201, 3280.202, 3280.203, 3280.204, 3280.205, 3280.206, 3280.207, and 3280.208 of Part 3280, Subpart C, Fire Safety, are revised to read as follows:

Subpart C—Fire Safety

§ 3280.201 Scope.

The purpose of this subpart is to set forth requirements that will assure reasonable fire safety to the occupants by reducing fire hazards and by providing measures for early detection.

§ 3280.202 Definitions.

(a) The following definitions are applicable to Subparts C, H, and I of the standards:

(1) "Combustible material": Any material not meeting the definition of limited-combustible or noncombustible material.

(2) "Flame-spread rating": The measurement of the propagation of flame on the surface of materials or their assemblies as determined by recognized standard tests conducted as required by this subpart.

(3) "Interior finish": The surface material of walls, fixed or movable partitions, ceilings, columns, and other exposed interior surfaces affixed to the home's structure including any materials such as paint or wallpaper and the substrate to which they are applied. Interior finish does not include:

(i) Trim and sealant 2 inches or less in width adjacent to the cooking range and in furnace and water heater spaces provided it is installed in accordance with the requirements of § 3280.203(b)(3) or (4), and trim 6 inches or less in width in all other areas;

(ii) Windows and frames;

(iii) Single doors and frames and a series of doors and frames not exceeding 5 feet in width;

(iv) Skylights and frames;

(v) Casings around doors, windows, and skylights not exceeding 4 inches in width;

(vi) Furnishings which are not permanently affixed to the home's structure;

(vii) Baseboards not exceeding 6 inches in height;

(viii) Light fixtures, cover plates of electrical receptacle outlets, switches, and other devices;

(ix) Decorative items attached to walls and partitions (i.e., pictures, decorative objects, etc.) constituting no more than 10% of the aggregate wall surface area in any room or space not more than 32 square feet in surface area, whichever is less;

(x) Plastic light diffusers when suspended from a material which meets the interior finish provisions of § 3280.203(b);

(xi) Coverings and surfaces of exposed wood beams; and

(xii) Decorative items including the following:

(A) Nonstructural beams not exceeding 6 inches in depth and 6 inches in width and spaced not closer than 4 feet on center;

(B) Nonstructural lattice work;

(C) Mating and closure molding; and

(D) Other items not affixed to the home's structure.

(4) "Limited-combustible": A material meeting:

(i) The definition of Article 2–3 of NFPA 220–1979; or

(ii) 5/16-inch or thicker gypsum board.

(5) "Noncombustible material": A material meeting the definition of Article 2–6 of NFPA 220–1979.

(6) "Single-station alarm device": An assembly incorporating the smoke detector sensor, the electrical control equipment, and the alarm-sounding device in one unit.

(7) "Smoke detector": A wall-mounted detector of the ionization chamber or photoelectric type which detects visible or invisible particles of combustion and operates from a 120 V AC source of current.

§ 3280.203 Flame-spread limitations and fire protection requirements.

(a) Establishment of flame spread rating. The surface flame spread rating of interior-finish material shall not exceed the values shown in § 3280.203(b) when tested by "Standard Method of Testing for Surface Burning Characteristics of Building Materials, ASTM E 84–81(a)," except that the surface flame spread rating of interior-finish materials required by § 3280.203(b) (5) and (6) may be determined by using the "Test for Surface Flammability of Materials Using a Radiant Heat Energy Source, ASTM E 162–81." However, the following materials need not be tested to establish their flame spread rating unless a lower rating is required by these standards.

(1) Flame-spread rating—76 to 200.

(i) .035-inch or thicker high pressure laminated plastic panel countertop;

(ii) 1/4-inch or thicker unfinished plywood with phenolic or urea glue;

(iii) Unfinished dimension lumber (1-inch or thicker nominal boards);

(iv) 3/8-inch or thicker unfinished particleboard with phenolic or urea binder;

(v) Natural gum-varnished or latex- or alkyd-painted:

(A) 1/4-inch or thicker plywood, or

(B) 3/8-inch or thicker particleboard, or

(C) 1-inch or thicker nominal board;

(vi) 5/16-inch gypsum board with decorative wallpaper; and

(vii) 1/4-inch or thicker unfinished hardboard.

(2) Flame-spread rating—25 to 200.

(i) Painted metal;

(ii) Mineral-base acoustic tile;

(iii) 5/16-inch or thicker unfinished gypsum wallboard (both latex- or alkyd-painted); and

(iv) Ceramic tile.

(The above-listed material applications do not waive the requirements of §§ 3280.203(c) or 3280.204 of this subpart.)

(b) Flame-spread rating requirements.

(1) The interior finish of all walls, columns, and partitions shall not have a flame spread rating exceeding 200 except as otherwise specified herein.

(2) Ceiling interior finish shall not have a flame spread rating exceeding 75.

(3) Walls adjacent to or enclosing a furnace or water heater and ceilings above them shall have an interior finish with a flame spread rating not exceeding 25. Sealants and other trim materials 2 inches or less in width used to finish adjacent surfaces within these spaces are exempt from this provision provided that all joints are completely supported by framing members or by materials having a flame spread rating not exceeding 25.

(4) Exposed interior finishes adjacent to the cooking range shall have a flame spread rating not exceeding 50, except that backsplashes not exceeding 6 inches in height are exempted (Adjacent surfaces include the exposed vertical surfaces between the range-top height and the overhead cabinets and/or ceiling. Refer also to § 3280.204)(a), "Kitchen Cabinet Protection.") Sealants and other trim materials 2 inches or less in width used to finish adjacent surfaces are exempt from this provision provided that all joints are completely supported by a framing member.

(5) Kitchen cabinet doors, countertops, backsplashes, exposed bottoms, and end panels shall have a flame spread rating not to exceed 200. Cabinet rails, stiles, mullions, and top strips are exempted.

(6) Finish surfaces of plastic bathtubs, shower units, and tub or shower doors shall not exceed a flame spread rating of 200.

(c) Fire protective requirements.

(1) Materials used to surface the following areas shall be of limited combustible material (e.g., 5/16-inch gypsum board, etc.):

(i) The exposed wall adjacent to the cooking range (see § 3280.203(b)(4));

(ii) Exposed bottoms and sides of kitchen cabinets as required by § 3280.204;

(iii) Interior walls and ceilings enclosing furnace and/or water heater spaces; and

(iv) Combustible doors which provide interior or exterior access to furnace and/or water heater spaces. The surface may be interrupted for louvers ventilating the enclosure. However, the louvers shall not be constructed of a material of greater combustibility than the door itself (e.g., plastic louvers on a wooden door).

(2) No burner of a surface cooking unit shall be closer than 12 horizontal inches to a window or an exterior door with glazing.

§ 3280.204 Kitchen cabinet protection.

(a) The bottom and sides of combustible kitchen cabinets over cooking ranges to a horizontal distance of 6 inches from the outside edge of the

cooking range shall be protected with at least 5/16-inch thick gypsum board or equivalent limited combustible material. One-inch nominal framing members and trim are exempted from this requirement. The cabinet area over the cooking range or cooktops shall be protected by a metal hood (26-gauge sheet metal, or .017 stainless steel, or .024 aluminum, or .020 copper) with not less than a 3-inch eyebrow projecting horizontally from the front cabinet face. The 5/16-inch thick gypsum board or equivalent material which is above the top of the hood may be supported by the hood. A 3/8-inch enclosed air space shall be provided between the bottom surface of the cabinet and the gypsum board or equivalent material. The hood shall be at least as wide as the cooking range.

(b) The 3-inch metal eyebrow required by paragraph (a) of this section will project from the front and rear cabinet faces when there is no adjacent surface behind the range, or the 5/16-inch thick gypsum board or equivalent material shall be extended to cover all exposed rear surfaces of the cabinet.

(c) The metal hood required by paragraphs (a) and (b) of this section can be omitted when an oven of equivalent metal protection is installed between the cabinet and the range and all exposed cabinet surfaces are protected as described in paragraph (a) of this section.

(d) When a manufactured home is designed for the future installation of a cooking range, the metal hood and cabinet protection required by paragraph (a) of this section and the wall-surfacing protection behind the range required by § 3280.203 shall be installed in the factory.

(e) Vertical clearance above cooking top. Ranges shall have a vertical clearance above the cooking top of not less than 24 inches to the bottom of combustible cabinets.

§ 3280.205 Carpeting.

Carpeting shall not be used in a space or compartment designed to contain only a furnace and/or water heater. Carpeting may be used in other areas where a furnace or water heater is installed, provided that it is not located under the furnace or water heater.

§ 3280.206 Firestopping.

(a) Firestopping of at least 1-inch nominal lumber, 5/16-inch thick gypsum board, or the equivalent, shall be provided to cut off concealed draft openings between walls and partitions, including furred spaces, and the roof or floors, so as to retard vertical movement of fire. In particular, such concealed spaces must be constructed so that floor-to-ceiling concealed spaces on one floor do not communicate with any concealed space on another floor, any concealed spaces in the floor, or any concealed space in the roof cavity. A barrier must be installed to prevent communication between adjacent concealed spaces.

(1) Where the barrier is vertical, it must be made of exterior or interior covering(s) equivalent to that used on the nearest exposed wall surface; and

(2) In all other cases, the barrier must be made of 1-inch nominal lumber, 5/16-inch thick gypsum board, or the equivalent.

(b) A space does not lose its character as a concealed draft opening if it is filled with insulation or other material or if it is blocked by a barrier other than as required by paragraph (a) of this section.

(c) All openings for pipes and vents and other penetrations in walls, floors, and ceilings of furnace and water heater spaces shall be tight-fitted or firestopped. Pipes, vents, and other penetrations are tight-fitted when they cannot be moved freely in the opening.

§ 3280.207 Requirements for foam plastic thermal insulating materials.

(a) *General.* Foam plastic thermal insulating materials shall not be used within the cavity of walls (not including doors) or ceilings or be exposed to the interior of the home unless:

(1) The foam plastic insulating material is protected by an interior finish of 5/16-inch thick gypsum board or equivalent material for all cavities where the material is to be installed; or

(2) The foam plastic is used as a sheathing or siding backerboard, and it: (i) Has a flame spread rating of 75 or less and a smoke-developed rating of 450 or less (not including outer covering of sheathing); (ii) does not exceed 3/8-inch in thickness; and (iii) is separated from the interior of the manufactured home by a minimum of 2 inches of mineral fiber insulation or an equivalent thermal barrier; or

(3) The foam plastic insulating material has been previously accepted by the Department for use in wall and/or ceiling cavities of manufactured homes, and it is installed in accordance with any restrictions imposed at the time of that acceptance; or

(4) The foam plastic insulating material has been tested as required for its location in wall and/or ceiling cavities in accordance with testing procedures described in the Illinois Institute of Technology Research Institute (IITRI) Report, "Development of Mobile Home Fire Test Methods to Judge the Fire Safe Performance of Foam Plastic, J-6461," or other full-scale fire tests accepted by the Department, and it is installed in a manner consistent with the way the material was installed in the foam plastic test module. The materials shall be capable of meeting the following acceptance criteria required for their location.

(i) *Wall assemblies.* The foam plastic system shall demonstrate equivalent or superior performance to the control module as determined by:

(A) Time to reach flashover (600°C in the upper part of the room);

(B) Time to reach an oxygen (O_2) level of 14% (rate of O_2 depletion), a carbon monoxide (CO) level of 1%, a carbon dioxide (CO_2) level of 6%, and a smoke level of 0.26 optical density/meter measured at 5 feet high in the doorway; and

(C) Rate of change concentration for O_2, CO, CO_2 and smoke measured 3 inches below the top of the doorway.

(ii) *Ceiling assemblies.* A minimum of three valid tests of the foam plastic system and one valid test of the control module shall be evaluated to determine if the foam plastic system domonstrates equivalent or superior performance to the control module. Individual factors to be evaluated include intensity of cavity fire (temperature-time) and post-test damage.

(iii) Post-test damage assessment for wall and ceiling assemblies. The overall performance of each total system shall also be evaluated in determining the acceptability of a particular foam plastic insulating material.

(b) All foam plastic thermal insulating materials used in manufactured housing shall have a flame spread rating of 75 or less (not including outer covering or sheathing) and a maximum smoke-developed rating of 450.

§ 3280.208 Fire detection equipment.

(a) *General.* At least one smoke detector (which may be a single station alarm device) shall be installed in the home in the location(s) specified in paragraph (b) of this section.

(b) *Smoke detector locations.* (1) A smoke detector shall be installed on any wall in the hallway or space communicating with each bedroom area between the living area and the first bedroom door unless a door(s) separates the living area from that bedroom area, in which case the detector(s) shall be installed on the living area side as close to the door(s) as practicable. Homes having bedroom areas separated by any one or combination of common-use areas such as kitchen, dining room, living room, or family room (but not a bathroom or utility room), shall have at

least one detector protecting each bedroom area.

(2) When located in hallways, the detector shall be between the return air intake and the living area.

(3) When a home is equipped or designed for future installation of a roof-mounted evaporative cooler or other equipment discharging conditioned air through a ceiling grille into the living space environment, the detector closest to the air discharge shall be located no closer than three horizontal feet from any discharge grille.

(4) A smoke detector shall not be placed in a location which impairs its effectiveness.

(c) *Labeling.* Smoke detectors shall be labeled as conforming with the requirements of Underwriters Laboratory Standard No. 217—1980 for "Single and Multiple Station Smoke Detectors."

(d) *Installation.* Each smoke detector shall be installed in accordance with its listing. The top of the detector shall be located on a wall 4 inches to 12 inches below the ceiling. However, when a detector is mounted on an interior wall below a sloping ceiling, it shall be located 4 inches to 12 inches below the intersection of the connecting exterior wall and the sloping ceiling (cathedral ceiling). The required detector(s) shall be attached to an electrical outlet box and the detector connected by a permanent wiring method into a general electrical circuit. There shall be no switches in the circuit to the detector between the over-current protection device protecting the branch circuit and the detector. Smoke detector(s) shall not be placed on the same branch circuit or any circuit protected by a ground fault circuit interrupter.

3. A new § 3280.209 is added to Part 3280 to read as follows:

§ 3280.209 Fire testing.

All fire testing conducted in accordance with this subpart shall be performed by nationally recognized testing laboratories which have expertise in fire technology. In case of dispute, the Secretary shall determine if a particular agency is qualified to perform such fire tests.

4. New §§ 3280.308 and 3280.309 are added as follows:

§ 3280.308 Formaldehyde emission controls for certain wood products.

(a) Formaldehyde emission levels. All plywood and particleboard materials bonded with a resin system or coated with a surface finish containing formaldehyde shall not exceed the following formaldehyde emission levels when installed in manufactured homes:

(1) Plywood materials shall not emit formaldehyde in excess of 0.2 parts per million (ppm) as measured by the air chamber test method specified in § 3280.406.

(2) Particleboard materials shall not emit formaldehyde in excess of 0.3 ppm as measured by the air chamber test specified in § 3280.406.

(b) Product certification and continuing qualification. All plywood and particleboard materials to be installed in manufactured homes which are bonded with a resin system or coated with a surface finish containing formaldehyde, other than an exclusively phenol-formaldehyde resin system or finish, shall be certified by a nationally recognized testing laboratory as complying with paragraph (a) of this section.

(1) Separate certification shall be done for each plant where the particleboard is produced or where the plywood or particleboard is surface-finished.

(2) To certify plywood or particleboard, the testing laboratory shall witness or conduct the air chamber test specified in § 3280.406 on randomly selected panels initially and at least quarterly thereafter.

(3) The testing laboratory must approve a written quality control plan for each plant where the particleboard is produced or finished or where the plywood is finished. The quality control plan must be designed to assure that all panels comply with paragraph (a) of this section. The plan must establish ongoing procedures to identify increases in the formaldehyde emission characteristics of the finished product resulting from the following changes in production.

(i) In the case of plywood:

(A) The facility where the unfinished panels are produced is changed;

(B) The thickness of the panels is changed so that the panels are thinner; or

(C) The grooving pattern on the panels is changed so that the grooves are deeper or closer together.

(ii) In the case of particleboard:

(A) The resin formulation is changed so that the formaldehyde-to-urea ratio is increased;

(B) The amount of formaldehyde resin used is increased; or

(C) The press time is decreased.

(iii) In the case of plywood or particleboard:

(A) The finishing or top coat is changed and the new finishing or top coat has a greater formaldehyde content; or

(B) The amount of finishing or top coat used on the panels is increased, provided that such finishing or top coat contains formaldehyde.

(4) The testing laboratory shall periodically visit the plant to monitor quality control procedures to assure that all certified panels meet the standard.

(5) To maintain its certification, plywood or particleboard must be tested by the air chamber test specified in § 3280.406 whenever one of the following events occurs:

(i) In the case of particleboard, the resin formulation is changed so that the formaldehyde-to-urea ratio is increased; or

(ii) In the case of particleboard or plywood, the finishing or top coat is changed and the new finishing or top coat contains formaldehyde; or

(iii) In the case of particleboard or plywood, the testing laboratory determines that an air chamber test is necessary to assure that panels comply with paragraph (a) of this section.

(6) In the event that an air chamber test measures levels of formaldehyde from plywood or particleboard in excess of those permitted under paragraph (a) of this section, then the tested product's certification immediately lapses as of the date of production of the tested panels. No panel produced on the same date as the tested panels or on any day thereafter may be used or certified for use in manufactured homes.

(i) Provided, however, that a new product certification may be obtained by testing randomly selected panels which were produced on any day following the date of production of the tested panels. If such panels pass the air chamber test specified in § 3280.406, then the plywood or particleboard produced on that day and subsequent days may be used and certified for use in manufactured homes.

(ii) Provided further, that plywood or particleboard produced on the same day as the tested panels, and panels produced on subsequent days, if not certified pursuant to paragraph (b)(4)(i), may be used in manufactured homes only under the following circumstances:

(A) Each panel is treated with a scavenger, sealant, or other means of reducing formaldehyde emissions which does not adversely affect the structural quality of the product; and

(B) Panels randomly selected from the treated panels are tested by and pass the air chamber test specified in § 3280.406.

(c) Panel identification. Each plywood and particleboard panel to be installed in manufactured homes which is bonded or coated with a resin system containing formaldehyde, other than an exclusively phenol-formaldehyde resin system, shall be stamped or labeled so as to identify

the product manufacturer, date of production and/or lot number, and the testing laboratory certifying compliance with this section.

(d) Treatment after certification. If certified plywood or particleboard subsequently is treated with paint, varnish, or any other substance containing formaldehyde, then the certification is no longer valid. In such a case, each stamp or label placed on the panels pursuant to paragraph (c) of this section must be obliterated. In addition, the treated panels may be recertified and reidentified in accordance with paragraphs (b) and (c) of this section.

§ 3280.309 Health Notice on formaldehyde emissions.

(a) Each manufactured home shall have a Health Notice on formaldehyde emissions prominently displayed in a temporary manner in the kitchen (i.e., countertop or exposed cabinet face). The Notice shall read as follows:

Important Health Notice

Some of the building materials used in this home emit formaldehyde. Eye, nose, and throat irritation, headache, nausea, and a variety of asthma-like symptoms, including shortness of breath, have been reported as a result of formaldehyde exposure. Elderly persons and young children, as well as anyone with a history of asthma, allergies, or lung problems, may be at greater risk. Research is continuing on the possible long-term effects of exposure to formaldehyde.

Reduced ventilation resulting from energy efficiency standards may allow formaldehyde and other contaminants to accumulate in the indoor air. Additional ventilation to dilute the indoor air may be obtained from a passive or mechanical ventilation system offered by the manufacturer. Consult your dealer for information about the ventilation options offered with this home.

High indoor temperatures and humidity raise formaldehyde levels. When a home is to be located in areas subject to extreme summer temperatures, an air-conditioning system can be used to control indoor temperature levels. Check the comfort cooling certificate to determine if this home has been equipped or designed for the installation of an air-conditioning system.

If you have any questions regarding the health effects of formaldehyde, consult your doctor or local health department.

(b) The Notice shall be legible and typed using letters at least ¼ inch in size. The title shall be in red and typed using letters at least ¾ inch in size.

(c) The Notice shall not be removed by any party until the entire sales transaction has been completed (refer to Part 3282—Manufactured Home Procedural and Enforcement Regulations for provisions regarding a sales transaction).

(d) A copy of the Notice shall be included in the Consumer Manual (refer to Part 3282—Manufactured Home Consumer Manual Requirements).

5. Section 3280.404 is amended by adding paragraph (b)(4)(vi) as follows:

§ 3280.404 Standard for egress windows for use in manufactured homes.

* * * * *

(b) * * *

(4) * * *

(vi) An operational check of each installed egress window or device shall be made at the factory. All egress windows and devices shall be openable to a minimum required dimension without binding or requiring the use of tools. Any window or device failing this check shall be repaired or replaced. A repaired window shall conform to its certification. Any repaired or replaced window or device shall pass the operational check.

* * * * *

6. A new § 3280.406 is added to read as follows:

§ 3280.406 Air chamber test method for certification and qualification of formaldehyde emission levels.

(a) *Preconditioning.* Preconditioning of plywood or particleboard panels for air chamber tests shall be initiated as soon as practicable but not in excess of 30 days after the plywood or particleboard is produced or surface-finished, whichever is later, using randomly selected panels.

(1) If preconditioning is to be initiated more than two days after the plywood or particleboard is produced or surface-finished, whichever is later, the panels must be dead-stacked or air-tight wrapped until preconditioning is initiated.

(2) Panels selected for testing in the air chamber shall not be taken from the top or botton of the stack.

(b) *Testing.* Testing shall be conducted in accordance with the Large-Scale Test Method for Determining Formaldehyde Emissions From Wood Products, Large Chamber Method FTM 2–1983, NPA/HPMA for Manufactured Housing components, with the following exceptions:

Testing conditions for operation of the chambers shall be as follows:

(1) The chamber shall be operated indoors.

(2) Plywood and particleboard panels shall be individually tested in accordance with the following loading ratios:

(i) Plywood—0.29 Ft2/Ft3, and

(ii) Particleboard—0.13 Ft2/Ft3.

(3) Temperature to be maintained inside the chamber shall be 77° plus or minus 2° F.

(4) The test concentration (C) shall be standardized to a level (C_o) at a temperature (t_o) of 77° F and 50% relative humidity (H_o) by the following formula:

$$C = C_o \times [1 + A \times (H - H_o)] \times e^{-R(1/t - 1/t_o)}$$

where:

C = Test formaldehyde concentration

C_o = Standardized formaldehyde concentration

e = Natural log base

R = Coefficient of temperature (9799)

t = Actual test condition temperature (°K)

t_o = Standardized temperature (°K)

A = Coefficient of humidity (0.0175)

H = Actual relative humidity (%)

H_o = Standardized relative humidity (%)

The standardized level (C_o) is the concentration used to determine compliance with § 3280.308(a).

(5) The air chamber shall be inspected and recalibrated at least annually to insure its proper operation under test conditions.

7. Section 3280.710 is amended by adding new paragraph (g) to read as follows:

§ 3280.710 Venting, ventilation, and combustion air.

* * * * *

(g) Ventilation improvement options to improve indoor air quality.

(1) In addition to the minimum ventilation required by § 3280.103 and this paragraph, each manufacturer shall make available in its approved designs and in the marketplace at least one of the following ventilation options to improve indoor air quality:

(i) A passive ventilation system; or

(ii) A mechanical ventilation system; or

(iii) A combination of a passive and mechanical ventilation system; or

(iv) A fresh-air inlet (not for combustion air) which draws its air from the exterior of the home (not the underside). The inlet shall be continuously connected from a forced-air furnace to the exterior and be capable of providing at least 25 cubic feet per minute with the furnace fan in normal operation. The air inlet shall be listed for use with the installed forced-air furnace.

(2) The ventilation system(s) offered must improve the ventilation of the occupied living space of the manufactured home.

(3) Ventilation improvement information sheet. Before any person enters into an agreement to sell a manufactured home to the first purchaser for purposes other than resale, the seller shall deliver a

ventilation improvement information sheet to each prospective purchaser. The sheet shall include a description of the available ventilation option(s) and, for mechanical systems, the rated capacity in air changes per hour or cubic feet per minute; and

(4) The manufacturer shall provide, in its instructions, complete information for the installation of each ventilation option(s) being offered for use with its designs, including the ventilation system manufacturer's instructions.

Authority: Secs. 604 and 625 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403 and 5424, and sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 3, 1984.

Shirley M. Wiseman,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 251

Coinsurance for the Construction or Substantial Rehabilitation of Multifamily Housing Projects; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 251

[Docket No. R-84-1138; FR-1198]

Coinsurance for the Construction or Substantial Rehabilitation of Multifamily Housing Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule adds a new Part 251 to Title 24 of the Code of Federal Regulations. The new Part authorizes a program of FHA coinsurance in connection with the construction or substantial rehabilitation of multifamily housing projects. Under the program the Department insures, under section 221 of the National Housing Act, mortgages covering newly constructed or substantially rehabilitated multifamily housing projects pursuant to a coinsurance contract. The contract provides that the mortgage lender: (1) Assume a percentage of any loss resulting from a default on the mortgage and (2) carry out (subject to monitoring) most of the underwriting, commitment, loan servicing, property disposition and other functions that would otherwise be carried out by the Federal Housing Commissioner. This Part 251 program is supplemented, in 24 CFR Part 255, by a similar program of coinsurance for the purchase or refinancing of existing multifamily housing projects.

EFFECTIVE DATE: October 4, 1984. The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements contained in § 251.301 until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: James Hamernick, Office of Multifamily Housing Development, Room 6132, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 755-6500. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 9, 1984, the Department published a proposed rule (49 FR 9084) which would authorize a program of FHA coinsurance for the construction or substantial rehabilitation of multifamily housing projects. Public comments were invited concerning this proposal and a period of 60 days was provided for this purpose.

Public comments on the proposed rule were due by May 9, 1984. Eighteen comments were received by that date. Four were from national organizations (National Association of Homebuilders, Mortgage Bankers Association, Council of State Housing Agencies, and American Institute of CPAs); seven were from individual State Housing Agencies; six were from private lender-developers; and one was from a HUD Area Office (Baltimore). Many of the commenters divided their written views into: (1) Major recommendations or objections and (2) numerous "technical" comments on specific sections.

The following is a listing of major recommendations or objections. For the most part, these general issues were raised by at least two of the commenters. The Department's disposition of these issues, as well as its actions on a number of the "technical" comments received, are set forth later in this preamble in a statement of "Changes Made in the Rule as Originally Proposed."

1. *Targeting (§§ 251.1 (c) and (f)).* Two comments expressed concern that the coinsurance program, as it develops, will avoid the higher risk projects in older areas—by either ignoring these projects, or considering only full insurance proposals in such areas.

2. *Application Fee (§ 251.102(a)).* Four comments addressed this section, stating: (1) The $5,000 application fee was too high and should be reduced, (2) State agencies should be exempted from paying a fee, and (3) payment should not be required if the applicant is already a section 223(f) coinsuring lender.

3. *Assignments (§ 251.106).* There were four comments on this issue. Concern was expressed about the undefined nature of assignment only for "good cause" in § 251.106(a). Also, one commenter had detailed recommendations concerning broadening the category of eligible assignees and the use of security interest assignments.

4. *Pledging and Other Security Arrangements (49 FR 9086 and new § 251.108).* Four comments recommended inclusion of a new section authorizing participation and pledge arrangements similar to those now permitted under 24 CFR 207.261. Section 207.261 authorizes a lender, under specified conditions, to assign, pledge, or transfer an insured mortgage (or partial interest therein) by way of a participation or other arrangement.

5. *Limit on Commercial Space (§ 251.201(a)(5)).* Ten comments objected to the rule's apparent five percent limit on commercial space in a project, generally arguing that: (1) A 10-20 percent limit has historically been more appropriate and (2) the special needs of downtown areas require higher percentages of commercial space.

6. *Debt Service Limitation (§ 251.203(c)).* Two comments recommended that this section expressly permit funding of projects that may run an operating deficit for a limited period (up to five years).

7. *Rehabilitating Projects Owned in Unencumbered Fee (§ 251.203(d)(2)).* Three comments noted that the proposed rule permits the inclusion of value in excess of existing debt in the financing of rehabilitation by a present owner, and recommended that this formula also be used if no debt exists on the property.

8. *Legally Required HUD Reviews (§§ 251.201(b) and 301(b)).* Six comments expressed concern over the potential for delay in these HUD reviews (especially for NEPA), and some suggested a 30-day review period after which the project would be deemed as meeting any NEPA or Historic Preservation requirements.

9. *Full Review of First Three Coinsurance Cases (§ 251.302(b) and (49 FR 9088)).* Five comments objected to a full review as unnecessary (especially with State Housing Agencies), and recommended that experience under the existing section 223(f) coinsurance program be taken into account in determining the scope of review.

10. *Cost Certification—Certificate of Public Accountant (§ 251.404(g)).* The American Institute of Certified Public Accountants objected that the current language of § 251.404(g) conflicts with professional auditing literature and that CPAs are precluded from making the statements as to accuracy and examination required by that section. They recommend substitute language for this section.

11. *Payment of MIP Before Taxes, Special Assessments, Fire Insurance, etc. (§ 251.503(f)).* Two comments urged that payment of taxes, etc., be given priority over payment of MIP by the lender, since such payments are vital to the continued viability of the project.

12. *Prepayment Restrictions (§ 251.503(i)).* Six comments urged leaving any prepayment restrictions to the discretion of the lender, citing: (1) Need for flexibility in any "work out" arrangements, (2) in cases where tax-exempt bonds are involved, Internal

Revenue Code restrictions on converting projects to non-rental uses. One commenter stated that, if HUD must have a prepayment restriction, the five-year restriction currently in the section 223(f) coinsurance program would be preferable.

13. *Regulation of Rents and Charges (§ 251.703).* Eight comments asserted that in order to comply with the Internal Revenue Code and State enabling legislation, State Housing Agencies must have some authority to regulate rents and charges.

14. *Control of Residual Receipts and Distributions (§ 251.705).* Seven comments recommended that, unless the project is directly subsidized by HUD, control of residual receipts should generally lie with the lender. Also, the commenters asserted that the six percent limit on distributions to limited dividend mortgagors is much too low.

15. *Commencement of Foreclosure Proceedings (§ 251.815–816).* Two comments stated that these sections establish very rigid time schedules that could be detrimental to efforts to work out problem loans. They urged that lenders have greater discretionary control over starting foreclosure proceedings.

16. *Proposal that HUD Share in any "Windfall" in the Subsequent Sale of a Foreclosed Property for a Price Higher Than Appraised Value (49 FR 9089).* Eleven comments strongly opposed this proposal as inequitable. They argued that if this is done, HUD should also "be willing to share in any loss if the property is sold for less."

17. *Inclusion of Only ⅔ of Lender's Property Acquisition Costs in Payment of Insurance Claim (§ 251.821(c)).* Four comments said this limitation is unfair, given the five percent deductible and coinsurance features of the program, and that, therefore, the entire cost should be allowed.

18. *Removal of 24 CFR Part 250 (Coinsurance for State Housing Finance Agencies).* The Council of State Housing Agencies objected to removal of this part, and urged that Part 250 remain in place during an extended trial of the new Part 251. Major ground for the objection was that HUD, in its effort to consolidate programmatic vehicles, may have undermined the advantages and incentives encouraging the use of coinsurance by State agencies.

19. *Use of New Mortgage Instruments (SAM, GPM etc.) with Coinsurance.* Two comments urged that HUD address in the rule how coinsurance may be used in conjunction with new mortgage instruments added by the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181), such as Shared Appreciation Mortgages under section 253 of the National Housing Act and Graduated Payment Mortgages under section 245 of that Act.

20. *Relation of Coinsurance to Section 8 and Other HUD Subsidies (49 FR 9088–9).* Two comments urged that this question be clarified in the rule. One comment urged coinsurance of portfolio loans assisted under section 8.

Changes Made in Rule as Originally Proposed

As a result of: (1) Evaluation of public comments received concerning the proposed rule since its publication on March 9, 1984, (2) evaluation of public comments concerning an interim rule revising the complementary Part 255 multifamily coinsurance program for existing structures published May 25, 1983, and (3) a continuing evaluation within the Department of HUD's multifamily coinsurance programs, this final rule makes the following changes in the original proposed rule.

Subpart A—General Provisions

This subpart is the same as in the proposed rule, except for the addition of one provision described below and minor editorial changes.

Two commenters on the proposed rule expressed concern that, as the coinsurance program develops, there will be a tendency for lenders to avoid higher risk projects in older urban areas—by either refusing to consider these projects, or considering only full insurance proposals for such areas. The Department will be monitoring its coinsurance programs closely to determine whether such a tendency develops and will review carefully any public correspondence received on this subject. As stated in § 251.1(f), "If the Commissioner determines that coinsurance under this part is having an adverse effect on the availability of Mortgage credit to older and declining neighborhoods or to purchasers of older and lower cost housing, the Commissioner will discontinue the program after due notice." In addition, the final rule adds a supplementing provision to § 251.1(f) stating that "If the Commissioner determines that coinsurance under this part is disrupting (or will disrupt) the housing or mortgage market in a market area or is adversely impacting (or will adversely impact) other federally insured projects in a market area, the Commissioner will modify, suspend, or discontinue program activities in such area after due notice."

Subpart B—Lender Requirements

This Subpart deals with the categories of eligible lenders, HUD approval of such lenders, delegations of servicing, assignment of mortgages, reinsurance, and pledging and other security arrangements. In this final rule a new § 251.108 (Pledging and other security arrangements) is added and an additional paragraph is added to § 251.106 (Assignments). Otherwise, aside from editorial corrections, the Subpart is the same as in the proposed rule.

A number of commenters on the proposed rule addressed § 251.102 (Review and approval of coinsuring lenders). Two commenters said that the $5,000 application fee under § 251.102(a) was too high, and that a lower fee ($2,500 was suggested) would be sufficient to discourage frivolous applications. The Department does not agree with this recommendation. Initial approval as a coinsuring lender requires intensive examination of the lender's operations by HUD staff including, under § 251.302(b), a complete HUD review of the first three cases processed by the applicant lender. Given these initial demands upon HUD staff, the $5,000 fee is considered reasonable.

A State housing agency urged that such agencies be exempt from the $5,000 application fee. For the reasons cited above justifying the amount of HUD's fee, the Department does not agree with this proposal. In addition, the Department does not believe that an exemption from (or a reduced) HUD oversight review for State agencies is justified in this beginning stage of the coinsurance program. A number of commenters also recommended that, where coinsuring lenders have already paid an application fee under the Part 255/223(f) coinsurance program, they not be required to pay an additional application fee under this Part 251 program. The Department cannot agree with this recommendation. There are significant differences in the staff and management capabilities needed to oversee the purchase or refinancing of existing projects and those needed to carry to successful completion, a newly constructed or substantially rehabilitated multifamily project. Also, a full HUD review of the initial three cases processed by the coinsuring lender will be required under each program.

Four commenters discussed § 251.106 (Assignments). Concern was expressed over the requirement in § 251.106(a) that assignment would only be allowed for "good cause." Also, one commenter had detailed recommendations concerning broadening the category of eligible assignees and the use of security interest assignments.

Given the continuing oversight responsibilities delegated to a coinsuring lender under this Part 251 program, the Department has a strong interest in the reasons for, and the nature of, any assignment of coinsured mortgages, and it wishes to retain the authority to review and approve all such cases on an individual basis. One of the Department's major concerns in this regard is that the coinsurance risk be retained during the period of assignment. The Department wishes therefore, to review and approve any risk allocation between the assignor (coinsuring lender) and the assignee. As additional protection for the Department, § 251.106(a)(4) has been amended to list, among the requirements for approval of the assignment of coinsured mortgages, the prior written approval of the Commissioner with respect to any risk allocation between assignor and assignee.

In addition, the Department does not believe that it is appropriate at this time to define, as some commenters suggested, what will constitute "good cause." What may constitute "good cause" may turn on the facts and circumstances of each case, and the Department believes it premature to define the term further in this regulation, lest the definition turn out in practice to be either too rigid or too lax. With respect to the need for a category of "security interest assignments," the final rule adds a new § 251.108 (Pledging and other security arrangements) which is described below and which is intended to be responsive to this concern.

Three commenters urged that the final rule contain provisions authorizing participation and pledge arrangements similar to those now permitted under 24 CFR 207.261. They stated that the addition of these provisions would result in an increase in the sources of financing and would have a favorable impact on the cost of such financing. The Department agrees with this recommendation, and has added new §§ 251.108 (Pledging and other security arrangements) and 251.106(c) (Transfer of partial interest under participating agreement) in the final rule in response.

The new §251.106(c) is based upon a similar authority to make transfers of partial interest found in 24 CFR 207.261. In brief, a partial interest in a coinsured mortgage may be transferred without obtaining the approval of the Commissioner under a participation agreement or arrangement if the following conditions are met: (1) The coinsured mortgage is held by a coinsuring mortgagee (the "principal" mortgagee); (2) the "principal" mortgagee at all times retains at least a ten percent beneficial interest in the insured mortgage up to the time of the final endorsement, and at least a five percent beneficial interest thereafter; (3) the participation or partial interest is issued to a mortgagee approved by the Commissioner or a qualified pension or retirement fund or a profit sharing plan; (4) the participation agreement or arrangement provides that the "principal" mortgagee shall remain the mortgagee of record under the contract of coinsurance; and (5) the Commissioner shall have no obligation to recognize or do business with any other party except the mortgagee of record with respect to the rights, benefits and obligations of the mortgagee under the contract of coinsurance. No notice of any sale or transfer of a participating or partial interest is required unless the coinsured mortgage is transferred in its entirety to a new "principal" mortgagee. A provision is also added (new § 251.106(d)(2)) in the final rule) which protects GNMA's interests in connection with these partial transfers by providing that, when a coinsured mortgage is to be included in a GNMA mortgage pool backing one or more GNMA Project Loan Certificates, the lender-issuer and the holders of the participating interests must certify that the participations shall terminate as of the release (delivery) of the Project Loan Certificates. No participations may exist in mortgages backing GNMA Construction Loan Certificates or GNMA Project Loan Certificates.

Under the new § 251.108, a lender may pledge the beneficial interests in a coinsured mortgage as security pursuant to the terms of a reinsurance contract, trust indenture, third party guarantee agreement or similar financing arrangement directly related to the coinsurance transaction, subject to the following conditions: (1) An approved coinsuring lender has legal title to the note and the mortgage subject to the security interest created; (2) the Commissioner has no obligation to recognize or deal with anyone other than the coinsuring lender or record with respect to the rights, benefits, and obligations of the coinsuring lender; and (3) the mortgagor has no obligation to recognize or deal with anyone other than the coinsuring lender or to such other person or entity servicing the mortgage loan under § 251.105, except that the mortgagor may be directed to make payments under the mortgage and mortgage note to a successor lender or to one or more custodial accounts. Under this section, a lender may not pledge the beneficial interests of coinsured mortgages backing GNMA construction or Project Loan Certificates except as authorized by GNMA. The intent of the new section is to provide maximum flexibility to the coinsuring lender in devising pledging or other security arrangements consistent with the protection of the interests of the Commissioner and GNMA.

It has been asserted that, in some jurisdictions at least, an effective pledge of a beneficial interest under new § 251.108 may have to involve the vesting of legal title to the note and mortgage in a secured party. The Department is most reluctant to authorize such transfers of title, but will consider the views of interested parties as to the need of any regulatory revision in this area.

Subpart C—Program Requirements

This subpart sets forth the requirements which must be met if a project, a mortgagor, and the mortgage covering the project are to be eligible for program benefits. It also covers the fees and premiums chargeable by the lender, the coinsurance of portfolio mortgages, and the nondiscrimination and labor standards requirements which must be met in developing and operating a coinsured project.

Except for revisions of § 251.203(d) and § 251.209(a) (described below) and nonsubstantial editorial changes, this Subpart remains the same as published in the proposed rule. The proposed rule reserved a space for possible provisions relating to Operating Loss Loans in connection with coinsured projects. One commenter recommended the inclusion of such provisions. The Department has decided, however, that such provisions are not needed at this stage of development in the coinsurance program, and there are none in this final rule.

Ten public comments were received concerning § 251.201(a)(5). This section provides that a project "Must be designed primarily for residential use, but may include commercial and community facilities determined to be adequate to serve the occupants. In general, the net rentable commercial area in any project may not exceed five percent of the total net rentable area, unless the commercial tenants leasing the space meet specific financial responsibility standards established by the Commissioner. In no event may the net rentable commercial area exceed 20 percent of the total net rentable area."

The comments tended to view the "general" five percent limit as a rigid requirement. They urged an express 10-

20 percent limit, arguing that experience has shown such a limit to be more appropriate and that projects in older downtown areas frequently need higher percentages of commercial space if they are to be economically viable. The Department believes that the language of the proposed rule quoted above is sufficiently flexible to accommodate the concerns expressed in the public comments and, therefore, that no change is required. The five percent limit is merely a "general" limit, and does not apply at all to tenants that meet the Commissioner's financial responsibility standards.

Section 251.203(c) limits a coinsurable mortgage to the amount which can be amortized by 90–95 percent of the net income derived from the project. Two commenters noted that during the early rent-up period, rents may not be sufficient to meet mortgage payments and urged that the regulations expressly permit a deficit financing situation to prevail for a 5-year period, provided the developer can give satisfactory assurance to HUD and the lender (through a letter of credit, pledge of syndication proceeds, or cash) that mortgage payments will be met. The Department does not agree with this recommendation. HUD's position has been and continues to be that deficit periods allowed in mortgage underwriting may not exceed 18 months. It will be HUD policy, as in the section 221 full insurance program, to have the lender require assurances of the mortgagor that adequate funds will be available for payment of operating deficits whenever necessary.

One commenter noted that in calculating new projected income for payment of debt service under § 251.203(c), "distribution, where appropriate" are taken into account. The commenter asserted that this has the deleterious effect of both: (1) Reducing projected income available for debt service and (2) "guaranteeing a mortgagor's distribution." The Department believes that the potential for distributions by general or limited dividend mortgagors is an important factor that should be taken into account in determining the proper mortgage amounts, both as a matter of logic and as a practical matter. Taking this factor into account in no way "guarantees" to the mortgagor that such distributions will be made. The current language in § 251.203(c) is therefore retained.

Two commenters noted that § 251.203(d) (1) and (2) of the proposed rule would have provided different maximum coinsurable amounts in the case of rehabilitation projects owned by the mortgagor depending on whether the property was owned in unencumbered fee simple or was subject to existing indebtedness to be refinanced by part of the proceeds of the coinsured mortgage. In the fee simple case, the mortgage could not exceed the cost of rehabilitation. In the refinancing case, the mortgage could not exceed the cost of rehabilitation plus a specific percentage of the lender's estimate of the value of the property before rehabilitation. The commenters recommend extension of the value-plus-cost-of-rehabilitation formula used in refinancing cases to cases where there is no preexisting debt on the property. It is argued that such a formula will avoid forced sales by the owner of the property in order to realize equity, thereby eliminating the unnecessary costs resulting from such a sale, with possible impact on subsequent rents. The Department believes there is merit in this argument, and has revised § 251.203(d) to permit the incluson of value in determining the maximum mortgage amount where the project to be rehabilitated is owned free and clear.

One commenter, the U.S. Department of Labor, expressed concern that the proposed rule might be interpreted as vesting in the lender, rather than HUD, responsibility for carrying out various functions with regard to the administration and enforcement of Davis-Bacon labor standards. Final responsibility for carrying out these functions is, of course, the responsibility of HUD. The final rule revises § 251.209(a) to make clear that "the Commissioner shall assure compliance with those [labor] standards and requirements and the lender must obtain, evaluate, and submit any information or certifications required by the Commissioner to assist the Commissioner in carrying out this function." While retaining this responsibility, the Department does intend, through administrative requirements, to delegate to the lender certain information collection or other routine functions, such as wage interviews or payroll reviews, where this is feasible and consistent with HUD's retention of final responsibility. Any such delegations will be carefully monitored by the Department through investigations of noncompliance and post audit reviews.

Subpart D—Processing and Commitment

This Subpart delineates the relationship between HUD and the lender during the development of a coinsured multifamily housing project. A sponsor/developer seeking a coinsured mortgage loan would apply to an approved lender. The sponsor/developer would be required to provide, as part of its application, documentation required by the lender to comply with the requirements of Part 251. These documentary requirements would be set forth in detail in appropriate HUD handbooks. The lender must perform all of the processing and make all of the determinations of the eligibility of a mortgage for coinsurance under the program, except for certain environmental, previous participation, fair housing-equal opportunity, and intergovernmental review requirements that, under law or by their very nature, may not be delegated by the Secretary of HUD. Upon completion of processing, the lender may issue a commitment to coinsure the mortgage. Closing of the loan is done by the lender, except that endorsement of the mortgage for coinsurance will be done by the Commissioner or the Commissioner's authorized departmental representative upon certification by the lender of compliance with the terms and conditions of Part 251. For the first three commitments to coinsure prepared for issuance by the lender, it will be HUD's policy to require the lender to submit its complete case file, in order that the Commissioner may ascertain that the lender is processing applications in full compliance with the requirements of Part 251. This policy was announced in the preamble to the proposed Part 251 (see 49 FR 9088).

This final rule retains the language of the proposed rule, except for editorial corrections and the addition of a new paragraph (c) to § 251.301 which requires the lender, in addition to any information the lender must submit under paragraph (b) of that section to enable the Commissioner to carry out certain nondelagible functions, to also submit any information required by the Commissioner concerning the location, number and type of units, and projected rent range of units in the proposed project. This additional information requirement imposes no significant paper burden. In essence, it asks for the information regularly required (on the first page of HUD form 9–2013) in FHA full insurance processing and will prove most useful to the Commissioner in carrying out his or her obligation to continuously monitor the impact of coinsurance on the housing and mortgage markets and its own full insurance programs.

Six commenters expressed concern over the potential for delay in connection with these required determinations set forth in § 251.301(b)

which must be made by the Commissioner. A quote from one of these comments gives a sense of the general concern expressed.

Par. 251.301(b): This section retains for HUD the responsibility for reviewing previous participation certifications, environmental concerns, equal opportunity compliance, inter-governmental review procedures and compliance with the National Historic Preservation Act. Of course, there are statutory provisions requiring HUD to perform these reviews, and, therefore, it is appropriate for HUD to do so. However, we are concerned that there may be processing delays stemming from HUD's reviews in these areas. For example, it is not unknown where previous participation certificates were not approved until the day of closing, even though an application for mortgage insurance had been pending in the HUD Area Office for many, many months. One of the reasons for shifting to a co-insurance program is the belief that private mortgagees could expedite processing. This benefit would be lost while waiting for HUD to complete its reviews. Therefore, we suggest that a provision be added that after 30 days following submission of documents required for HUD's consideration these reviews be considered automatically approved unless the lender is notified otherwise.

The Department recognizes that the success or failure of the coinsurance program will be, in large part, determined by the timely processing by HUD of coinsurance applications. While an "automatic" approval after 30 days, as is recommended in the comment, is legally infeasible, the Department will be placing strong emphasis on expeditious processing and does not anticipate that unnecessary processing delays will be a serious factor in program operations.

Five commenters objected to the full review of a lender's first three coinsurance cases which HUD intends to carry out under § 251.302(b), arguing that a HUD review of one case, in full, should in all likelihood be sufficient, given the rigorous up-front approval process the lender also has to go through. At this stage in the development of the coinsurance program, the Department considers a full review of the initial three cases of each lender essential given: (1) The extent of delegation to the lender, (2) the complexity of the activities being delegated, and (3) the duration of the processing and construction or rehabilitation period. HUD will therefore continue its full, three-case review policy. It may be noted that any downward modification of this policy in the future, though unlikely, would not require a time consuming change in the regulation.

Subpart E—Insurance of Advances; Insurance Upon Completion; Construction Period

This Subpart covers requirements which must be met by the mortgagor and the lender during the period construction or substantial rehabilitation is taking place. Except for a revision to § 251.404, the Subpart is the same in this final rule as in the proposed rule.

Section 251.404 relates to inspections during construction and to cost certification requirements. Its provisions are applicable to both insurance of advances and insurance upon completion cases. In the proposed rule, § 251.404(g) would have required, in all projects exceeding 40 units, that cost certifications must be supported by "a certificate as to their accuracy" by a Certified Public Accountant. The certificate would have to include a statement that the accounts have been examined in accordance with generally accepted auditing standards "to the extent necessary to verify the actual costs." One commenter, the American Institute of Certified Public Accountants, asserted that the quoted language conflicts with professional auditing standards and that CPAs are precluded from making the statements as to accuracy and the examination required by the proposed rule. The Department believes this comment has merit and has, accordingly, revised the language of § 254.404(g) in the final rule to require "an audit of the cost certification statement and accompanying financial statements", and to require that the audit include a statement that the accounts have been examined in accordance with generally accepted auditing standards "to the extent necessary to verify that they present fairly the actual costs".

Subpart F—Mortgage and Closing Requirements

This Subpart relates to the type of property interest a coinsured mortgage may cover; requirements with respect to evidence of title; and required mortgage provisions with respect to payments, MIP, fire and hazard insurance, prepayment privileges, late charges, secondary liens, and conversion of the property to other uses. With the exception of a revision of § 251.503(i) relating to mortgage prepayments and technical revisions to §§ 251.503(l) and 505, this Subpart is the same as the proposed rule.

Two commenters recommended that § 251.503(f), relating to the priorities to be used by the lender in applying the payments received from the mortgagor, be revised to require that ground rents, taxes, special assessments, and fire and other hazard insurance premiums be payable ahead of mortgage insurance premiums to HUD, since deferral or nonpayment of these items is cause for a mortgage default. The Department does not concur in this recommendation. Giving first priority to lender payment of MIP is a HUD policy of at least 30 years standing and no significant mortgage default problems have been experienced because of HUD's adherence to it.

Six commenters urged that § 251.503(i) be revised to give lenders authority to impose mortgage prepayment restrictions or penalties citing: (1) Existing Internal Revenue Code restrictions on conversions of tax-exempt bond financied rental housing to other uses; and (2) the inconsistency in the proposed rule text in allowing unrestricted prepayments with respect to section 221(d)(4) mortgages but prohibiting prepayment for 20 years for mortgages insured under section 221(d)(3) without regard to whether or not the project is subsidized.

The Department believes there is merit in these comments, and the final rule revises § 251.503(i) to permit prepayment of section 221(d)(3) mortgages while authorizing the lender to impose partial or full prepayment restrictions on both section 221(d)(3) and section 221(d)(4) mortgages, subject to standards and restrictions established by the Commissioner, that: (1) Cover projects in which units are subsidized under section 8 of the United States Housing Act of 1937 or other Federal law or (2) are mortgages which may be purchased, assigned or otherwise transferred to the Government National Mortgage Association (GNMA). As is the proposed rule mortgages which are given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipatory notes, or both, may also contain a lender prepayment restriction or penalty charge acceptable to the Commissioner as to term, amount, and conditions.

Subpart G—Requirements Relating to Structure of Mortgagor Entity and Transfers of Ownership Interest

The language of this Subpart is the same in both the final and proposed rule.

Subpart H—Program Requirements Relating to Project Operation

This Subpart covers requirements applicable to the operation of a project after the mortgage has been endorsed for coinsurance. The language of §§ 251.703 (Rents and Charges) and

251.705 (Distributions and Residual Receipts) are revised in this final rule. Otherwise, except for editorial corrections, the language of the proposed rule is retained.

Five commenters recommended that coinsuring lenders have authority to determine the maximum rents and charges under § 251.703. This was deemed especially important in connection with section 221(d)(4) mortgages, where HUD allows the mortgagor to set rents and charges. A number of State Housing Agencies state that this gives an undue amount of discretion to the mortgagor and may conflict with State enabling legislation or with requirements in the Internal Revenue Code concerning tax-exempt bond financing. In response, the Department is revising paragraph (d) of § 251.703 to permit a coinsuring lender to regulate the rents and charges (subject to the Commissioner's administrative procedures), of a section 221(d)(4) project if the lender determines that such regulations is necessary in order to comply with the requirements of the Internal Revenue Code or State law. The Department has also revised paragraph (c) of § 251.703 to delegate to coinsuring lenders the authority to regulate facility or other charges, subject to the Commissioner's administrative procedures of section 221(d)(4) projects constructed exclusively for the elderly or handicapped.

Seven State Housing Agencies addressed § 251.705 (Distributions and Residual Receipts). Two recommendations were made. First, the language of § 251.705(c), which gives the Commissioner control of the residual receipts of non-profit or limited dividend mortgagors, should be revised to allow lender control of the use of residual receipts "as the lender absorbs the first dollar losses under the coinsurance program." The final rule revises this section (redesignated § 251.705(d) in the final rule) to authorize the lender to release residual receipts on unsubsidized projects "in accordance with the Commissioner's administrative procedures. As provided in the regulations governing the various subsidy programs, HUD will retain control over the release and use of residual receipts on projects which receive HUD subsidy payments.

The commenters also urged revision of § 251.705(b)(3) which, in the proposed rule, restricted limited distribution mortgagors to a six percent return on equity. They argue that a six percent return may not be sufficient to attract private capital into the development of multifamily housing, particularly without Federal subsidies, and urged that lenders should be free to set higher rates for limited distribution mortgagors, provided that the higher rate of distribution is consistent with State and local law. The Department believes there is merit in this recommendation and has revised § 251.705(b) accordingly. If the project does not receive subsidy payments from HUD, distributions will be earned annually at a rate prescribed by the lender consistent with State and local law. If the project receives subsidy payments from HUD, distributions will be earned at a rate prescribed in the regulations and administrative procedures applicable to the subsidy program.

Section 251.705(h) is also revised in the final rule to require the mortgagor to respond within 30 (rather than 45) days after receipt of any lender management review or physical inspection reports or written inquiries concerning project financial statements. This change reflects current HUD administrative policy.

Subpart I—Contract Rights and Obligations

This Subpart covers contract rights and obligations under the coinsurance program. Topics include mortgage insurance premiums, delinquency and default under the mortgage, termination of coinsurance, claim procedures and payment of coinsurance benefits, and remedies for default by a lender-issuer under GNMA's Mortgage-Backed Securities Program.

The final rule adds a new § 251.827 at the end of the Subpart. The new section was not developed in response to any public comment, but results from the Department's continuing internal evaluation of the coinsurance program. It deals with an intra-agency problem which could arise where there is a default on a coinsured mortgage which is included in a GNMA mortgage-backed securities pool. The situation could arise where, subsequent to the lender-issuer obtaining legal title to the property covered by the defaulted mortgage through foreclosure or other action (with a consequent extinguishment of the mortgage), the lender-issuer itself defaults on its GNMA obligations under a GNMA guarantee agreement and is terminated as a GNMA issuer. This could leave GNMA in the position of having to obtain title to, and dispose of the property before it could apply for coinsurance benefits for payment to securities holders.

The section provides that, if as a result of a default by the lender-issuer on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA must pay all or any part of the amount owed one or more securities holders, than GNMA as substitute lender-issuer shall be entitled to file a claim for and receive coinsurance benefits. GNMA may file a claim with the Commissioner immediately upon its declaration of a lender-issuer default under the GNMA MBS program if (1) The defaulting lender-issuer has acquired legal title to the previously coinsured property but has not received coinsurance benefits and (2) the defaulting lender-issuer cannot or will not convey title to the property to GNMA. Such a claim may be filed notwithstanding the provisions of § 251.818(b) that claims be submitted after the sale of the coinsured property or the expiration of 12 months from the acquisition of title. The claim shall be based upon (i) property appraisals obtained by the lender-issuer at the time of acquisition of title or, in the absence of such appraisals, by GNMA after default of the lender-issuer. The lender-issuer will have no claim against the Commissioner for any payment made pursuant to this section.

The section also provides that if as a result of the lender-issuer's default, the full amount paid by GNMA to one or more securities holders is an amount greater than the amount of coinsurance benefits paid by the Commissioner to GNMA, then the Commissioner shall reimburse GNMA for the additional amount in accordance with § 251.823(b).

For any coinsured mortgage that is to be included in a GNMA MBS pool, GNMA shall obtain, before issuance of any securities, an assignment by contract of any future right of the lender-issuer to collect coinsurance benefits on the coinsured mortgage following the lender-issuer's acquisition of legal title to the coinsured property.

If the lender-issuer is unable or unwilling to transfer legal title to the coinsured property promptly to GNMA, GNMA shall take all necessary and appropriate action to obtain legal title to it. Upon receipt of legal title, GNMA shall convey the coinsured property to the Commissioner. In the event GNMA cannot acquire legal title, GNMA shall transfer to the Commissioner any other rights or interests it possesses in the coinsured property.

GNMA shall reimburse the Commissioner in an amount not to exceed the amount of any prior payment of coinsured proceeds by the Commissioner to GNMA under § 251.827(a) if the Commissioner is required to pay coinsurance proceeds under this Subpart to any party other

than GNMA with respect to the coinsured mortgage.

Section 251.806 (Definition of default) is revised to make clear the relationship between a monetary and a covenant default. The revision is clarifying in nature and reflects no substantive change in HUD policy or procedures. A monetary default exists when the mortgagor fails to make any payment due under the mortgage. A covenant default exists when the mortgagor fails to perform any other covenant under the provisions of the mortgage or the regulatory agreement, which is incorporated in the mortgage. A lender becomes eligible for insurance benefits on the basis of a covenant default only after the lender accelerates the debt and the owner has failed to pay the full amount due, thus converting the covenant default to a monetary default.

Section 251.811 (Financial relief to cure a default) is revised to make clear that under any temporary payment plan entered into, the mortgagor must agree that, even if the project is current under the terms of the temporary payment plan, no distributions will be paid by the mortgagor until the mortgage itself has been brought current and the mortgagor has complied with all terms of the temporary payment plan and any broader reinstatement plan, including the completion of any maintenance work or management initiatives. Section 251.811(a)(2) is also revised to make clear that Commissioner approval is not required before the lender may withdraw from the reserve for replacements funds to pay up one month's debt service and mortgage escrows on order to prevent a default. These revisions are clarifying in nature and in no way reflect a change in current HUD policy.

Section 251.813 (Termination of coinsurance) is revised by adding a new paragraph (b) providing that the contract of coinsurance may, at the option of the Commissioner, be terminated in the event of an assignment or transfer of a coinsured Mortgage which does not meet the requirements of § 251.106 (Assignment of coinsured mortgages). It is anticipated that this sanction of the commissioner would be exercised mainly in cases where there is an improper transfer of partial interests in the coinsured mortgage under the new § 251.106(c) set forth in this final rule.

Two commenters said that §§ 251.815 and 251.816 establish very rigid time schedules for starting foreclosure proceedings, and recommended that the lender be permitted more discretionary control over beginning these proceedings. The Department disagrees with this recommendation. Section 251.815 (Notice of election to acquire property and file claim) currently allows a lender to request an extension of the 75-day-after-default deadline for notifying the Commissioner of its intent to file claim. The Commissioner can grant and renew such extensions for specific time periods if the Commissioner finds that reinstatement of the mortgage and resolution of the problems that led to the default are feasible. This extension procedure, in the view of the Department, provides ample flexibility for determining whether, and when, to commence foreclosure proceedings.

Eleven commenters strongly objected to a suggestion, made in the preamble of the proposed rule, that HUD share in any "windfall" profits realized in the sale of a foreclosed property for a price higher than its appraised value. The final rule does not contain any such "windfall" provision, though HUD will continue to assess the desirability of such a requirement in the light of future program experience.

Four commenters said that § 251.821 (c), allowing inclusion of only two-thirds of a lender's property acquisition costs in the payment of coinsurance claims, was unfair. They pointed out that there is already a five percent deductible feature in the coinsurance program and that 100 percent of property acquisition costs are allowed in the full insurance programs. The Department disagrees with this contention.

It is most important that unnecessary costs, including property acquisition costs, be kept to a minimum. This two-thirds provision provides an incentive for the coinsuring lender to minimize acquisition costs. It should be kept in mind that this is a coinsurance program, where risks and burdens are to be equitably shared. A comparison with features of the full insurance programs is not always appropriate. While additional risks are placed upon the lender in coinsurance, every attempt is made to do this in a balanced and equitable manner. For example, while the commentators correctly point out there is a five percent deductible feature in coinsurance which is absent from the full insurance programs, fairly liberal reinsurance features are also contained in the coinsurance program for the benefit of the coinsuring lender.

In the preamble of the proposed rule, the Department stated its belief that State Agencies would prefer the coinsurance programs under Parts 251 and 255 over the coinsurance program already available to them under Part 250, and invited public comment on HUD's intention to remove Part 250 from the Code of Federal Regulations. The Council of State Housing Agencies strongly objected to this proposed removal of Part 250, stating "We raise this objection on the grounds that the Department, in its effort to consolidate programatic vehicles, may have effectively undermined the advantages and incentives encouraging the use of coinsurance by State Agencies. Certain of the programatic incentives have always been necessary as State Agency bond ratings are sensitive to what might be the most minor programatic nuances.". In deference to this concern, the Department is not removing Part 250 from the Code of Federal Regulations at this time.

The Council of State Housing Agencies also noted that "nowhere in these regulations is there adequate provision made for the use of Adjustable Rate Mortgages (ARMs), Graduated Payment Mortgages (GPMs), and a variety of other mortgage instruments which are now in use in the industry", and urged that the final rule address in some detail how the coinsurance program may be adapted to the particular circumstances of these new mortgage instruments.

Only recently, in the Housing and Urban-Rural Recovery Act of 1983, has the Congress authorized the Department to insure any of these new mortgages in connection with multifamily housing. Specifically, sections 245 and 253 of the National Housing Act (as amended by the 1983 Act) now authorize HUD to insure graduated payment mortgages (GPMs) and shared appreciation mortgages (SAMs) covering multifamily housing. The Department is currently developing regulations to implement both of these authorities, and will address the desirability of using these new mortgage instruments in conjunction with coinsurance in those regulations.

Two commenters urged that the relation between section 8 and other HUD housing subsidy programs and this new coinsurance program be clarified in the final rule. Generally, the Department does not contemplate the use of coinsurance in conjunction with the development of subsidized housing units. There is nothing in the regulations as currently drafted however, to preclude a lender with an uninsured or fully insured portfolio loan covering a subsidized project from coinsuring the loan in connection with its substantial rehabilitation, but the Department expects any such cases to be the exception rather than the general rule. In any event, the program requirements for coinsurance stand by themselves and must be met independently of any

additional or similar requirements of the subsidy programs.

Finally, the preamble to the proposed rule noted that certain special types of mortgagors (e.g., rehabilitation sales and "public" mortgagors) were not included as eligible mortgagors under Part 251 as they are currently demonstrating little interest in the section 221 multifamily insurance programs. Comment was invited concerning this exclusion. Since no comments were received, the exclusion is retained in this final rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect 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.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW. 20410.

This rule was listed as item H-67-83 (Sequence Number 83) under the Office of Housing in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15927), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The catalog of Federal Domestic Assistance program numbers are 14.135 and 14.137.

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. While some small mortgagees may not be able to participate in the coinsurance program because of its asset requirements, their access to HUD's full insurance program under sections 221 (d) (3) and (4) of the National Housing Act remains unaffected by this proposal.

Information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Please send any comments regarding the collection of information requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for HUD. After OMB review and approval, the public will be notified of the OMB control number assigned these requirements through a technical amendment to this rule.

List of Subjects in 24 CFR Part 251

Mortgage insurance, Coinsurance of multifamily mortgages.

Accordingly, Title 24 of the Code of Federal Regulations is amended by adding a new Part 251, to read as follows:

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

Subpart A—General Provisions

Sec.

251.1 Purpose and scope.
251.2 Coinsurance contract.
251.3 Definitions.
251.4 Effect of amendments.

Subpart B—Lender Requirements

251.101 Eligible lender.
251.102 Review and approval as coinsuring lender.
251.103 Duration of approval.
251.104 Withdrawal of approval.
251.105 Delegation of servicing.
251.106 Assignment of and participation in coinsured mortgages.
251.107 Reinsurance.
251.108 Pledging and other security arrangements.

Subpart C—Program Requirements

251.201 Eligible project.
251.202 Eligible mortgagors.
251.203 Maximum mortgage limitations.
251.204 Maximum interest rate.
251.205 Term of the mortgage.
251.206 Lender's fees and premiums.
251.207 Coinsurance of mortgages in lender's portfolio.
251.208 Non-discrimination in housing and employment.
251.209 Labor standards and prevailing wage requirements.

Subpart D—Processing and Commitment

251.301 Processing and development responsibilities.
251.302 Processing and commitment.

Subpart E—Insurance of Advances; Insurance Upon Completion; Construction Period

Sec.

251.401 Insurance of advances or insurance upon completion; Applicability of requirements.
251.402 Insurance of advances.
251.403 Insurance upon completion.
251.404 Requirements applicable to both insurance of advances and insurance upon completion cases.
251.405 Lender's review of mortgage amount.
251.406 Application of net income received before beginning of amortization.
251.407 Endorsement by the commissioner.

Subpart F—Mortgage and Closing Requirements

251.501 Mortgage requirements—real estate.
251.502 Title.
251.503 Mortgage provisions.
251.504 Mortgage lien and other obligations.
251.505 Regulatory agreement.
251.506 Other closing documents.

Subpart G—Requirements Relating to Structure of Mortgagor Entity and Transfers of Ownership Interest

251.601 Requirements applicable to all projects.
251.602 Requirements for projects intended for cooperative ownership.
251.603 Requirements for projects intended for nonprofit ownership.

Subpart H—Program Requirements Relating to Project Operation

251.701 General.
251.702 Reserve for replacements and general operating reserve.
251.703 Rents and charges.
251.704 Use of project funds.
251.705 Distributions and Residual Receipts.
251.706 Project management.

Subpart I—Contract Rights and Obligations

Mortgage Insurance Premiums

251.801 MIP in insurance of advances cases.
251.802 MIP in insurance upon completion cases.
251.803 Duration and method of payment of MIP.
251.804 Pro-rata refund of annual MIP.
251.805 Late charges—MIP.

Delinquency and Default Under the Mortgage

251.807 Notice of delinquency.
251.808 Definition of default.
251.809 Date of default.
251.810 Notice of default.
251.811 Financial relief to cure a default.
251.812 Reinstatement of a defaulted Mortgage.

Termination

251.813 Termination of Coinsurance Contract.
251.814 Notice and date of termination by Commissioner.

Claim Procedure and Payment of Insurance Benefits

251.815 Notice of election to acquire property and file a claim.

Sec.
251.816 Acquisition of property.
251.817 Deed in lieu of foreclosure.
251.818 Disposition of property and application for insurance benefits.
251.819 Method of payment.
251.820 Amount of payment.
251.821 Items included in payment.
251.822 Items deducted from payment.

Remedies for Default by a Lender-Issuer Under the Government National Mortgage Association (GNMA) Mortgaged-Backed Securities Program

251.823 Indemnification of GNMA.
251.824 Withdrawal of lender approval.
251.825 HUD recourse against lender-issuer.
251.826 GNMA right to assignment.
251.827 GNMA right to claim coinsurance benefits after lender-issuer's acquisition of title.

Authority: (Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)), Sec. 244, National Housing Act, 12 U.S.C. 1715z(9)).

Subpart A—General Provisions

§ 251.1 Purpose and Scope.

(a) Section 307 of the Housing and Community Development Act of 1974 amended the National Housing Act (the Act) by adding a new section 244 entitled, "Coinsurance". Section 244 authorizes the Department to insure, under a Coinsurance Contract, any Mortgage otherwise eligible for insurance under Title II of the Act. The Coinsurance Contract provides that the approved lender (1) assume a percentage of any loss and (2) carry out (subject to monitoring) underwriting, commitment, property disposition and other functions that the Federal Housing Commissioner (Commissioner) approves.

(b) HUD expects that the sharing of risk and the assumption by the lender of major processing functions under coinsurance will reduce processing time and HUD staff burden, and increase lender involvement in all phases of the HUD Mortgage insurance process.

(c) Section 244(c) of the Act permits the Secretary to coinsure Mortgages only if the Secretary determines, after due consultation with the Mortgage lending industry, that coinsurance will not disrupt the Mortgage market or reduce the availability of Mortgage credit to borrowers who depend upon full Mortgage insurance provided under the Act. HUD has invited and will continue to invite, through formal public comment procedures and otherwise, the Mortgage lending industry and other interested parties to make their views known on these issues. Issuance of this Part 251 (and any later amendment to it) for effect will mean that no adverse effects are reasonably predictable at the time of issuance. However, the Department will continue to monitor the effects of coinsurance and will welcome the submission of evidence that shows that disruptions of the housing or Mortgage market or reductions in Mortgage credit are occurring (or will occur) as a result of the coinsurance program.

(d) This part provides for the coinsurance of Mortgages under section 221(d)(3) or section 221(d)(4) of the Act, which cover multifamily projects to be newly constructed or substantially rehabilitated.

(e) No full insurance authorized under any provision of the Act will be withdrawn, denied, or delayed because of the availability of coinsurance under this part.

(f)(1) If the Commissioner determines that coinsurance under this part is having an adverse effect on the availability of Mortgage credit to older and declining neighborhoods or to purchasers of older and lower cost housing, the Commissioner will discontinue the program after due notice. In such a case, no further coinsurance applications will be accepted nor will any further commitments under the program be authorized.

(2) If the Commissioner determines that coinsurance under this part is disrupting (or will disrupt) the housing or Mortgage market in a market area or is adversely impacting (or will adversely impact) other federally insured projects in a market area, the Commissioner will modify, suspend, or discontinue coinsurance activities in such area after due notice.

(g) Neither the coinsuring lender nor the Mortgagor shall have any vested or other right in the General Insurance Fund.

§ 251.2 Coinsurance Contract.

The Contract of Coinsurance is the agreement between the lender and the Commissioner to coinsure a Mortgage under this part. It is evidenced by an endorsement on the Mortgage note by the Commissioner, or by the Commissioner's authorized Departmental representative, and includes the terms, conditions and provisions of this part.

§ 251.3 Definitions.

(a) "Builder's and Sponsor's Profit and Risk Allowance" (BSPRA) is an amount included in replacement cost where an identity of interest, as defined by the Commissioner, exists between the Mortgager and general contractor. The amount is a percentage of the total estimated cost of on-site land improvements; structures; general requirements; general overhead expenses; architect's fees; carrying and financing charges; and legal, organizational and audit expenses. The appropriate percentage to be applied is established by the Commissioner and may not exceed 10 percent.

(b) "Builder-seller Mortgagor" means an entity organized:

(1) To construct or rehabilitate a project and that, by written agreement with a Nonprofit Mortgagor, will sell the project (at final endorsement) to the Nonprofit Mortgagor at a purchase price not exceeding the certified cost of the project under § 251.404;

(2) To operate the project (subject to regulation by the lender) in accordance with requirements of the Commissioner, until sold to the Nonprofit Mortgagor; and

(3) To operate the project, if it is not sold within two years to a Nonprofit Mortgagor, as a Limited Distribution Mortgagor.

(c) "Coinsured Mortgage" means a Mortgage concerning which the risk of loss is shared by the lender and the Commissioner. The coinsurance is evidenced by endorsement of the Mortgage note by the Commissioner or by the Commissioner's authorized Departmental representative.

(d) "Cooperative Mortgagor" means a nonprofit cooperative ownership housing corporation, regulated by the lender under a regulatory agreement, that restricts permanent occupancy of the project to members of the corporation, and requires membership eligibility and transfer of membership in a manner approved by the Commissioner.

(e) "Distribution" means the withdrawal of any cash or asset of the project excluding outlays for:

(1) Mortgage payments;

(2) Reasonable expenses necessary for the proper operation and maintenance of the project; and

(3) Repayment of advances from the owner, when such repayments are authorized by the Commissioner.

(f) "Firm Commitment" means the commitment from the lender to the Mortgagor that contains final determinations by the lender of the maximum insurable Mortgage based upon complete working drawings and specifications and cost estimates, prepared in a manner specified by the Commissioner. The Firm Commitment may not be issued for longer than 60 days, by which time the project must be initially endorsed (insurance of advance cases) or construction started (insurance upon completion cases). The Firm Commitment may be extended by the

lender as provided in § 251.302(c) of this part.

(g) "General Mortgagor" means any Mortgagor approved by the lender that does not meet any of the definitions in paragraphs (b), (d), (h), (i) or (m) of this section and that is regulated by the lender by means of a regulatory agreement.

(h) "Investor-sponsor Mortgagor" means an entity organized in the same manner as a Builder-seller Mortgagor and subject to the same restrictions, except that the project will be sold to a Cooperative Mortgagor rather than a Nonprofit Mortgagor.

(i) "Limited Distribution Mortgagor" means an entity restricted by Federal or State law, and by the lender by means of a regulatory agreement, as to its rate of return and other aspects of its operation.

(j) "Mortgage" means a first lien on real estate and other property commonly given to secure either advances on real estate or the unpaid balance of the purchase price of real estate under the laws of the jurisdictions in which the real estate is located. "Mortgage" includes any credit instrument(s) secured by the real estate.

(k) "Mortgagor" means the original borrower under a Mortgage and its successors, and any assigns approved by the Commissioner.

(l) "Mortgage Insurance Premium" (MIP) means the Mortgage Insurance Premium collected under §§ 251.801 and 251.802 of this Part.

(m) "Nonprofit Mortgagor" means an entity that is organized for reasons other than financial gain and that the lender finds is not controlled or directed by persons or firms seeking to derive financial gain from it. The operation of a Nonprofit Mortgagor must be regulated under Federal or State law, and by the lender by means of a regulatory agreement.

(n) "Residual Receipts" means (1) for projects owned by Nonprofit Mortgagors, all Surplus Cash and (2) for projects owned by Limited Distribution Mortgagors, any Surplus Cash remaining after allowable Distributions have been made or funds have been set aside for their payment.

(o) "Sound Capital Resources" means the excess of the coinsuring lender's assets (minus any valuation allowances) over its liabilities (generally referred to as net worth), plus allowed letters of credit. Net worth includes paid-in capital stock, surplus, reserves, undistributed earnings and any other unencumbered resources of the coinsuring lender. Sound Capital Resources may include (up to the limit specified in § 251.102(b)(2)) an unconditional and irrevocable firm letter of credit from a supervised financial institution with assets of not less than $100,000,000. For purpose of determining Sound Capital Resources, a loss reserve established to cover coinsurance liability under this part that is treated as a liability in the Mortgagee's balance sheets may be deemed a capital item rather than a liability.

(p) "Sponsor's Profit and Risk Allowance" (SPRA) is an amount included in replacement cost where no identity of interest, as defined by the Commissioner, exists between the general contractor and Mortgagor. The amount is a percentage of the sum of the architect's fee; carrying and financing charges; and legal, organizational and audit expenses. The appropriate percentage is established by the Commissioner and may not exceed 10 percent.

(q) "Substantial Rehabilitation" consists of repairs, replacements, and improvements:

(1) The cost of which exceeds the greater of:

(i) 15 percent of the property's value after completion of all repairs, replacements, and improvements, or

(ii) $6,500 per dwelling unit (adjusted by any applicable high-cost area factor under § 251.203(a)), or

(2) That involve the replacement of more than one major building component. For purposes of this definition, the term "major building component" includes:

(i) Roof structures,

(ii) Ceiling, wall, or floor structures,

(iii) Foundations,

(iv) Plumbing systems,

(v) Heating and air conditioning systems, or

(vi) Electrical systems.

(r) "Surplus Cash" means any unrestricted cash remaining after:

(1) The payment of: (i) All sums due or currently required to be paid under the terms of any Mortgage or note coinsured by the Commissioner;

(ii) All amounts required to be deposited in any replacement or operating reserve; and

(iii) All other obligations of the project other than the coinsured mortgage unless funds for payment are set aside, or deferral of payment has been approved by the lender; and

(2) The segregation and recording of an amount equal to: (i) The aggregate of any special funds required to be maintained by the project; and

(ii) The project's total liability for tenant security deposits.

In computing Surplus Cash, the Mortgagor must follow any administrative requirements prescribed by the Commissioner.

§ 251.4 Effect of amendments.

The Commissioner may amend the regulations in this part from time to time. Amendments will not adversely affect the interests of a lender under a Contract of Coinsurance on any Mortgage already coinsured or on any Mortgage to be coinsured on which the lender has already issued a Firm Commitment, provided the Mortgage is initially endorsed (insurance of advances) or construction starts (insurance upon completion) within 60 days after issuance of the Firm Commitment. The 60 days will run from the date of the original issuance of the Firm Commitment or from the date of any amendment, reissuance, or extension of a commitment that occurred before the effective date of the amendment of the regulation.

Subpart B—Lender Requirements

§ 251.101 Eligible lender.

The Commissioner may approve as a coinsuring lender any lender that (a) is currently a HUD-approved multifamily lender under 24 CFR 203.3 through 203.6 or 203.8(b) and (b) meets the requirements of § 251.102.

§ 251.102 Review and approval as coinsuring lender.

The Commissioner will review an applicant lender's technical staff and procedures before granting approval as a coinsuring lender under this part. This review, including an on-site review of the lender's operations, will establish the adequacy of technical staff, processing procedures, development and management oversight, Mortgage servicing, and any disposition functions.

(a) A fee of $5,000 is charged for each application for approval as a coinsuring lender. This fee will not be refunded once the application has been determined acceptable for initial review.

(b) An applicant lender must submit:

(1) A written opinion of its counsel that it has the necessary powers to participate in the coinsurance program under this part.

(2) Evidence acceptable to the Commissioner of Sound Capital Resources of not less than $1,500,000, including liquid funds of at least $500,000. An unconditional and irrevocable firm letter of credit of not more than $500,000 from a supervised financial institution with assets of not less than $100,000,000 may be used to meet up to $500,000 of this Sound Capital Resources requirement and up to $500,000 of the liquidity requirement.

The lender must agree that, for the period of the coinsurance, it will maintain the basic Sound Capital Resources requirement and an additional one dollar of Sound Capital Resources for each 300 dollars of outstanding principal indebtedness on Mortgages it has coinsured under this part.

(3) Evidence acceptable to the Commissioner that the lender has the operating procedures, internal management controls, and technical staff (under contract or in its own employ) necessary to discharge full Mortgage underwriting, development, oversight, servicing, management, property repair and disposition, and other functions. It must employ adequate staff to monitor contract work and make final underwriting conclusions. It must agree to notify HUD of any changes in its operating procedures and principal staff and to make no changes that are inconsistent with this part.

(4) The lender's most recent detailed audit report of its financial records, supplemented as the Commissioner may require. The audit must be made by an independent certified public accountant or independent public accountant licensed by a regulatory authority of a State or other political subdivision on or before December 31, 1970.

(5) A statement agreeing to file annual audits similar to those described in paragraph (a)(4) of this section and annual reports on its processing and commitment activities, coinsured loan portfolio and loan servicing activities. The annual audits and reports must be prepared in formats acceptable to the Commissioner and submitted within the time limits established by the Commissioner.

(6) A statement agreeing to auditing by the Commissioner, the HUD Inspector General, and the Comptroller General of the United States with respect to its activities under this part. For this purpose, the Commissioner, the HUD Inspector General, the Comptroller General and their authorized agents shall have access to the financial records of the lender.

(7) A statement agreeing to comply with the provisions of title 8 of the Civil Rights Act of 1968, the Equal Credit Opportunity Act, Executive Order 11063, other Federal laws and all regulations issued pursuant to these authorities with respect to the lending, investing, or coinsuring of funds in real estate Mortgages.

(8) A statement agreeing to retain all its legal obligations under this part, if it delegates servicing functions, as provided in § 251.105.

(9) A statement agreeing to abide by all applicable requirements issued by the Commissioner for performing its functions under this part.

§ 251.103 Duration of approval.

Initial approval as a coinsuring lender will continue in force until one of the following occurs:

(a) Expiration of the Secretary's authority to coinsure under this part. A temporary lapse in this authority will not terminate the leader's approved coinsurer status or affect outstanding Firm Commitments or coinsurance in force. However, lenders are responsible for suspending issuance, extension, or reopening of commitments during these periods.

(b) Withdrawal of approval under § 251.104.

§ 251.104. Withdrawal of approval.

(a) Approval as a coinsuring lender under this part may be withdrawn or suspended for any of the following causes:

(1) Failure to maintain satisfactory Sound Capital Resources.

(2) Failure to discharge its responsibilities under any regulatory agreement, Coinsurance Contract, or administrative procedures issued by the Commissioner under this part.

(3) Payment by the lender, in any insurance transaction, of any fee, kickback, or other consideration, directly or indirectly, to any person who has received any consideration from another person for services related to the transaction; however, compensation may be paid for the actual performance of services approved by the Commissioner.

(4) Submission of a false, fraudulent or incomplete report to HUD or the incurring of any indebtedness to HUD for which no satisfactory repayment plan or agreement is in effect.

(5) Failure to pay any amount owed to a holder of securities guaranteed by the Government National Mortgage Association (GNMA) and backed by a coinsured loan.

(6) Assigning a Coinsured Mortgage to an entity that is not a HUD-approved coinsuring lender.

(7) Other reasons the Commissioner determines to be justified in accordance with Part 24 of this title or by action of the Mortgagee Review Board in accordance with Part 25 of this title.

(b) Withdrawal or suspension of approval as a coinsuring lender will not affect any coinsurance or Firm Commitments in effect at the time of the withdrawal or suspension of approval.

§251.105 Delegation of Servicing.

(a) The lender must directly service all coinsured loans included in GNMA securities pools. In all other instances, the lender may choose to service its coinsured loans or arrange for another entity to service the Mortgages as long as the contract servicer is a HUD-approved lender under §§ 203.1 through 203.6 or § 203.8(b) of this chapter and the coinsuring lender retains its obligations under this part.

(b) The lender must inform HUD of any delegation of servicing on a form prescribed by the Commissioner.

(c) If HUD considers the servicer's performance to be unsatisfactory, HUD may require the lender to cancel the servicing arrangement after giving the lender a 30-day written notice.

§ 251.106 Assignment of and participation in Coinsured Mortgages.

(a) A lender may assign a Coinsured Mortgage to another lender if the following requirements are satisfied:

(1) The assignee is a HUD-approved coinsuring lender;

(2) The lender shows good cause for the assignment;

(3) The Commissioner finds that the assignment is for good cause and that there will be no disadvantage to the Federal Housing Administration (FHA); and

(4) The Commissioner gives prior written approval for the assignment and any risk allocation between assignor and assignee.

(b) The lender must inform HUD on a form prescribed by the Commissioner following the assignment of any Coinsured Mortgage. The lender will not be relieved of its obligation to pay Mortgage Insurance Premiums until HUD has received this notice.

(c) *Transfer of partial interest under participating agreement.* (1) A partial interest in a Coinsured Mortgage may be transferred without obtaining the approval of the Commissioner under a participation agreement or arrangement, if the following conditions are met:

(i) The Coinsured Mortgage shall be held by an approved coinsuring lender, which shall (for purposes of this paragraph) be referred to as the "principal lender";

(ii) The principal lender shall at all times retain at least a ten percent beneficial interest in the Coinsured Mortgage up to the time of the final endorsement (endorsement in insurance upon completion cases), and at least a five percent beneficial interest thereafter;

(iii) A participation or partial interest in a Coinsured Mortgage shall be issued

to and held by: (A) A lender approved by the Commissioner or (B) a pension or retirement fund or a profitsharing plan maintained and administered by a corporation or by a governmental agency or by a trustee or trustees, which the principal lender determines has lawful authority to acquire a partial interest in a Coinsured Mortgage under the conditions set forth in this paragraph; and

(iv) The participation agreement or arrangement shall provide that the principal lender shall remain the lender of record under the Contract of Coinsurance and that the Commissioner shall have no obligation to recognize or do business with any other party except the lender of record with respect to the rights, benefits, and obligations of the lender under the Contract of Coinsurance.

(2) No notice of any sale or transfer of a participating or partial interest is required unless the Coinsured Mortgage is transferred in its entirety to a new principal lender on the public records.

(d)(1) If the Mortgage is used to back securities guaranteed by the Government National Mortgage Association (GNMA), GNMA approval also is required for the assignment of the pooled Mortgage.

(2) When a Coinsured Mortgage is to be in a GNMA mortgage pool backing one or more GNMA Project Loan Certificates the lender-issuer and the holder of the participating interests must certify that the participations shall terminate as of the release (delivery) of the Project Loan Certificates. No participations may exist in mortgages backing GNMA Construction Loan Certificates or GNMA Project Loan Certificates.

§ 251.107 Reinsurance.

(a) The lender may reinsure its potential loss with respect to a particular project. Reinsurance may be obtained for:

(1) 50 percent of its risk;

(2) 100 percent of its risk; or

(3) That percentage of its risk that equals the maximum amount the reinsurer is authorized by State law to reinsure.

(b) The effect of reinsurance on the insurance benefits payable by HUD is covered in § 251.820.

(c) Any reinsurance policy must name the Commissioner as contingent beneficiary, where default by the lender compels the Commissioner under § 251.823 to reimburse the Government National Mortgage Association for the amount that the Association had to pay securities holders as a result of the lender's default in payment subject to the ceilings provided in § 251.823.

§ 251.108 Pledging and other security arrangements.

A lender may pledge the beneficial interests in a Coinsured Mortgage as security pursuant to the terms of a reinsurance contract, trust indenture, third party guarantee agreement, or similar financing arrangement directly related to the coinsurance transaction, subject to the following conditions:

(a) The lender must retain legal title to the note and the Mortgage subject to the security interest created, unless the title is otherwise transferred in accordance with § 251.106. Legal title to the note and Mortgage may not, at any time, be held by other than a coinsuring lender approved by the Commissioner.

(b) The Commissioner will have no obligation to recognize or deal with anyone other than the coinsuring lender of record or any successor to the lender's title to the Mortgage and Mortgage note with respect to the rights, benefits, and obligations of the coinsuring lender.

(c) The Mortgagor will have no obligation to recognize or deal with anyone other than the coinsuring lender or an approved coinsuring lender succeeding to title to the Mortgage or Mortgage note, or to such other person or entity servicing the Mortgage loan under § 251.105, except that the Mortgagor may be directed to make payments under the Mortgage and Mortgage note to a successor lender or to one or more custodial accounts.

(d) A lender may not pledge the beneficial interests of Coinsured Mortgages backing Government National Mortgage Association (GNMA) construction or Project Loan Certificates except as authorized by GNMA.

Subpart C—Program Requirements

§ 251.201 Eligible project.

(a) Projects to be newly constructed or substantially rehabilitated are eligible under this part. A project:

(1) Must have five or more units;

(2) May be detached, semi-detached, row houses, or multifamily structures;

(3) Must comply with all applicable zoning or deed restrictions, and applicable building and other governmental regulations;

(4) Must be designed in accordance with HUD minimum property standards; and

(5) Must be designed primarily for residential use, but may include commercial and community facilities determined to be adequate to serve the occupants. In general, the net rentable commercial area in any project may not exceed five percent of the total net rentable area, unless the commercial tenants leasing the space meet specific financial responsibility standards established by the Commissioner. In no event may the net rentable commercial area exceed 20 percent of the total net rentable area.

(b) The Commissioner must review all projects proposed for coinsurance under this part for compliance with the requirements of the National Environmental Policy Act of 1969 and related laws and authorities as set forth in Part 50 of this title.

(c) No insurance will be made available under this part for any building located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless (1) the jurisdiction in which the project is located is participating in the National Flood Insurance Program and is subject to 44 CFR 59–79 or (2) less than a year has passed since FEMA notification regarding such hazards, and flood insurance is obtained in compliance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(d) No insurance will be made available under this part with respect to a property within the Coastal Barriers Resources System established by the Coastal Barriers Resources Act (16 U.S.C. 3501).

(e) Wherever applicable, projects under this part must comply with the National Historic Preservation Act (16 U.S.C. 470).

(f) Involuntary displacement of tenants must be minimized under a plan developed by the Mortgagor, in any case where it is anticipated that Substantial Rehabilitation will cause such displacement.

§ 251.202 Eligible Mortgagors.

Nonprofit, Builder-seller, Investor-sponsor, Cooperative, Limited Distribution, and General Mortgagors, as defined in § 251.3 and approved by the lender in accordance with standards established by the Commissioner, are eligible under this part. Differing maximum insurable Mortgage limits (see § 251.203) apply under sections 221(d)(3) and 221(d)(4) of the Act, depending upon the type of Mortgagor entity involved.

§ 251.203 Maximum Mortgage limitations.

The maximum Mortgage coinsurable under this part is the lowest of the amounts determined under the following limits:

(a) *Statutory cost limits.* Congress has established maximum per unit dollar

amounts for costs attributable to dwelling use. These limitations vary by number of bedrooms, structure type (elevator or non-elevator), Mortgagor type, and section of the Act, and are changed from time to time by statute. In addition, to compensate for geographic differences in construction costs, the Commissioner may establish, where appropriate, high-cost area factors. These are multiples of the otherwise applicable basic dollar limits. The factor for any geographic area may not exceed 175 percent of the basic limit. The maximum coinsurable amount applicable to a particular project may be obtained from the appropriate HUD field office. On an individual project basis in high-cost areas, the Commissioner may approve the use of a factor of up to 240 percent of the basic limit where costs justify it, except that for projects to be purchased by the Government National Mortgage Association under Section 305 of the Act (Tandem programs), the Commissioner may not approve a factor of more than 190 percent. In the unusually high-cost areas of Alaska, Guam and Hawaii, the Commissioner may approve the use of a factor of up to 360 percent. The Commissioner is also permitted to increase the otherwise applicable dollar limits by up to 20 percent to account for the installation in the project of a solar energy system (as defined in section 2(a) of the Act) or certain residential energy conservation measures (as defined in section 210(11) (A)-(G) and (I) of Pub. L. 95-619). The maximum coinsurable amount cannot exceed the sum of the project's total calculated statutory cost limit plus the applicable percentage below of structural and land costs not attributable to dwelling use:

Section	Mortgagor	Percentage
(1) 221(d)(3)	General and Limited Distribution.	90
(2) 221(d)(3)	All others	100
(3) 221(d)(4)	All Mortgagors	90

(b) *Replacement cost limits.* The replacement cost of a project is the total of the lender's estimate of the value of the land (or the value of the leasehold estate), determined in a manner prescribed by the Commissioner, plus physical improvements, utilities within the boundaries of the land, architect's fees, taxes, carrying and financing charges and miscellaneous charges incident to construction that are allowed by the Commissioner and approved by the lender. In the case of General and Limited Distribution Mortgagors, replacement cost is increased by BSPRA or SPRA, as appropriate. The maximum Coinsurable Mortgage cannot exceed the applicable percentage of the project's total replacement cost as follows:

Section	Mortgagor	Percentage
(1) 221(d)(3)	General and Limited Distribution.	90
(2) 221(d)(3)	Cooperative	98
(3) 221(d)(3)	All others	100
(4) 221(d)(4)	All Mortgagors	90

(c) *Debt service limits.* The net projected project income available for payment of debt service is determined by reducing the estimated gross income of the project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacements, taxes, and distributions, where appropriate. (In the case of cooperatives, net income is determined by deducting up to an additional 5 percent for operating reserves and collection losses.) The maximum Coinsurable Mortgage cannot exceed the amount that could be amortized by the applicable percentage of net income set out below:

Section	Mortgagor	Percentage
(1) 221(d)(3)	General and Limited Distribution.	90
(2) 221(d)(3)	All others	95
(3) 221(d)(4)	All Mortgagors	90

(d) *Rehabilitation projects—additional limits.* In addition to the limits of paragraphs (a), (b) and (c) of this section, the following additional limits apply to projects to be Substantially Rehabilitated. (In the case of General and Limited Distribution Mortgagors, the cost of rehabilitation includes BSPRA or SPRA, as appropriate, where a cost-plus contract is used.)

(1) Where the property is owned by the Mortgagor in unencumbered fee simple or is subject to existing indebtedness to be refinanced by part of the proceeds of the Coinsured Mortgage, the maximum Coinsurable Mortgage may not exceed the sum of the cost of rehabilitation plus the applicable percentage of the lender's estimate of value of the property before rehabilitation as follows:

Section	Mortgagor	Percentage
(i) 221(d)(3)	General and Limited Distribution.	90
(ii) 221(d)(3)	All others	100
(iii) 221(d)(4)	All Mortgagors	90

(2) Where the property is to be acquired and the purchase price to be financed with part of the proceeds of the Coinsured Mortgage, and

(i) The Mortgagor is a General or Limited Distribution Mortgagor using Section 221(d)(3), or any Mortgagor using Section 221(d)(4), the maximum Coinsurable Mortgage cannot exceed 90 percent of the sum of the cost of rehabilitation plus the lesser of the purchase price of the property or the lender's estimate of value of the property before rehabilitation; or,

(ii) The Mortgage is to be coinsured under section 221(d)(3) and the Mortgagor is not a General or Limited Distribution Mortgagor, the maximum Coinsurable Mortgage cannot exceed the sum of the cost of rehabilitation plus the lesser of the purchase price of the property or the lender's estimate of the value of the property before rehabilitation.

§ 251.204 Maximum interest rate.

The interest rate in a commitment to coinsure, including a commitment for Mortgage increase, shall be at such rate as may be agreed upon by the Mortgagor and the coinsuring lender at the time the commitment is issued. The interest rate may be increased or decreased only after reprocessing and issuance of an amended commitment. The interest rate may not be increased after initial endorsement (insurance of advances) or start of construction (insurance upon completion), except that where a Mortgage increase is requested, processed, and approved, a higher rate may be applied to the amount of the increase only.

§ 251.205 Term of the Mortgage.

The Mortgage term may not exceed 40 years from the date of first payment to principal.

§ 251.206 Lender's fees and premiums.

(a) The lender may collect from the Mortgagor, and include in the Mortgage, an application fee, financing fee, permanent placement fee, and inspection fee. These fees may not exceed the maximums approved by the Commissioner. The lender may collect additional fees, approved by the Commissioner, that are outside the Mortgage and that must be disclosed at initial endorsement (insurance of advances) or endorsement (insurance upon completion). In no event will the fees allowed under this paragraph be permitted to exceed comparable fees allowed in the full insurance programs under sections 221(d)(3) and 221(d)(4) of the Act.

(b) The coinsuring lender may collect a lender's premium of .25 percent per year of the average outstanding principal balance of the Mortgage (without regard to delinquent payments or prepayments) beginning not earlier than 12 months after the date of initial endorsement (insurance of advances) or the date of endorsement (insurance upon completion). This premium will be for the account of the lender or an insurer of the lender.

§ 251.207 Coinsurance of Mortgages in lender's portfolio.

(a) Coinsurance under this part is available for Mortgages that the lender (or a related entity) already holds in its own portfolio only if:

(1) The project requires Substantial Rehabilitation;

(2) The loan is current and has not been in default, modification, or forbearance at any time during the two years preceeding the submission of the application to the lender;

(3) Portfolio loans make up no more than one-fourth of the total number of loans the lender presents for endorsement for coinsurance during any 12-month period; and

(4) The entire loan transaction is reviewed and approved by the Commissioner (in his or her discretion) before any commitment is issued.

(b) The following loans will not be subject to the one-fourth limitation in paragraph (a)(3) of this section:

(1) Mortgages insured by HUD under its full insurance programs; and

(2) Mortgages in which the lender's sole involvement is servicing.

§ 251.208 Nondiscrimination in housing and employment.

The Mortgagor must certify to the lender and to the Commissioner that, so long as the mortgage is coinsured under this part, it will:

(a) Not use tenant selection procedures that discriminate against families with children, unless the project was specifically designed for housing the elderly;

(b) Not discriminate against any family because of the sex of the head of household;

(c) Comply with title VIII of the Civil Rights Act of 1968 and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion (creed), sex, or national origin; administer the project and related activities to further fair housing in an affirmative manner; and comply with State and local fair housing laws;

(d) Comply with Executive Order 11063 and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion (creed), sex, or national origin in housing and related facilities provided with Federal financial assistance; and

(e) Not discriminate because of race, color, religion, sex, or national origin against any employee or applicant for employment. Provisions to this effect, and, in addition, the provisions of Executive Order 11246 and 41 CFR Chapter 60, where appropriate, will apply to any contract or subcontract for project repairs and improvements.

§ 251.209 Labor standards and prevailing wage requirements.

(a) *In general.* Except as specified in paragraph (b) of this section, the following labor standards and prevailing wage requirements shall be applicable to Mortgages coinsured under this part. The Commissioner shall assure compliance with those standards and requirements and the lender must obtain, evaluate, and submit any information or certifications required by the Commissioner to assist the Commissioner in carrying out this function.

(1) *Labor Standards.* Any contract, subcontract, or building loan agreement executed for a project to be constructed or Substantially Rehabilitated under this part shall comply with all applicable labor standards and provisions of 29 CFR Parts 1, 3 and 5, issued by the Secretary of Labor.

(2) *Ineligible advances.* No advance under the Mortgage shall be eligible for coinsurance after the lender determines (in accordance with the Commissioner's administrative procedures) that the general contractor or any subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant to 29 CFR 5.12, issued by the Secretary of Labor.

(3) *Wage certificate.* No advance under any Mortgage shall be coinsured under this part unless there is filed with the application for the advance, and no mortgage shall be coinsured under this part unless there is filed with the Commissioner after completion of the construction or Substantial Rehabilitation, a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor before the beginning of construction and after the date of filing of the application for insurance.

(b) *Excepted transactions.* The Commissioner may waive the requirements of paragraph (a) of this section with respect to a cooperative housing project where laborers or mechanics not otherwise employed at any time in the construction of the project voluntarily donate their services without compensation for the purpose of lowering their housing costs in the project and the Commissioner determines that any amounts saved thereby are fully credited to the cooperative undertaking the construction.

Subpart D—Processing and Commitment

§ 251.301 Processing and development responsibilities.

(a) The lender is responsible for the performance of all functions under this part, including acceptance and review of applications, issuance of commitments, inspections, and closings, except those functions specified in paragraphs (b) and (c) of this section.

(b) Certain functions are retained by the Commissioner. The lender must submit any information or certifications required by the Commissioner to permit determinations of compliance with requirements concerning:

(1) Previous participation of the principals of the Mortgagor, general contractor, consultant, and management agent in accordance with the Previous Participation and Clearance Review Procedures of 24 CFR 200.210 through 200.218;

(2) Environmental impact under the National Environmental Policy Act of 1969 and related laws and authorities set forth in 24 CFR Part 50;

(3) Equal opportunity considerations in the development and operation of the proposed project;

(4) The intergovernmental review procedures of 24 CFR Part 52. These procedures apply to cases involving 200 or more units in urbanized areas or 50 or more units in non-urbanized areas; and

(5) The National Historic Preservation Act, 16 U.S.C. 470, where applicable.

(c) The lender must also submit any information required by the Commissioner concerning the location, number and type of units, and projected

rent range of units in the proposed project.

(d) The Commissioner's authorized Departmental representative must endorse the Mortgage for coinsurance.

§ 251.302 Processing and commitment.

(a) After acceptance of an application for a commitment to coinsure, the lender will determine the maximum insurable Mortgage, review plans and specifications for compliance with the HUD standards, determine the acceptability of the proposed management agent, and make other determinations necessary to assure acceptability of the proposed project. The lender must make these determinations in the manner prescribed by the Commissioner, using appropriate forms where prescribed by the Commissioner.

(b) The lender may issue a Firm Commitment to coinsure after completion of its review and after receipt of written evidence from HUD of (1) the acceptability of the project in the areas of responsibility retained by the Commissioner under § 251.301(b), (2) a waiver, where needed, of the approved high-cost factor under § 251.203(a), and (3) completion of any case review requirements of the Commissioner that are part of its lender approval process. A copy of the Firm Commitment must be sent to HUD Headquarters within five days of issuance.

(c) Subject to standards established by the Commissioner, the lender is responsible for extending commitments, assuring commitments are updated when appropriate, and amending commitments. The lender may also reopen commitments within 90 days of the expiration of an earlier commitment, reconsider previously rejected applications, and may charge a reopening or reexamination fee acceptable to the Commissioner.

Subpart E—Insurance of Advances; Insurance Upon Completion; Construction Period

§ 251.401 Insurance of advances or insurance upon completion; applicability of requirements.

Either insurance of advances or insurance upon completion procedures may be used under this part. In insurance upon completion cases, only the permanent loan is coinsured and a single endorsement is required after satisfactory completion of construction or Substantial Rehabilitation. In insurance of advances cases, progress payments approved by the lender are also coinsured and both an initial and final endorsement on the Mortgage are required. The requirements of §§ 251.404 through 251.406 apply in either case and the Mortgage and other closing documents must meet the requirements of Subpart F.

§ 251.402 Insurance of advances.

(a) *Financial Requirements.* (1) Before initial endorsement, the Mortgagor (other than a Nonprofit Mortgagor) must make a working capital deposit of two percent of the face amount of the Mortgage. The deposit must be made to the lender or be controlled by the lender in a depository acceptable to it. Unless the Commissioner approves exceptions, this deposit may be used only for equipping and rent-up of the project and, during construction, for allocation by the lender to accruals for taxes, ground rents, MIP, property insurance premiums, and assessments required by the terms of the Mortgage.

(2) Before initial endorsement, the Mortgagor must deposit with the lender cash that the lender deems sufficient, when added to the proceeds of the insured Mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organizational expenses incident to construction of the project. This cash will be held by the lender in a special account or by an acceptable depository designated by the lender under an appropriate agreement. The agreement will require all cash held to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, before the advance of any Mortgage money. If all or part of the funds required under paragraph (a)(2) of this section are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, Mortgage proceeds may, with the prior written approval of the Commissioner, be advanced before the full disbursement of the grant or loan funds, to pay the cost of work, material or other charges and expenses. However, if any portion of these funds is to be provided by the Mortgagor, that portion must be disbursed in full before the disbursement of the Mortgage proceeds.

(3) Charges to be paid by the Mortgagor in connection with the financing that are in excess of the initial service charge and that are acceptable to the Commissioner must be deposited with the lender in cash at or before initial endorsement. Alternatively, a note, in a form prescribed by the Commissioner, may be accepted by the lender. The note must evidence the obligations of a party other than the Mortgagor and may not be secured by the assets of the Mortgagor entity.

(4) The lender must require assurance of completion of offsite public utilities and streets. (An exception is made where a public body has agreed to install offsite improvements without cost to the Mortgagor and this agreement is acceptable to the lender.) The assurance must be either a cash escrow deposit or the retention by the lender at initial closing of a specified amount of the Mortgage proceeds allocated to land in the project analysis. If a cash escrow is used, it must be deposited with the lender or a depository designated by the lender. The lender may also require a surety bond.

(5) The lender may accept, in lieu of a cash deposit required by paragraphs (a)(1), (3) and (4) of this section, an unconditional irrevocable letter of credit issued to the lender by a banking institution. If all or part of the funds required under paragraph (a)(2) of this section are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, the lender may accept for the portion so provided, in lieu of a cash deposit required by paragraph (a)(2) of this section, either an unconditional irrevocable letter of credit issued to the lender by a banking institution or an agreement, as described in § 207.19(c)(7) of this chapter, entered into by HUD, the governmental agency or instrumentality, the Mortgagor and the lender. The lender of record may not be the issuer of any letter of credit referred to in this paragraph (a)(5) without the prior written consent of the Commissioner. If a demand under a letter of credit referred to in this paragraph is not immediately met, the lender must provide cash equivalent to the undrawn balance under the letter of credit.

(b) *Building loan agreement.* Before initial endorsement, the lender and Mortgagor must execute a building loan agreement in a form approved by the Commissioner. This agreement sets out the terms and conditions under which progress payments may be advanced during construction. To be covered by coinsurance, each progress payment must be approved by the lender and must contain a certificate that the prevailing wage requirements of § 251.209 have been met.

(c) *Insured advances for components stored off-site.* The provisions of 24 CFR 221.541a apply to projects coinsured under this part, except that the lender performs the functions otherwise performed by the Commissioner.

(d) *Assurance of completion.* (1) The Mortgagor must furnish assurance of completion of the project. The lender may establish more stringent criteria, but, at a minimum, must require assurance by bonds issued by a surety company acceptable to the Commissioner for payment and performance each in the amount of 100 percent of the estimated construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 15 percent (or 25 percent where the structure contains an elevator and is four stories or more) of the amount of the estimated construction or rehabilitation cost. An unconditional and irrevocable letter of credit may be substituted for this cash deposit under the same terms and conditions as provided in paragraph (a)(5) of this section.

(2) Alternatively, where the estimated cost of construction or rehabilitation is $500,000 or less, the lender may accept assurance of completion in the form of a personal indemnity agreement executed by the controlling principals of the general contractor.

§ 251.403 Insurance upon completion.

A commitment to coinsure upon completion prescribes a designated period during which the Mortgagor must start construction or Substantial Rehabilitation. If construction or rehabilitation is started as required, the commitment will be valid for an additional period no longer than the lender's estimate of the construction period plus six months, except as extended as provided in § 251.302(c).

§ 251.404 Requirements applicable to both insurance of advances and insurance upon completion cases.

(a) *Latent defects escrow.* (1) In insurance upon completion cases, the Mortgagor must make a cash escrow deposit at endorsement of two and one-half percent of the principal amount of the mortgage, or provide a surety bond of 10 percent of the lender's estimate of the cost of construction or Substantial Rehabilitation, as a latent defects escrow. An unconditional and irrevocable letter of credit may be substituted for this cash escrow deposit under the same terms and conditions as provided in § 251.402(a)(5). This escrow must be retained by the lender for 18 months after substantial completion.

(2) In insurance of advances cases, if a completion assurance agreement referred to in § 251.402(d) was used at initial endorsement, an amount equal to two and one-half percent of the construction contract must be retained in cash or a letter of credit for a period of 18 months following substantial completion as a latent defects escrow.

(b) *Inspections during construction.* The lender must inspect projects under this part at such times during construction or Substantial Rehabilitation as the lender determines, within standards established by the Commissioner. The inspections must be conducted to assure compliance with the contract documents.

(c) *Cost certification requirements—Mortgagor.* (1) Before initial endorsement (insurance of advances) or start of construction (insurance upon completion), the Mortgagor and the lender must enter into an agreement satisfactory to the Commissioner that precludes any excess of Mortgage proceeds over maximum insurable Mortgage limits. In this agreement, the Mortgagor must also disclose its relationship with the builder, including any collateral agreement, and agree to:

(i) Enter into a construction contract that (A) complies with the requirements of § 221.548 of this Chapter (as to whether the contract should be lump sum or cost-plus) and (B) is approved by the lender and acceptable to the Commissioner as to form and content;

(ii) Execute a certificate of actual costs when all physical improvements are complete; and

(iii) Reduce the Mortgage if necessary in accordance with § 251.405.

(2) The provisions of paragraph (c)(1) of this section relating to disclosure and the requirement of a construction contract do not apply where the Mortgagor and the general contractor are one and the same.

(3) If the Mortgagor, the general contractor, or their officers, directors, or stockholders have any interest, financial or otherwise, as defined by the Commissioner, in any subcontractor, material supplier, or equipment lessor, the Mortgagor must disclose the identity of interest before start of construction. The lender may approve the use of a subcontractor, material supplier, or equipment lessor having an identity of interest if the amounts paid to that entity do not exceed the rate prevailing in the locality for similar types of labor and materials.

(4) The Mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, must be submitted to the lender when the improvements are completed to the satisfaction of the lender and before final endorsement (or before endorsement in the case of insurance upon completion). The certificate must show the actual cost to the Mortgagor of:

(i) The cost-plus construction contract or the lump sum construction contract or the cost of the construction of the project where the Mortgagor and the general contractor are one and the same and no construction contract is executed;

(ii) The architect's fee;

(iii) The offsite public utilities and streets not included in paragraph (c)(4)(A) of this section;

(iv) The organizational and legal expenses;

(v) In the case of General or Limited Distribution Mortgagors, where a cost-plus contract is used, the BSPRA or SPRA as applicable; and

(vi) Other items of expense approved by the Commissioner.

(d) *Cost certification requirements—general contractor.* (1) Where a cost-plus form of contract is used, the Mortgagor must also submit to the lender a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, and subcontract work under the general contract, exclusive of the builder's fee.

(2) Where there is a cost-plus contract and the lender determines that an identity of interest (as defined by the Commissioner) exists between the Mortgagor or general contractor or any of their officers, directors, stockholders, or partners and any subcontractor, material supplier, or equipment lessor, the lender may require the Mortgagor to submit a certification by the subcontractor, material supplier, or equipment lessor as to the actual costs paid for labor, materials, subcontractors and overhead. This certification must be in a form prescribed by the Commissioner.

(e) *Exclusions.* The certifications required by paragraphs (c)(4) and (d) of this section must exclude any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the Mortgagor or any of their officers, directors, stockholders or partners.

(f) *Records.* The Mortgagor must maintain adequate records of all costs of any construction or other cost items that do not represent work under the general contract and, in the case of a lump sum contract, must require the builder to keep similar records and, if requested by the lender or the Commissioner, must make these records (including any collateral agreements) available for examination, including examination by the Inspector General of HUD or the Comptroller General.

(g) *Certificate of public accountant.* In all projects exceeding 40 units, cost certifications must be supported by an audit of the cost certification statement and accompanying financial statements

by an independent Certified Public Accountant or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision on or before December 31, 1970. The audit must include a statement that the accounts, records, and supporting documents have been examined in accordance with generally accepted auditing standards to the extent necessary to verify that they present fairly the actual costs.

(h) *Requisites of agreement and certification.* Any agreement, statement or certification required by this section must specifically state that it has been prepared for the purpose of influencing an official action of the Commissioner and may be relied upon by the Commissioner and the lender as true.

(i) *Cost certification incontestable.* Upon the lender's approval of the Mortgagor's certification, the certification will be final and incontestable except for fraud or material misrepresentation on the part of the Mortgagor.

§ 251.405 Lender's review of mortgage amount.

When the cost certifications submitted under § 251.404 are reviewed and approved by the lender, the lender must determine, in accordance with standards set by the Commissioner, whether a mortgage reduction is necessary and whether any requests for a mortgage increase are approvable.

§ 251.406 Application of net income received before beginning of amortization.

In the case of General and Limited Distribution Mortgagors, net income (as defined by the Commissioner) that is received after final endorsement but before the beginning of amortization will be applied in one or more of the following ways as the lender determines:

(a) To advance amortization;

(b) To offset construction costs approved by the lender; or

(c) To be deposited in the reserve for replacements in addition to the monthly deposits required by the regulatory agreement.

§ 251.407 Endorsement by the Commissioner.

Before start of construction in insurance of advances cases, and in all cases after completion of construction or Substantial Rehabilitation and completion of the lender's review of the Mortgage amount, the lender will hold a closing and submit required documentation to the Commissioner or the Commissioner's authorized Departmental representative for coinsurance of the Mortgage by endorsement of the Mortgage note. The note must identify the section of the Act and the regulations under which the Mortgage is coinsured, the percentage of risk assumed by the lender and the Commissioner, and the date of coinsurance, i.e., the date of HUD endorsement of the project Mortgage. The lender's submission must include a certification that it has obtained written HUD approval of compliance with the requirements referred to in § 251.301(b) and any additional documents and information required by the Commissioner's administrative procedures.

Subpart F—Mortgage and Closing Requirements

§ 251.501 Mortgage requirements—real estate.

(a) The Mortgage must be on real estate held:

(1) In fee simple;

(2) Under a renewable lease for not less than 99 years;

(3) Under a lease running at least 75 years from the date the Mortgage is executed; or

(4) Under a lease executed by a governmental agency, or other lessor approved by the Commissioner, for up to the maximum term the agency or lessor may enter into, but not less than 50 years from the date the Mortgage is executed.

(b) The property must be held by an eligible Mortgagor.

§ 251.502 Title.

(a) *Eligibility of title.* Title to the Mortgaged property must be vested in the Mortgagor on the date the Mortgage is filed for record.

(b) *Title evidence.* Before coinsurance of the Mortgage, the Mortgagor must furnish the lender with a survey, satisfactory to the lender, of the Mortgaged property and a title insurance policy covering the property. If, for reasons that are satisfactory to the lender, title insurance cannot be furnished, the Mortgagor must furnish evidence of title in accordance with paragraph (b)(2) of this section. The types of title evidence are:

(1) A title insurance policy issued by a company, and in a form, satisfactory to the lender. The policy must name the lender, the Mortgagor, and the Commissioner as the insureds, as their interests may appear. The policy must also provide that, upon acquisition of title by the lender, it will become an owner's policy running to the lender.

(2) An abstract of title satisfactory to the lender, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the lender as to the quality of the title, signed by an attorney experienced in the examination of titles.

§ 251.503 Mortgage provisions.

(a) The Mortgage must be executed on a form approved by the Commissioner for use in the jurisdiction in which the property is located. The form must not be changed without the prior written approval of the Commissioner.

(b) The Mortgage must be executed by an eligible Mortgagor.

(c) The Mortgage must be a first lien on property that conforms with property standards prescribed by the Commissioner.

(d) The Mortgage must provide for equal monthly payments on interest and principal due on the first day of each month in accordance with a level annuity amortization plan agreed to by the Mortgagor and lender and acceptable to the Commissioner.

(e) The lender will determine the date of first payment to principal. The lapse of time between completion of the project and beginning of amortization must not be longer than the lender determines, in accordance with standards established by the Commissioner, to be necessary to obtain sustaining occupancy.

(f)(1) The Mortgage must provide that all monthly payments made by the Mortgagor to the lender be added together into a single payment made by the Mortgagor on each monthly payment date. The lender must apply payments received from the Mortgagor or for the account of the Mortgagor to the following items in the order listed:

(i) MIP under the Contract of Coinsurance;

(ii) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(iii) Interest on the Mortgage; and

(iv) Principal on the Mortgage.

(2) Any deficiency in the amount of the aggregate monthly payment required under paragraph (f)(1) of this section will constitute a fiscal default. The Mortgage will further provide for a grace period of 30 days within which time the default must be made good.

(g) The Mortgage must provide for payments by the Mortgagor to the lender, on each monthly payment date, of an amount sufficient to accumulate the next annual MIP one payment period before the MIP is due. These payments will continue only as long as the Contract of Coinsurance is in effect.

(h) The Mortgage must provide for equal monthly payments sufficient to

pay any ground rents, estimated taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a period ending one month before these items become due. The Mortgage must also make provision for adjustments in case the estimated amount of any of these items differs from amounts actually payable by the Mortgagor.

(i)(1) Partial or full prepayment of the Mortgage is permitted, subject to standards and restrictions established by the Commissioner with respect to prepayments of mortgages that: (A) Cover projects in which units are subsidized under section 8 of the United States Housing Act of 1937 or other Federal law or (B) may be purchased, assigned, or otherwise transferred to the Government National Mortgage Association (GNMA).

(2) Where the Mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipatory notes, or both, the Mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount and conditions.

(j) The Mortgage may provide for the collection by the lender of a late charge, not to exceed four percent of each payment to interest and principal that is more than 15 days late, or such other charges as may be agreed to by the lender and the Commissioner, to cover the extra expense of handling delinquent payments. Late charges must be separately charged to and collected from the Mortgagor and may not be deducted from any total monthly payment.

(k) The Mortgage must contain a convenant prohibiting the use of the property for any purpose other than the purpose intended on the day the Mortgage was executed.

(l) The Mortgage must contain a convenant, acceptable to the Commissioner, that binds the Mortgagor to keep the property insured by one or more standard policies for fire or other hazards stipulated by the Commissioner or the lender. The amount must comply with the coinsurance clause applicable to the location and character of the property, but may not be less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage must be in the amount estimated by the lender after completion of the project. A standard mortgagee clause making loss payable to the lender and the Commissioner as their interests may appear must be included in the mortgage. The lender is responsible for assuring that insurance is maintained in force and in the amount required by this paragraph and the Mortgage. If the Mortgagor does not obtain the required insurance, the lender must do so and assess the Mortgagor for such costs. These insurance requirements apply as long as the Coinsurance Contract is in force.

§ 251.504 Mortgage lien and other obligations.

The Mortgagor and the lender must certify at endorsement of the loan for insurance, and the lender must determine, that:

(a) The property covered by the mortgage is free from all liens other than the Coinsured Mortgage, except that the property may be subject to an inferior lien, made or held by a Federal, State or local governmental agency or instrumentality as provided in 24 CFR 221.520(b). No lien (other than State or local liens of taxes and assessments, or ground rents) may have a priority equal or superior to the Coinsured Mortgage.

(b) All contractural obligations in connection with the Mortgage transaction, including the purchase of the property and the improvements to the property, are paid. An exception is made for obligations that are approved by the lender and determined by the lender to be of a lesser priority for payment than the obligation of the insured Mortgage and that meet standards established by the Commissioner.

(c) Any additional obligations provided for in this section are represented by promissory notes on forms approved by the Commissioner. These notes must not be due and payable until the maturity date of the Mortgage, but may be prepaid from Surplus Cash or Residual Receipts in accordance with the conditions prescribed in the regulatory agreement between the lender and the Mortgagor.

§ 251.505 Regulatory agreement.

The lender and the Mortgagor must execute a regulatory agreement in a form acceptable to the Commissioner. The regulatory agreement must require the Mortgagor to comply with the requirements of Subparts G and H and other applicable provisions of this part for as long as the Commissioner coinsures the Mortgage. In the regulatory agreement, the lender may regulate the Mortgagor on other matters if the Commissioner determines that the additional lender controls or requirements do not conflict with the requirements of this part or requirements contained in the administrative instructions issued under this part.

§ 251.506 Other closing documents.

The lender will require execution of such other closing documents as the Commissioner may require.

Subpart G—Requirements Relating to Structure of Morgagor Entity and Transfers of Ownership Interest

§ 251.601 Requirements applicable to all projects.

(a) The Mortgagor may issue shares of capital stock, partnership participations or beneficial certificates of interest, as applicable, only in the number and form approved by the lender.

(b) The Mortgagor must comply with the Commissioner's administrative procedures for previous participation clearance and Transfers of Physical Assets before conveying, assigning or transferring any ownership interest in the project or any beneficial interest in any trust holding title to the project.

(c) The Mortgagor must obtain the Commissioner's and the lender's written approval before:

(1) Conveying, assigning, transferring, encumbering or disposing of any legal interest in the project, including rents and security deposits;

(2) Engaging, except for natural persons, in any business or activity, including the operation of any other project, or incurring any liability or obligation not in connection with the project.

(d) The Mortgagor may not resign or withdraw from the project until the lender has approved a substitute Mortgagor.

§ 251.602 Requirements for projects intended for cooperative ownership.

(a) *Investor-sponsor's escrow.* The lender must hold in escrow the amount it determines will be needed, in the event the project is not transferred to a Cooperative within two years of the date of project completion, to reduce the principal of the Mortgage to an amount authorized for a Limited Distribution Mortgagor. The amount held in escrow may be disbursed to the Mortgagor if the transfer occurs within the two-year period. Where the transfer does not occur within this period, the escrow will be applied against the Mortgage or in such other manner as the lender and the Commissioner authorize.

(b) *Compensation to Investor-sponsor.* The consideration for the transfer to a Cooperative Mortgagor will be the assumption of the Mortgaged indebtedness plus a down payment in an amount which, when added to the

original principal, may not exceed the Investor-sponsor's actual certified cost as approved by the lender under § 251.404.

§ 251.603 Requirements for projects intended for nonprofit ownership.

(a) *Builder-seller's escrow.* The lender must hold in escrow the amount it determines will be needed, in the event the project is not transferred to a Nonprofit Mortgagor within two years of the date of project completion, to reduce the principal of the Mortgage to an amount authorized for a Limited Distribution Mortgagor. The amount held in escrow may be disbursed to the Mortgagor if the transfer occurs within the two-year period. Where the transfer does not occur within this period, the escrow will be applied against the Mortgage or in such other manner as the lender and the Commissioner authorize.

(b) *Compensation to Builder-seller.* The consideration for the transfer to the Nonprofit Mortgagor shall be the assumption of the Mortgage indebtedness, to which may be added a cash payment in an amount which, when added to the original principal, may not exceed the Builder-seller's actual certified cost as approved by the lender under § 251.404.

Subpart H—Program Requirements Relating to Project Operation

§ 251.701 General.

In order to be eligible for the benefit of insured financing under this part, the Mortgagor must agree to be regulated and restricted by the lender with respect to the ongoing operation of the project as set forth in this subpart.

§ 251.702 Reserve for replacements and general operating reserve.

(a) The Mortgagor must establish and maintain a reserve for replacements which will be held and administered by the lender. The Mortgagor must accumulate, maintain and use this reserve, and the lender must administer this reserve, only as provided in the regulatory agreement and the Commissioner's administrative procedures.

(b) In addition to the reserve for replacements required by paragraph (a) of this section, a Cooperative Mortgagor must establish with the lender a general operating reserve in an amount required by the Commissioner's administrative procedures. The Cooperative Mortgagor must accumulate, maintain and use this reserve only as provided in the regulatory agreement and the Commissioner's administrative instructions.

(c) To the extent consistent with the project's liquidity needs, money placed in a reserve for replacements (and, in the case of Cooperatives, a general operating reserve) must be invested in United States Treasury securities, securities issued by a Federal agency, or deposits that are insured by an agency of the Federal Government.

§ 251.703 Rents and charges.

(a) For any units receiving section 8 assistance, unit rents and charges for facilities and services must be determined in accordance with the regulations and administrative procedures governing the program under which the unit is receiving assistance.

(b) For any project coinsured under section 221(d)(3), the Mortgagor may collect unit rents and other charges only in amounts less than or equal to those approved by the lender. In determining maximum allowable rents and charges and in passing upon applications for changes, the lender must adhere to standards established by the Commissioner. These standards are designed to set rents at a level needed to maintain the economic soundness of the project and to provide a reasonable return to the Mortgagor and reasonable rents to tenants.

(c) If the project is coinsured under section 221(d)(4) and the lender does not elect to regulate rents pursuant to paragraph (d) of this section, the mortgagor will determine rents and charges for all units except those which receive section 8 assistance. If the project is not constructed for occupancy exclusively by the elderly or handicapped, the mortgagor may also determine the charges for facilities or services. If the project is contructed exclusively for occupancy by the elderly or handicapped, the Mortgagor may charge tenants for facilities and services only after obtaining any lender approval required by the Commissioner's administrative procedures. Such charges must be reasonable in amount and may not exceed any amounts approved by the lender.

(d) For any project insured under section 221(d)(4), the lender may regulate rents and charges for any units not receiving section 8 assistance, subject to the Commissioner's administrative procedures, if the lender (under standards established by the Commissioner) determines that such regulation is necessary in order to comply with the requirements of the Internal Revenue Code or State law.

(e) HUD may preempt any State or local regulation of rents or leases of projects subject to this part as provided in Part 246 of this title.

§ 251.704 Use of project funds.

(a) The Mortgagor must deposit all rents and other receipts of the project in the name of the project in accounts that are fully insured as to principal by an agency of the Federal government. Project funds in excess of those needed to meet short-term project operating expenses may be invested in accordance with the administrative instructions of the Commissioner.

(b) The Mortgagor may use project funds only for:

(1) Payment of Mortgage obligations;

(2) Payment of reasonable expenses necessary to the proper operation and maintenance of the project (including deposits to required reserves);

(3) Distributions of Surplus Cash permitted under § 251.705;

(4) Repayment of Mortgagor advances authorized by the Commissioner's administrative procedures.

(c) The Mortgagor may not use project funds to liquidate liabilities related to the construction of the project, other than the Coinsured Mortgage, unless the lender authorizes this use in accordance with the Commissioner's administrative procedures.

(d) The Mortgagor must deposit and maintain residents' security deposits in a trust account separate and apart from all other funds of the project. This trust account must be held in the name of the project and the balance in the account must at all times equal or exceed the project's liability for residents' security deposits. The owner must comply with any State or local laws regarding investment of security deposits and the Distribution of interest or other income earned thereon. Any earnings received from the investment of security deposits must accrue to the benefit of the project or the project residents.

§ 251.705 Distributions and residual receipts.

(a) The Mortgagor may make, receive or retain Distributions only as provided in this section. The Mortgagor must compute Surplus Cash and Distributions in accordance with the Commissioner's administrative procedures.

(1) Distributions may be paid only from Surplus Cash that exists as of the end of a semi-annual or annual fiscal period.

(2) Distributions are payable only after construction has been completed and the lender has received the Cost Certification required by § 251.404.

(3) Distributions may be paid only after the end of the fiscal period in which the Surplus Cash is generated.

(4) No Distribution may be paid from borrowed funds or when payments due

under the note, Mortgage, or regulatory agreement have not been made.

(b) If any of the conditions listed below applies, the Mortgagor may distribute Surplus Cash only after obtaining the lender's written approval to do so:

(1) The Mortgagor has not satisfactorily responded to any Lender Management Review, Physical Inspection Report, annual financial statement correspondence or any other correspondence that requires the Mortgagor to implement corrective action, and that was received at least 30 days before the end of the fiscal period for which the Surplus Cash computation is made;

(2) The lender determines that the project has significant uncorrected physical deficiencies; or

(3) There is a default, other than a fiscal default, under the regulatory agreement.

(c) The Mortgagor must limit Distributions in any one fiscal period to the amount specified below, and must calculate Distributions in accordance with the administrative requirements of the Commissioner.

(1) Cooperative projects not receiving assistance under Part 886, Subparts A and C of this title, Section 8 Housing Assistance Payments Program—Special Allocations, may distribute all Surplus Cash to members, Cooperatives receiving Section 8 assistance under Part 886, Subparts A and C, may distribute only the portion of Surplus Cash attributable to non-subsidized units. Surplus cash must be prorated to subsidized and unsubsidized units in accordance with the Commissioner's administrative procedures.

(2) No Distributions are permitted on nonprofit rental projects.

(3) On projects owned by Limited Distribution Mortgagors, Distributions may not exceed the lesser of Surplus Cash or the Distributions available as of the end of the previous fiscal period.

(i) If the project receives subsidy payments from HUD, distributions are cumulative and will be earned at a rate prescribed in the regulations and administrative procedures applicable to that subsidy program.

(ii) If the project does not receive subsidy payments from HUD, distributions are cumulative and will be earned annually at a rate prescribed by the lender consistent with State or local law.

(4) On projects owned by General Mortgagors, all Surplus Cash generated during the previous fiscal period may be distributed to the Mortgagor.

(d) Nonprofit Mortgagors of rental projects must deposit Residual Receipts with the lender within 60 days after the end of each fiscal year in which Surplus Cash is generated. Limited Distribution Mortgagors must deposit Residual Receipts with the lender within 60 days after the end of each annual or semiannual fiscal period in which Surplus Cash is generated.

(e) Residual Receipts must at all times remain under the control of the lender. The lender must administer the Residual Receipts account in accordance with the Commissioner's administrative requirements.

(1) If the project receives subsidy payments from HUD, the lender may release Residual Receipts only after obtaining the Commissioner's written approval. If the project does receive subsidy payments from HUD, the lender may release Residual Receipts only in accordance with the Commissioner's administrative procedures.

(2) The Mortgagor may use Residual Receipts only for such purposes as the Commissioner or the lender authorizes their withdrawal.

(f) The Mortgagor must direct the lender to invest Residual Receipts in accordance with the administrative requirements of the Commissioner. All earnings on these investments must be added to the Residual Receipts account unless other disposition of such earnings has been approved by the Commissioner or by the lender in accordance with the Commissioner's administrative requirements.

(g) When the contract of coinsurance is terminate any funds remaining in the Residual Receipts account must be distributed in accordance with the Commissioner's administrative procedures.

§ 251.706 Project management.

The Mortgagor must:

(a) Provide for management satisfactory to the lender and the Commissioner, execute a management contract that meets the requirements of the Commissioner, and deliver to the lender such certifications and information regarding project management as the Commissioner may require.

(b) Maintain the project in good repair and condition and promptly complete necessary repairs and maintenance as required by the lender.

(c) Assure that all project expenses are reasonable in amount and necessary to the operation of the project.

(d) Obtain the lender's and the Commissioner's written approval before undertaking self-management, contracting for management services, or paying (or incurring any obligation to pay) fees for management services.

(e) Establish and maintain the project's books, accounts and records in accordance with the Commissioner's administrative requirements. Books and accounts must be maintained for such periods of time as the Commissioner may prescribe.

(f) Permit the lender, the Commissioner, the HUD Inspector General, the Comptroller General of the United States, or their authorized agents to inspect the project's property, equipment, buildings, plans, offices, apparatus, devices, books, accounting records, contracts, and documents during reasonable business hours. This right to inspect extends to the records of the Mortgagor, as well as to the records of any companies with which the Mortgagor has an identity of interest, as defined in the regulatory agreement.

(g) Furnish the lender and the Commissioner with a financial report on the project's operations within 60 days following the end of each fiscal year, unless the lender authorizes the Mortgagor to submit the report on a later date. Unless the Commissioner authorizes the lender to accept an unaudited report, the report must be made by an independent certified public accountant or by an independent public accountant licensed by a State or other political subdivision on or before December 31, 1970.

(h) Upon request, furnish the lender with operating budgets; occupancy, accounting and other reports; properly certified copies of minutes of meetings of the directors, officers, shareholders, or beneficiaries of the Mortgagor entity; and specific answers to questions raised from time to time by the lender relative to income, assets, liabilities, expenses, operation, and condition of the project. The Mortgagor must furnish a response to the lender's management review reports, physical inspection reports and written inquiries regarding annual or monthly financial statements no later than 30 days after receipt of the lender's report or inquiries.

(i) In renting units adhere to the civil rights and equal opportunity requirements set forth in § 251.208.

(j) Give preference to families or individuals displaced from an urban renewal area, or as a result of governmental action or a major disaster as determined by the President.

(k) Permit occupancy of units only under a lease or occupancy agreement approved by the lender in accordance with any standards established by the Commissioner.

(l) Adhere to the Commissioner's occupancy requirements for any units assisted under 24 CFR Part 886,

Subparts A or C of this title, Section 8 Housing Assistance Payments Program—Special Allocations.

(m) Not permit any part of the project to be rented for transient or hotel purposes. The term rental for transient or hotel purposes means (1) rental for any period less than 30 days or (2) any rental, if the occupants of the housing accommodation are provided customary hotel services, such as room service for food and beverage, maid service, furnishing and laundering of linens, and bellhop service.

Subpart I—Contract Rights and Obligations

Mortgage Insurance Premiums

§ 251.801 MIP in insurance of advances cases.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before the initial endorsement of the Mortgage for coinsurance, the lender must collect a MIP from the Mortgagor equal to one percent of the original amount of the Mortgage.

(2) If the date of the first principal payment is more than one year after the date of initial endorsement, the lender must, before each anniversary of the date of initial endorsement that occurs more than 30 days before the first principal payment, collect from the Mortgagor an additional MIP equal to 0.5 percent of the original Mortgage amount.

(3) Before the first principal payment, the lender must collect from the Mortgagor an amount equal to 0.5 percent of the average outstanding principal balance of the Mortgage for the year following the first principal payment.

(4) Beginning with the first principal payment and continuing until the Coinsurance Contract terminates, the lender must collect and place in escrow monthly MIP sufficient to accumulate 0.5 percent of the average principal that will be outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments on the Mortgage except as provided in § 251.804.

(5) The MIP required under paragraphs (a) (1) and (2) of this section may be included in the Mortgage. The Mortgagor must pay the MIP required under paragraphs (a) (3) and (4) of this section from its own funds.

(b) *Payment of MIP by the lender.* (1) At initial endorsement, the lender must pay to the Commissioner an initial MIP equal to .65 percent of the original amount of the Mortgage.

(2) If the date of the first principal payment is more than one year after the date of the initial endorsement, the lender must, on each anniversary of the date of initial endorsement that occurs more than 30 days before the first principal payment, pay to the Commissioner an additional MIP equal to 0.5 percent of the original Mortgage amount.

(3) Following final endorsement, the Commissioner will adjust the MIP so that it equals .65 percent per year of the average outstanding principal balance for the year following the date of initial endorsement plus 0.5 percent per year of the average outstanding principal balance for the period from the first anniversary of initial endorsement to the date of the first principal payment. If the adjusted amount is less than the amount previously paid by the lender, the Commissioner will refund the excess amount to the lender for application to the Mortgagor's account.

(4) On the date of the first principal payment and each year thereafter on the anniversary of the date on which the first principal payment was due, and continuing until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance of the Mortgage for the 12 months following the date the premium becomes payable. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments or Mortgage prepayments except as provided in § 251.804.

§ 251.802 MIP in insurance upon completion cases.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before endorsement of the Mortgage for coinsurance, the lender must collect from the Mortgagor a MIP equal to 0.5 percent per year of the average outstanding principal balance of the Coinsured Mortgage from the date of the endorsement to one year after the due date of the first payment to principal.

(2) For each year thereafter, the lender must collect from the Mortgagor monthly MIP sufficient to accumulate and place in escrow 0.5 percent of the average principal balance outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments on the Mortgage except as provided in § 251.804.

(b) *Payment of MIP by the lender.* (1) At endorsement, the lender must pay to the Commissioner an initial MIP equal to 0.5 percent of the face amount of the Mortgage. Following endorsement, the Commissioner will adjust the initial MIP so that it equals 0.5 percent per year of the average outstanding balance of the Mortgage from the date of endorsement to one year after the due date of the first payment to principal. If this adjusted amount is more than the amount paid by the lender at endorsement, the Commissioner will bill the lender for the difference. If the adjusted amount is lower than the amount paid by the lender at endorsement, the Commissioner will refund the excess amount to the lender for application to the Mortgagor's account.

(2) Beginning on the anniversary of the date on which the first principal payment was due and continuing annually thereafter until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance for the 12 months following the date the premium becomes available. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments or Mortgage prepayments except as provided in § 251.804.

§ 251.803 Duration and method of payment of MIP.

(a) MIP payments must continue annually until one of the following occurs:

(1) The Mortgage is paid in full;

(2) A deed to the lender is filed for record; or

(3) The Contract of Coinsurance is otherwise terminated with the consent of the Commissioner.

(b) The lender may pay any MIP required under this part in cash or debentures.

§ 251.804 Pro-rata refund of annual MIP.

If the Coinsurance Contract is terminated by prepayment in full or by termination with the consent of the Commissioner after the due date of the first annual MIP, the Commissioner will refund any MIP paid for the period after the effective date of the termination of insurance. The refund will be mailed to the lender for credit to the Mortgagor's account. In computing the pro rata portion of the annual MIP, the date of termination of coinsurance will be the last day of the month in which the Mortgage is prepaid or the Commissioner receives a termination request. No refund will be made if insurance was terminated because of a default or if termination occurs before the date the first annual MIP is due.

§ 251.805 Late charges—MIP.

(a) If the Commissioner receives a MIP payment more than 15 days after the later of the billing date or due date, the lender must pay a late charge of four percent of the amount due.

(b) If the Commissioner receives a premium payment more than 30 days after the later of the billing or due date, the lender must pay both the four percent late charge and interest. Interest will be charged from the later of the billing date or the due date at a rate set in conformity with the Treasury Fiscal Requirements Manual.

Delinquency and Default Under the Mortgage

§ 251.807 Notice of delinquency.

If the lender has not received the Mortgagor's monthly Mortgage payment by the 16th day of the month in which the payment is due, the lender must notify the Commissioner of the delinquency. The lender must mail this notice in time for it to be received by the Commissioner by the 20th day of that month.

§ 251.808 Definition of default.

(a) A monetary default exists when the Mortgagor fails to make any payment due under the Mortgage.

(b) A covenant default exists when the Mortgagor fails to perform any other covenant under the provisions of the Mortgage or the regulatory agreement, which is incorporated in the Mortgage. A lender becomes eligible for insurance benefits on the basis of a covenant default only after the lender has accelerated the debt and the owner has failed to pay the full amount due, thus converting a covenant default into a monetary default.

§ 251.809 Date of default.

For purposes of this subpart, the date of default is:

(a) The date of the first uncorrected failure to perform a mortgage covenant or obligation; or

(b) The date of the first failure to make a monthly payment that is not covered by subsequent payments, when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

§ 251.810 Notice of default.

If a default (as defined in § 251.808) continues for a period of 30 days, the lender must notify the Commissioner within 30 days thereafter, unless the default is cured. Unless waived by the Commissioner, the lender must submit this notice monthly until the default has been cured, the lender has acquired title to the property, or the coinsurance contract is terminated.

§ 251.811 Financial relief to cure a default.

(a) To reinstate a defaulted Mortgage, the lender may use one or more of the forms of financial relief described in this paragraph. The lender's efforts to cure a default will not result in a curtailment of interest as provided by § 251.821(b) in any subsequent claim for insurance benefits, if the lender complies with the conditions set forth in this section and the notice requirements set forth in §§ 251.810 and 251.815. The lender must service delinquent loans in accordance with the Commissioner's administrative procedures.

(1) Temporary adjustment of Mortgage payments. Without obtaining the Commissioner's approval, the lender may agree to hold the Mortgage in default and temporarily adjust payments, if a temporary payment plan meets the conditions listed below. The lender may approve a payment plan that does not meet all of these conditions only after obtaining the Commissioner's written approval.

(i) The temporary payment plan will last no longer than 18 months.

(ii) Payments will be set at less than the debt service and escrows required by the Mortgage for no more than six months.

(iii) The plan requires the Mortgagor to pay a specific dollar amount each month toward the Mortgage delinquency, but also gives the lender the right (subject to the Commissioner's administrative procedures) to require that the Mortgagor also apply any net operating income to the Mortgage delinquency.

(iv) The Plan requires the Mortgagor to furnish the lender monthly accounting reports until the Mortgage is reinstated.

(v) The Mortgagor agrees that, even if the project is current under the terms of a temporary payment plan, no distributions will be paid until the Mortgage itself has been brought current and the Mortgagor has complied with all terms of the temporary payment plan and any broader reinstatement plan, including the completion of any maintenance work or management initiatives.

(2) Withdrawal from the reserve for replacements. If the Mortgage is more than 25 days delinquent, the lender may withdraw reserve funds without prior Commissioner approval to pay up to one month's debt service and Mortgage escrows. The lender must obtain the Commissioner's written approval for withdrawals that, individually or cumulatively over a 12-month period, would exceed one month's Mortgage payment.

(3) Suspension of deposits to the reserve for replacements. The lender may suspend reserve deposits for up to six months during any 36 month period. The lender must obtain the Commissioner's written approval for suspensions in excess of six months during any 36-month period.

(4) Recasting the Mortgage. The lender may recast delinquent principal and interest over the remaining Mortgage term so long as the sum of the outstanding principal balance of the Mortgage and the delinquency being recast does not exceed the original Mortgage amount, and the lender obtains the Commissioner's written approval before executing an agreement permanently modifying the terms of the Mortgage.

(b) For any project comprising a GNMA pool, the lender-issuer must continue to pay the securities holders the full amount of scheduled payments due under the securities, even if the lender does not collect the full amount from the Mortgagor.

§251.812 Reinstatement of a defaulted mortgage.

If the Mortgagor cures the default before the completion of any foreclosure proceedings, the insurance will continue as if a default had not occurred. The Mortgagor must pay all reasonable expenses that the lender incurs in connection with the foreclosure proceedings. The lender must give written notice of reinstatement to the Commissioner.

Termination

§251.813 Termination of coinsurance contract.

(a) The Contract of Coinsurance will terminate if any of the following occurs:

(1) The Mortgage is paid in full;

(2) The lender acquires the Mortgaged property and notifies the Commissioner that it will not make a claim for insurance benefits;

(3) The Mortgagor redeems the property after foreclosure;

(4) A party other than the lender acquires the property at a foreclosure sale;

(5) The Mortgagor and lender jointly request termination and the Commissioner grants approval; or

(6) The lender or its successors or assigns commit fraud or make a material misrepresentation to the Commissioner with respect to the Contract of Coinsurance on the Mortgage.

(b) The Contract of Coinsurance may, at the option of the Commissioner, be

terminated in the event of the assignment or transfer of interest of a Coinsured Mortgage which does not meet the requirements of § 251.106.

(c) When the Coinsurance Contract is terminated, all of the rights and obligations of the Mortgagor and the lender, including the obligation to pay MIP, will terminate.

§ 251.814 Notice and date of termination by Commissioner.

The Commissioner will notify the lender that the contract of coinsurance on a Mortgage has been terminated and will establish the effective date of the termination. The termination date will be the last day of the month in which any one of the events specified in § 251.813 occurs.

Claim Procedure and Payment of Insurance Benefits

§ 251.815 Notice of election to acquire property and file a claim.

Unless the Commissioner has given the lender a written extension, the lender must notify the Commissioner of its election to acquire the property and its intention to file a claim for insurance benefits within 75 days of the date of default. The Commissioner will approve an extension of the 75-day deadline if the Commissioner determines that (a) the lender and the Mortgagor are diligently pursuing reinstatement of the Mortgage, and (b) reinstatement of the Mortgage and resolution of the problems that led to the default are feasible.

§ 251.816 Acquisition of property.

Within 30 days after submitting the notice required by § 251.815, the lender must institute action either to foreclose the Mortgage or acquire title to the Mortgaged property through deed-in-lieu of foreclosure. The lender must exercise reasonable diligence in pursuing this action, and must promptly report to the Commissioner any developments that might delay the completion of acquisition. During the period that the lender controls the property, it must adhere to the Commissioner's requirements for project management, as set forth in the regulatory agreement and the Commissioner's administrative procedures.

§ 251.817 Deed-in-lieu of foreclosure.

In lieu of instituting or completing a foreclosure, the lender may acquire the property by voluntary conveyance from the Mortgagor. The lender may accept a deed-in-lieu of foreclosure if:

(a) The Mortgage is in default at the time the deed is executed and delivered;

(b) The credit instrument is cancelled and surrendered to the Mortgagor;

(c) The Mortgage of record is satisfied as a part of the consideration for the conveyance; and

(d) The deed from the Mortgagor conveys marketable title and contains a covenant that warrants against the acts of the grantor and all claims by, through, or under the grantor.

§ 251.818 Disposition of property and application for insurance benefits.

(a) After acquisition of marketable title to the property, the lender must obtain two appraisals of the property performed by independent appraisers. The lender must select the appraisers from a panel approved by the Commissioner. The appraisals must estimate the market value of the property, as of the date of acquisition, for its highest and best use.

(b) After the lender sells the property, or after the end of 12 months from the date of acquisition of title, whichever occurs first, the lender may file a claim for any insurance benefits to which it is entitled under § 251.820. The lender must file the claim no later than 15 days after the sale, or expiration of the 12-month period, whichever is applicable, or Mortgage interest will be curtailed in accordance with § 251.821(b).

(c) The lender must file the claim on a form approved by the Commissioner and must state the sales price and the income and expenses incurred in connection with the acquisition, repair, operation, and sale of the property. The lender must also submit evidence in support of the claim, as prescribed by the Commissioner, including the appraisals required by paragraph (a) of this section, and ledger records and documentation for all accounts relating to the Mortgage transaction.

(d) If the property has not been disposed of at the time of the lender's request for payment, the lender must use the higher of the two appraised values of the property secured in accordance with paragraph (a) of this section in its notification to the Commissioner, in lieu of the sales price.

§ 251.819 Method of payment.

The Commissioner will pay insurance benefits in cash, unless the lender files a written request for payment in debentures. In the event that the lender requests debentures, all of the provisions of 24 CFR 207.259(e) will apply.

§ 251.820 Amount of payment.

(a) The basis for the computation of insurance benefits will be:

(1) The principal balance of the Mortgage unpaid as of the date of the institution of foreclosure proceedings or the date of acquisition of the property by deed in lieu of foreclosure;

(2) Plus all items set forth in § 251.821;

(3) Less all items set forth in § 251.822.

(b) The Commissioner will pay insurance benefits equal to 85 percent of the amount computed under paragraph (a) of this section if the lender (1) Has obtained no insurance of its coinsurance risk, (2) has insured 50 percent of its coinsurance risk or (3) is a State Housing Agency eligible as a lender under § 203.8(b) of this chapter that obtained reinsurance from an authorized public Mortgage insurer for any portion or all of its coinsurance risk, where the Commissioner finds an identity of interest exists between the State Housing Agency and the public Mortgage insurer.

(c) The Commissioner will pay insurance benefits equal to 72.25 percent of the amount computed under paragraph (a) of this section if the lender has obtained insurance for either 100 percent of its coinsurance risk or that portion of its coinsurance risk that equals the maximum amount that the insurer is authorized to insure.

(d) This paragraph sets forth the amount of coinsurance benefits to be paid when the amount of reinsurance obtained by the lender changes. If reinsurance is increased after initial or final endorsement, HUD's insurance benefits will be reduced accordingly. HUD's insurance benefits will not be increased if reinsurance is reduced or cancelled after final endorsement.

§ 252.821 Items included in payment.

The insurance benefits paid will include the following items:

(a) The amount of all payments that the lender made from its own funds and not from project income for:

(1) Taxes, special assessments, and water bills that are liens before the Mortgage;

(2) Fire and hazard insurance on the property; and

(3) Any Mortgage insurance premiums paid after the date of default. However, HUD will not reimburse the lender for any interest, late charge or other penalties imposed because of the lender's failure to make the required payments when due.

(b) An amount equivalent to Mortgage interest on the unpaid principal balance of the Mortgage on the date the lender initiated foreclosure proceedings or on the date the lender acquired title to the property through deed-in-lieu of foreclosure. This interest will be payable from the date of default to the date of payment of the insurance benefits. However, if the lender fails to

meet any of the requirements of §§ 251.810, 251.815, 251.816, or 251.818(b), within the specified time (including any permissible extension of time), the accrual of interest allowance on the cash payment will be curtailed by the number of days by which the required action was late. If the lender makes the request for payment in debentures, then all the provisions of § 207.259(e) of this chapter will apply.

(c) An amount not in excess of two-thirds of the costs actually paid by the lender and approved by the Commissioner of acquiring the property. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(d) Reasonable payments that the lender made from its own funds and not from project income for:

(1) Preservation, operation and maintenance of the property;

(2) Repairs necessary to meet the objectives of the HUD minimum property standards, those required by local law, and additional repairs that HUD specifically approved in advance; and

(3) Expenses in connection with the sale of the property.

§ 251.822 Items deducted from payment.

The following items will be deducted in the computation of insurance benefits:

(a) An amount equal to five percent of the outstanding principal balance of the Mortgage on the date the lender instituted foreclosure proceedings or acquired title to the property through deed-in-lieu of foreclosure.

(b) All amounts received by the lender on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property through deed-in-lieu of foreclosure after default, and any other reimbursement to the lender, other than under the Coinsurance Contract.

(c) All cash or funds related to the Mortgaged property that the lender holds (or to which it is entitled) including deposits and escrows made for the account of the Mortgagor. However, for any Mortgage comprising a GNMA pool, this deduction must exclude any funds in the lender-issuer's custodial accounts and collateral funding a GNMA Deposit Agreement relating to the lender-issuer loss exposure during the GNMA Indemnity Period.

(d) The amount of any undrawn balance under a letter of credit that the lender accepted in lieu of a cash deposit for an escrow agreement;

(e) Any net income from the Mortgaged property that the lender received after the date of default;

(f) The proceeds from the sale of the project or the appraised value of the project as provided in § 251.818, as follows:

(1) If the lender disposes of the project through a negotiated sale, the amount deducted will be the higher of the sales price or the appraised value.

(2) If the lender disposes of the project through a competitive bid procedure approved by the Commissioner, the amount deducted will be the sales price, even if it is lower than the appraised value.

(3) If the lender has not disposed of the project within 12 months from the date of acquisition, the amount deducted will be the appraised value.

(g) Any and all claims that the lender has acquired in connection with the acquisition and sale of the property. Claims include but are not limited to returned premiums from cancelled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposits left with utility companies, and amounts received as proceeds of a receivership.

Remedies for Default by a Lender-Issuer Under the Government National Mortgage Association (GNMA) Mortgage-Backed Securities Program

§ 251.823 Indemnification of GNMA.

(a) If, after the Commissioner pays a coinsurance claim, the lender-issuer fails to pay the full amount owed to a holder of securities guaranteed by GNMA and backed by a coinsured loan, the Commissioner will reimburse the Association for the amount the Association must pay securities holders as a result of the lender's default in payment.

(b) This amount will not exceed 15 percent or 27.75 percent (whichever is appropriate) of the amount computed under § 251.820, plus the amount referenced in § 251.822(a). The Commissioner will make payment in cash. After payment by the Commissioner, the lender-issuer will have no claim against the Commissioner for any such funds.

§ 251.824 Withdrawal of lender approval.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured Mortgage, the Commissioner may request that the Mortgagee Review Board withdraw approval of the lender-issuer as a HUD-approved Mortgagee, under the provisions of Part 25 of this title.

§ 251.825 HUD recourse against lender-issuer.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured Mortgage, the lender-issuer will be liable for reimbursing the Commissioner for the payments.

§ 251.826 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA will have the right, notwithstanding the requirements of § 251.806, to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer or to itself.

(a)(1) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will first attempt to have the Mortgage assigned to another eligible coinsuring lender by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are indicated on a periodically updated listing furnished to GNMA by the Commissioner and that are also GNMA issuers.

(2) If GNMA rejects all offers or no offers are received, GNMA will have the right to perfect an assignment of the Mortgage to itself.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR Part 221. Any future insurance claim by GNMA or any assignment of the fully insured Mortgage will be governed by the appropriate provisions of 24 CFR

Part 221, except that any payment will be made in cash instead of debentures.

§ 251.827 GNMA right to claim coinsurance benefits after lender-issuer's acquisition of title.

(a) If, as a result of a default by a lender-issuer on its obligations under the GNMA Mortgage-Backed Securities (MBS) program, GNMA must pay the full amount, or any part thereof, which is contractually owed to one or more securities holders, then GNMA as substitute lender-issuer shall be entitled to file a claim for and to receive coinsurance benefits in accordance with this subpart. GNMA may file a claim with the Commissioner immediately upon its declaration of the lender-issuer's default under the GNMA MBS program, if the defaulting lender-issuer has aquired legal title to property previously covered by a coinsured mortgage ("coinsured property") but has not received coinsured benefits under this subpart, and if the defaulting lender-issuer cannot or will not convey legal title to the coinsured property to GNMA. Such a claim may be filed by GNMA notwithstanding the requirements of § 251.818(b) that claims be submitted after the sale of the coinsured property or the expiration of 12 months from the acquisition of title. The claim shall be based upon property appraisals obtained by the lender-issuer at the time of acquisition of title or, in the absence of such appraisals, upon appraisals obtained by GNMA after default of the lender-issuer. The lender-issuer will have no claim against the Commissioner for any payment pursuant to this section.

(b) If, as a result of the lender-issuer's default, the full amount paid by GNMA to one or more securities holders is an amount greater than the amount of coinsurance benefits paid by the Commissioner to GNMA under paragraph (a) with respect to the Coinsured Mortgage that backed the securities, then the Commissioner shall reimburse GNMA for such additional amount in accordance with § 251.823(b).

(c) For any Coinsured Mortgage that is to be included in a GNMA MBS pool, GNMA shall obtain, an assignment by contract of any future right of the lender-issuer to collect coinsurance benefits on the Coinsured Mortgage following the lender-issuer's acquisition of legal title to the underlying coinsurance property on behalf of securities holders and GNMA. Such assignment shall become effective upon default by any lender-issuer after its acquisition of legal title to the coinsured property.

(d) If the lender-issuer is unable or unwilling to transfer legal title to the coinsured property promptly to GNMA, GNMA shall take all necessary and appropriate action to obtain legal title to it, Upon receipt of legal title, GNMA shall convey the coinsured property to the Commissioner. In the event GNMA cannot acquire legal title, GNMA shall transfer to the Commissioner any other rights or interests it possesses in the coinsured property.

(e) GNMA shall reimburse the Commissioner in an amount not to exceed the amount of any payment by the Commissioner to GNMA under paragraph (a) if the Commissioner is required to pay coinsurance proceeds under this subpart to any party other than GNMA with respect to the Coinsured Mortgage.

Dated: August 3, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-21077 Filed 8-8-84; 8:45 am]

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Thursday
August 9, 1984

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Parts 105, 111, and 115

Recognition of Jurisdictions With Substantially Equivalent Fair Housing Laws; Final Rule

24 CFR Part 115

Recognition of Substantially Equivalent Fair Housing Laws; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Parts 105, 111, and 115

[Docket No. R-84-1083; FR-1576]

Recognition of Jurisdictions With Substantially Equivalent Fair Housing Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends 24 CFR Part 115, which sets forth the criteria and procedures under which HUD recognizes State and local fair housing laws as providing rights and remedies that are substantially equivalent to those provided by the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968). The revisions are designed to clarify and simplify the recognition process, allow for more timely action in granting or withdrawing recognition, and revise existing requirements pertaining to sex discrimination. This final rule also makes related amendments in 24 CFR Parts 105 and 111.

EFFECTIVE DATE: October 8, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Sacks, Director, Federal, State and Local Programs Division, Office of Fair Housing and Equal Opportunity, 451 Seventh Street SW., Washington, D.C. 20410, (202) 426-3500. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 9, 1983, the Department published a proposed rule which would amend 24 CFR Part 115 (48 FR 36133). Part 115 sets forth the procedures and criteria used to determine whether a State or local fair housing law provides rights and remedies for discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act (Title VIII of the Civil Rights Act of 1968). The Department proposed to simplify Part 115, increase the flexibility of the recognition procedures, and revise the Part 115 requirements pertaining to sex discrimination.

Comments on the proposed rule were received from only three parties: the National Association of Realtors, the National Committee Against Discrimination in Housing (NCDH) and Housing Advocates, Inc. (a Cleveland-based nonprofit agency).

The principal changes proposed would: (1) Provide for addition or deletion of recognized jurisdictions by publication of a rule-related notice in the **Federal Register** rather than through a rulemaking proceeding, and (2) remove the possibility of recognizing a law as substantially equivalent notwithstanding that it does not prohibit discrimination based on sex. Commenters favored both of these changes (which are incorporated in the final rule) but suggested additional revisions to Part 115, some of which have been adopted. In addition, other changes have been incorporated in order to clarify the separate phases of the recognition process.

Stages of Recognition Process

The National Association of Realtors suggested that the criteria for recognition that a law provides substantially equivalent rights and remedies be amended to require the Department to deny recognition to "any state or locality whose fair housing law(s) contains provisions that countenance, tolerate or promote programs of managed integration, racial quota systems, or benign steering in any of their various forms intended to preserve, influence, or dictate the racial balance of its jurisdiction."

"Integration maintenance" refers generally to strategies pursued by local governments, particularly in some suburban areas, to preserve racial diversity and avoid "resegregation." See, e.g., Lind, *Maintaining Residential Integration: Municipal Practices and Law*, 31 Cleveland St. L. Rev 603 (1982). The term encompasses a variety of policies and programs pursued by different localities. The Department does not intend to imply that it considers the characterization of these approaches as involving "racial quota systems" to be generally accurate. Nevertheless, the Department does not deny that it is possible for some activities purportedly undertaken in the name of racial integration to have a limiting effect on the ability of some persons to select or apply for the housing of their choice. In housing contexts more than in other areas of affirmative action, the burden of these limitations may fall on minorities. See, *e.g., Burney* v. *Housing Authority for the County of Beaver*, 551 F. Supp. 746 (W.D. Pa. 1982) (low-income rental housing).

The Department opposes activities that limit the free choice of any person, majority or minority, in selecting available housing. In a homeownership context, it may be possible that some elements of an "integration maintenance" program might operate to restrict the channels available to homeseekers, more than to open them, in a manner that may be considered incompatible with the prohibitions of the Fair Housing Act. Such elements, for example, might include bans on "for sale" signs or on solicitation by real estate brokers, or race-conscious counselling by municipal agencies.

Focusing of these considerations has led the Department to further restructure the regulatory provisions regarding the recognition process in order more clearly to delineate what it considers to be two separate stages, or subject matters, of the determination of substantial equivalency. The two stages are determination of the adequacy of the law on its face, which is the threshold determination, and assessment of the effectiveness of the law in operation. Matters such as those discussed above are, in the Department's view, properly taken into account in the second assessment.

Accordingly, the recognition process has been clarified in the final rule as follows:

1. A new § 115.2 provides that determination of substantial equivalency requires examination and an affirmative conclusion by the Assistant Secretary on two separate inquires: (1) Whether the State or local law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, and (2) whether the current practices and past performance of the appropriate State or local agency charged with administration and enforcement of such law demonstrates that in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

2. Section 115.3 sets forth the criteria for evaluation of the law on its face. Subsection (c) makes clear that "on its face," in this context, denotes a distinction from effectiveness in operation and includes consideration of such relevant matters of State or local law, or interpretations of the fair housing law itself by competent authorities, as may be necessary to determine the meaning and intent of the text of the law. Such matters, for example, could include relevant opinions of the State Attorney General. The prescribed criteria, more fully discussed below, are substantially those contained in current § 115.3.

3. Section 115.4 sets forth the performance standards to be used in assessing the effectiveness of the law in operation. The standards, more fully

discussed below, are substantially those now contained in current § 115.8. In response to the considerations discussed above, a new subsection (c) provides that where the State or local agency has duties and responsibilities in addition to administration of the fair housing law, the Assistant Secretary may consider such matters as the relative priority given to fair housing administration vis-a-vis such other duties and responsibilities and the compatibility or potential conflict of fair housing objectives with such other duties and responsibilities.

4. Section 115.5 prescribes the manner in which a request for recognition may be made, including the supporting materials to be submitted. It is similar in material respects to current § 115.2. In order to facilitate the public comment process discussed below, § 115.5 requires that a copy of the request and supporting materials be kept available for public examination and copying at HUD's Headquarters and Regional Office and at the office of the State or local agency requesting recognition.

5. Section 115.6 sets forth the procedure for recognition. In essence, it provides that if the threshold determination of adequacy of the law on its face is made, the Assistant Secretary will publish notice to that effect and request public comment on the request for recognition. This places the request for public comment at an earlier stage in the total process than proposed in the proposed rule, in order that public input may be taken into account during the Department's assessment of the effectiveness of the law in operation, rather than afterward. If an affirmative determination is made after taking such public comment into account, the Department will seek to enter into a written agreement with the State or local agency. This written agreement may, but need not be, incorporated in a Memorandum of Understanding as described in § 111.104(a)(2). Thereafter, the Department will publish notice of recognition of the agency in the **Federal Register** in essentially the manner provided in the proposed rule.

The proposed rule provided that the Department would publish an annual rule-related notice containing an updated list of all recognized jurisdictions. Commenters generally favored this proposal, but proposed that the annual notice also include a list of jurisdictions whose requests for recognition had been denied or whose recognition had been withdrawn. The purpose of the annual publication is to inform the public of changes in the previously published recognition status of jurisdictions. Accordingly, § 115.6(e) of the final rule provides that the annual publication will also include a list of jurisdictions: (i) Whose recognition has been withdrawn since publication of the last list; (ii) for which notices for comment have been published and the request for recognition remains pending, (iii) for which notice of proposed withdrawal of recognition has been published and remains pending, (iv) for which notice of denial of recognition has been published since publication of the previous notice, and (v) for which an agreement for interim referrals or other utilization of services (see below) has been entered and remains in effect.

A consolidated list of currently recognized jurisdictions will be published in the **Federal Register** on or before the effective date of this rule.

Interim Referrals

Section 115.5 of the current regulation provides for temporary recognition if the Assistant Secretary determines that an issue involved in the final recognition determination "cannot be resolved with reasonable dispatch." The proposed rule proposed to eliminate temporary recognition. However, the restructuring of the recognition procedure discussed above, together with related considerations discussed below, has caused the Department to reconsider the usefulness of a form of interim recognition.

The current procedure gives rise to certain conflicting pressures. As indicated in the discussion above, the Department considers it essential that a determination be made of the effectiveness of the State or local agency's administration of the law in operation before recognition is granted. This concern follows from the effect of recognition as requiring referral of complaints filed with HUD to the State or local agency and the limitations under Section 810(c) of the Act and 24 CFR Part 105 on further HUD processing. HUD is understandably reluctant to commit complaints to State or local processing without a demonstrated basis for confidence in the effectiveness of the State or local agency's investigative and other processing procedures.

The conflicting pressure arises from the interrelationship of recognition under Part 115 and Fair Housing Assistance Program (FHAP) funding under 24 CFR Part 111. The latter limits eligibility for funding, including capacity-building funding, to recognized agencies. This creates a pressure to recognize an agency before its capacity in fact has been demonstrated.

The conflict is resolved in § 115.2 of the current regulation by limiting the consideration of "available indicia of the agency's ability to satisfactorily administer its law consonant with the performance standards" to cases where the agency has been in operation for one year or more. In the cases of new agencies, recognition is granted without consideration of performance and, indeed, before a performance record can be compiled.

The Department considers that this is an unsatisfactory resolution of the conflict. Accordingly, § 115.11 of the final rule contains a provision which is similar in effect to the current temporary recognition provision. Section 115.11 of the final rule provides for interim referral of complaints to agencies administering laws which have been determined adequate on their face but as to which the determination of effectiveness in operation cannot yet be made because the law has not been in effect or the agency in operation long enough. HUD may enter into an agreement with such an agency for referral of complaints to the agency on an agreed basis or for other utilization by HUD of the services of such agency. Notice of entry of such an agreement will be published in the **Federal Register**. Such utilization of the services of a State or local agency is authorized under Section 816 of the Act. Since final recognition has not been granted, reactivation of referred complaints by HUD will not be subject to the restrictions prescribed by Section 810(c) of the Act or 24 CFR 105.18–105.20.

A related amendment is made to Part 111. Temporary recognition of an agency under the current rule would make an agency eligible for funding under the Fair Housing Assistance Program. Accordingly, the final rule contains an amendment to 24 CFR 111.104 which provides that execution of an agreement providing for interim referrals or other utilization of services pursuant to § 115.11 will make the agency eligible for funding. However, such eligibility will be limited to type I-noncompetitive funding, which includes capacity building, complaint monitoring, training and reporting systems.

Criteria for Recognition

The proposed rule generally retained the existing criteria for determining whether a State or local fair housing law provides substantially equivalent rights and remedies. The sole proposed change would delete provisions permitting the recognition of State and local laws that fail to contain adequate provisions against sex discrimination. NCDH

favored this proposal which has been incorporated in § 115.3 of the final rule. However, NCDH and Housing Advocates, Inc. suggested other revisions to the criteria.

First, NCDH objected to retention of current provisions permitting a law to be found substantially equivalent even though the law does not contain adequate provisions against blockbusting, discrimination in financing, and denying access to or participation in multiple listing services, real estate brokers' organizations or other services.

The Department continues to believe that failure of a State or local fair housing law to prohibit such practices should not preclude recognition. Complaints involving the described practices represent only a small percentage of the total complaints received by HUD. Moreover, any complaint alleging such practices will be retained and investigated by HUD. Section 115.10 of the final rule provides that complaints will not be referred to the agency if the State or local law does not prohibit the questioned practice.

NCDH and Housing Advocates, Inc., both questioned the provisions, governing the consideration given to State and local judicial remedies. Consistent with current § 115.3(f), the proposed rule provided:

> * * * consideration will be given to the provisions of the law affording judicial protection and enforcement of the rights embodied in the law. However, a law may be determined substantially equivalent even though it does not contain express provision for access to State or local courts.

The commenters suggested that HUD amend this provision to require that State or local fair housing laws provide access to State or local courts (including a full range of judicial remedies).

The Department addressed the weight to be accorded State and local judicial remedies in the first rulemaking promulgating Part 115. In that proceeding, HUD concluded that failure to provide State or local judicial remedies should not preclude recognition, since a complainant would not be denied access to the Federal judicial system. During the statutory period of 180 days following the date of an alleged discriminatory housing practice, a complainant retains a right of access to a full range of remedies in Federal District Court under Section 812 of the Act. This right exists even if a complaint is filed with HUD and is referred to a State or local agency. In addition, Section 810(c) of the Act permits the Secretary to reactivate complaints where the protection of the rights of the parties and the interests of justice require such action. Current § 115.6 specifically provides that HUD may reactivate a complaint where the State or local law fails to provide access to a State or local court and the complaint has not been satisfactorily resolved. This reactivation terminates the "period of reference" under Section 810(d) of the Act, which restores the right of the individual complainant to commence a judicial action under Section 810(d) of the Act.

The Department believes that there may be merit to the position that availability of a judicial remedy under the State or local law that can be invoked by the complainant is essential to the effectiveness of the State or local administrative complaint processing. However, reversal of current practice in this regard involves a number of questions which have not been adequately explored by the Department and on which an adequate opportunity for comment by interested parties has not yet been afforded. The Department intends to consider this issue further and may propose further changes to Part 115 in this regard. In the meantime, the current provisions are being retained. As an editorial change, the provision for recall where the State or local law does not provide access to a State or local court has been transferred to 24 CFR 105.20(b), which generally covers reactivation of referred complaints.

NCDH suggested, alternatively, that HUD be required to consider whether the State or local law provides that a complainant will receive timely notice of the existence of a private right of action in State or local court substantially equivalent to Sections 810(d) and 812 of the Act, and whether the applicable statutes of limitation are substantially equivalent to those found in the Act. The commenter's proposal concerns rights of action and statutes of limitations that are substantially equivalent to Sections 810(d) and 812 of the Act. Since HUD does not now require judicial remedies under State and local law to be substantially equivalent to the judicial remedies under the Act, § 115.3(b) of the final rule simply permits HUD to consider whether State and local law or agency procedure provide complainants with timely notice of available judicial remedies and applicable statutes of limitation.

As illustrated by the comment, there has been some confusion whether recognition constitutes a determination that judicial remedies under a State or local fair housing act are equivalent to judicial remedies under the Act for purposes of Section 810(d) of the Act. See *Denny* v. *Hutchinson Sales Corporation*, 649 F.2d 816 (10th Cir. 1981). It does not. A clarification has been added to § 115.3(b) of the final rule, stating that a law may be found to be substantially equivalent even if it does not allow access to State or local courts or if it does allow access but does not provide the full panoply of judicial remedies provided under the Act, but that a grant of recognition is not a determination that the judicial protection and enforcement of the rights embodied in a State or local fair housing act are substantially equivalent to those found in the Act.

Performance Standards

As indicated above, § 115.4 of the final rule sets forth the performance standards to be utilized by the Department in its assessment of the current practices and past performance of the State or local agency to determine whether in operation the State or local fair housing law is in fact providing substantially equivalent rights and remedies. The standards are applicable to the determination whether to grant recognition and also are applicable to reviews to determine whether to continue such recognition.

Section 115.4 is based upon current § 115.8. One change from the current provision contained in the proposed rule was to specify that the average time, under ordinary circumstances, for investigating a complaint and, where applicable, setting it for conciliation should be 45 days or less, rather than "within 30–45 days" as in current § 115.8(b)(5).

NCDH and The Housing Advocates, Inc., questioned whether this time conflicts with other time limitations in the Act and HUD regulations. Section 810(c) of the Act states that, following referral of the complaint to the State or local agency, "the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or having done so, carries forward the proceedings with reasonable promptness." 24 CFR 105.20 contains a similar provision.

The 45-day average limit in § 115.4 does not conflict with these provisions. It requires that complaints, on an average, be investigated and, if applicable, set for conciliation or other remedial action, within 45 days. The cited statute and regulation, on the other hand, merely requires that the investigation be commenced within 30 days following the referral. This provision has not been revised.

Withdrawal of Recognition

The proposed rule would require the Assistant Secretary for Fair Housing and Equal Opportunity to review each jurisdiction "periodically" to determine whether previously granted recognition should be withdrawn. A commenter suggested that HUD be required to perform the reviews at specified time periods. It is HUD's current policy to review each recognized jurisdiction at least annually. Occasionally, however, it is necessary to defer review of a particular jurisdiction for a short period because of circumstances beyond HUD's or the local jurisdiction's control. The Department is concerned that the inclusion of a requirement mandating review within a specified period would place the status of these jurisdictions in question. Accordingly while we will pursue our policy of annual review, this policy has not been incorporated as a requirement in the regulations.

Written Agreement

In the proposed rule, HUD proposed to add to the provisions entitled "Consequences of Recognition" a provision that HUD would not refer complaints to a State or local agency unless and before the agency had entered into: (1) A Memorandum of Understanding with HUD pursuant to 24 CFR § 111.104(a)(2) (in connection with an application for FHAP funding), or (2) a written agreement setting forth procedures for communication between the agency and the Assistant Secretary that are adequate to permit HUD to monitor the continuing equivalency of the State or local law with the Federal law. HUD explained that requirement reflected current practice.

NCDH suggested that execution of a written agreement be required as a pre-requisite to recognition itself. This suggestion has been accepted, and the requirement of a written agreement has been incorporated into § 115.6(c) as constituting the final requirement before publication of notice of recognition.

NCDH also suggested that all written agreements include standard provisions requiring State and local agencies to provide: (1) Notice to HUD of all amendments to the State or local laws and regulations and any changes in the agency's staffing or budget; (2) if the State or local law provides a judicial remedy equivalent to Sections 810(d) or 812 of the Act, timely notice to all complainants of this fact; and (3) if the State or local law does not provide judicial remedies, notice to HUD upon completion of individual complaint proceedings so that HUD can end the "period of reference" and restore the individual's right of action under Section 810(d) of the Act. HUD intends to consider these suggestions in the context of its review of the provisions generally required to be included in agreements.

Complaint Processing Procedures

NCDH requested that the regulations define the term "period of reference" (as used in Section 810(d) of the Act) and adopt certain procedures including time limits, to govern the referral of complaints and the termination of the period of reference. The purpose of Part 115 is to set forth the criteria and procedures governing the issuance, denial and withdrawal of recognition. Procedures governing the processing of individual complaints under the Act are governed by Part 105. HUD is currently considering a proposed revision of Part 105 and will consider these comments in that context.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement Section 102(c)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulations issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) 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.

Under Section 605(b) of the Regulatory Flexibility Act, the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the rule is primarily procedural in nature. The rule would impose no additional duties on the small governmental entities receiving recognition under it.

This rule was listed as item 247 in the Department's Semiannual Agenda of Regulations published on April 9, 1984 (49 FR 15902 at 15954) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Programs numbers are 14.400 and 14.401.

OMB Control Number

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this regulation have been submitted for approval to the Office of Management and Budget (OMB).

List of Subjects

24 CFR Part 105

Administrative practice and procedure, Fair housing.

24 CFR Part 111

Fair housing, Cooperative agreements, Grant programs—housing and community development.

24 CFR Part 115

Fair housing, Intergovernmental relations.

Accordingly, Subtitle B, Chapter I, Subchapter A, of Title 24 of the Code of Federal Regulations is amended as follows:

PART 105—FAIR HOUSING

1. Section 105.20 is amended by revising paragraph (b) to read as follows:

§ 105.20 Reactivation of referred complaints.

* * * * *

(b) As a matter of policy, such certifications shall be made routinely: (1) When the State or local agency has not commenced proceedings within 30 days following the referral of the complaint to it, or having commenced action has not carried forth such proceedings with reasonable promptness in the judgment of the Assistant Secretary, or (2) where the complaint has not been satisfactorily resolved and the applicable State or local law fails to provide access to a State or local court.

(Title VIII of Civil Rights Act of 1968, 42 U.S.C. 3601–3619; sec. 7(d) of Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

PART 111—FAIR HOUSING ASSISTANCE

2. Section 111.104 is amended by revising paragraphs (a) and (b) to read as follows:

§ 111.104 Threshold agency eligibility criteria.

(a) In order to be eligible to participate in funded programs under any of the categories described above, an agency must first meet the following criteria:

(1) The State or local fair housing law administered by such agency must have been recognized (and such recognition must continue to be outstanding) as providing rights and remedies which are substantially equivalent to those provided by Title VIII of the Civil Rights Act of 1968 pursuant to 24 CFR 115.6 (or pursuant to 24 CFR 115.4 as in effect prior to [effective date of rule]), or, in the case of an applicant for type I funding only, the Department must have entered into an agreement regarding interim referrals of complaints to such agency or other utilization of the services of such agency pursuant to 24 CFR 115.11; and

(2) It must have executed a written Memorandum of Understanding with the Department which, at a minimum, describes the working relationship to be in force between the agency and the Department. An agreement pursuant to 24 CFR 115.11 may constitute such a Memorandum of Understanding.

(b) Notwithstanding the provision of paragraph (a)(1) of this section, an agency may submit funding proposals pursuant to the Fair Housing Assistance Program if the Department has determined that the State or local fair housing law administered by such agency provides, on its face, substantially equivalent rights and remedies but has not yet granted recognition to such law pursuant to 24 CFR Part 115. Evidence of such a determination by the Department shall consist of: (1) Publication of an invitation for written comments pursuant to 24 CFR 115.6(b), or (2) publication of proposal pursuant to 24 CFR 115.4(b), as in effect prior to October 8, 1984, to add the jurisdiction to the list of recognized jurisdictions. In either such case, the agency may enter into negotiations with the Regional Office of Fair Housing in order to develop a Memorandum of Understanding and may, at the same time, submit funding proposals. However, no funds will be obligated to an agency prior to its execution of a Memorandum of Understanding pursuant to paragraph (a)(2) of this section and, except in the case of an agency with which an agreement regarding interim referrals or other utilization of services has been entered pursuant to 24 CFR 115.11, its recognition pursuant to Part 115.

* * * * *

(Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; sec. 7(d), Department of Housing and Urban Development Act; 42 U.S.. 3535(d))

3. Part 115 is revised to read as follows:

PART 115—RECOGNITION OF JURISDICTIONS WITH SUBSTANTIALLY EQUIVALENT LAWS

Sec.
115.1 Purpose.
115.2 Basis of determination.
115.3 Criteria for adequacy of law.
115.4 Performance standards.
115.5 Request for recognition.
115.6 Procedure for recognition.
115.7 Denial of recognition.
115.8 Withdrawal of recognition.
115.9 Conferences.
115.10 Consequences of recognition.
115.11 Interim referrals.

Authority: Sec. 810(c), 816, Civil Rights Act of 1968, 42 U.S.C. 3610(c), 3616; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

§ 115.1 Purpose.

(a) Section 810(c) of the Fair Housing Act (Title VIII, Civil Rights Act of 1968, hereinafter referred to as the "Act") provides that wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Secretary of Housing and Urban Development (the "Secretary") shall notify the appropriate State or local agency of any complaint filed with HUD under the Act which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his or her attention, commenced proceedings in the matter, or, having done so, carries forward such proceedings with reasonable promptness. The Act permits the Secretary to take further action with respect to the complaint only if the Secretary certifies that in his or her judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action. The Secretary has delegated the exercise of his or her functions and duties under Section 810(c) of the Act to the Assistant Secretary for Fair Housing and Equal Opportunity (the "Assistant Secretary") (35 FR 6877, April 30, 1977).

(b) The purpose of this part is to set forth:

(1) The basis for a determination that a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act.

(2) The procedure by which such a determination is made by the Assistant Secretary.

(3) The basis and procedure for withdrawal of a recognition of substantial equivalency previously made.

(4) The consequences of recognition.

§ 115.2 Basis of determination.

A determination that a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act involves a two-phase procedure. Such a determination requires examination and an affirmative conclusion by the Assistant Secretary on two separate inquiries: (a) Whether the State of local law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, and (b) whether the current practices and past performance of the appropriate State or local agency charged with administration and enforcement of such law demonstrates that in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

§ 115.3 Criteria for adequacy of law.

(a) In order for a determination to be made that a State or local fair housing law on its face provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law or ordinance must:

(1) Provide for an administrative enforcement body to receive and process complaints;

(2) Delegate to the administrative enforcement body comprehensive authority to investigate the allegations of complaints, and power to conciliate complaint matters;

(3) Not place any excessive burdens on the complainant that might discourage the filing of complaints;

(4) Not contain exemptions that substantially reduce the coverage of housing accommodations as compared to Section 803 of the Act, which

provides coverage with respect to all dwellings except, under certain circumstances, single family homes sold or rented by the owner and units in owner-occupied dwellings containing living quarters for no more than four families; and

(5) Be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, i.e., the prohibition of the following acts if they are based on discrimination because of race, color, religion, sex, or national origin:

(i) Refusal to sell or rent.

(ii) Refusal to negotiate for a sale or rental.

(iii) Otherwise making unavailable or denying a dwelling.

(iv) Discriminating in terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith.

(v) Advertising in a manner that indicates any preference, limitation, or discrimination on a prohibited basis.

(vi) Falsely representing that a dwelling is not available for inspection, sale, or rental.

(vii) Blockbusting.

(viii) Discrimination in financing.

(ix) Denying a person access to, or membership or participation in, multiple listing services, real estate brokers' organizations, or other services.

Provided, however, a law may be determined substantially equivalent if it meets all of the criteria set forth in this section but does not contain adequate prohibitions with respect to one or more of the practices described in paragraph (a)(5) (vii), (viii), and (ix) of this section.

(b) In addition to the factors described in the preceding paragraph, consideration will be given to the provisions of the State or local law affording judicial protection and enforcement of the rights embodied in the law. This review many include consideration of such factors as whether the State or local law or agency procedure provides timely notice to complainants of the existence of State or local judicial remedies and notice of the the statute of limitations applicable to these remedies. A law may be determined substantially equivalent even though it either does not contain an express provision for access to State or local courts, or does allow access to State or local courts but does not provide the full panoply of judicial remedies provided under the Act. A grant of recognition is not a determination that the judicial protection and enforcement of the rights embodied in a State or local fair housing act are substantially equivalent to those found in the Act.

(c) Analysis of the adequacy of a State or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law as distinguished from the effectiveness of its administration. Accordingly, such analysis is not limited to the literal text of the law but must take into account such relevant matters of State or local law, or interpretations of the fair housing law by competent authorities, as may be necessary.

§ 115.4 Performance standards.

(a) The initial and continued recognition that a State or local fair housing law provides rights and remedies substantially equivalent to those provided in the Act will be dependent upon an assessment of the current practices and past performance of the appropriate State or local agency charged with administration and enforcement of the law to determine that in operation the law is in fact providing substantially equivalent rights and remedies. The performance standards set forth in paragraph (b) of this section will be used in making this assessment.

(b) A state or local agency must:

(1) Consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law;

(2) Consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices;

(3) Establish a mechanism for monitoring compliance with any agreements or orders entered into or issued by the State or local agency to resolve discriminatory housing practices;

(4) Engage in comprehensive and thorough investigative activities; and

(5) Commence and complete the administrative processing of a complaint in a timely manner, *i.e.*, the average time, under ordinary circumstances, for investigating a complaint and, where applicable, setting it for conciliation or other remedial action should be 45 days or less.

(c) Where the State or local agency has duties and responsibilities in addition to administration of the fair housing law, the Assistant Secretary may consider such matters as the relative priority given to fair housing administration vis-a-vis such other duties and responsibilities and the compatibility or potential conflict of fair housing objectives with such other duties and responsibilities.

§ 115.5 Request for recognition.

(a) A request for recognition under this Part may be filed with the Assistant Secretary by the State or local official having principal responsibility for administration of the State or local fair housing law. Such request shall be supported by the following materials and information:

(1) The text of the jurisdiction's fair housing law, any regulations or directives issued thereunder, and any formal opinions of the State's Attorney General or the chief legal officer of the jurisdiction pertaining thereto.

(2) Organization of the agency responsible for administering and enforcing such law.

(3) Funding and personnel made available to such agency for administration and enforcement of the fair housing law during the current operating year and not less than the preceding three operating years (or such lesser number during which the law was in effect).

(4) Data demonstrating that the agency's current practices and past performance comply with the performance standards described in § 115.4.

(5) Any additional information which the submitting official may wish to be considered.

(b) The request and supporting materials shall be filed with Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. A copy of such request and supporting materials shall be kept available for public examination and copying at: (1) The office of the Assistant Secretary, (2) the HUD Regional Office in whose jurisdiction the State or local jurisdiction seeking recognition is located, and (3) the office of the State or local agency charged with administrative and enforcement of the State or local law.

§ 115.6 Procedure for recognition.

(a) Upon receipt of a request for recognition filed pursuant to § 115.5, The Assistant Secretary may request such further information as he or she may deem relevant to the determinations required to be made under this Part.

(b) If the Assistant Secretary determines, after application of the criteria set forth in § 115.3, that the State or local fair housing law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the

submitting State or local official in writing of such determination. Except under cirumstances where the Assistant Secretary determines that interim referrals or other utilization of services under § 115.11 is appropriate, the Assistant Secretary shall publish a notice in the **Federal Register** which advises the public of such determination that the law, on its face, is substantially equivalent and invite interested persons and organizations, during a period of not less than 30 days following publication of the notice, to file written comments relevant to the determination whether the current practices and past performance of the State or local agency charged with administration and enforcement of such law demonstrates that in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act. Such notice shall also invite comments on the Department's determination as to the adequacy of the law on its face.

(c) If the Assistant Secretary determines, on the basis of the standards specified in § 115.4 and after considering the materials and information submitted pursuant to § 115.5, any additional material obtained pursuant to paragraph (a) of this section, and any written comments filed pursuant to paragraph (b) of this section, that in operation a State or local fair housing law in fact provides rights and remedies which are substantially equivalent to those provided in the Act, the Assistant Secretary shall offer to enter into a written agreement with the appropriate State or local agency providing for referral of complaints to the agency and for procedures for communication between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the continuing substantial equivalency of the State or local law. Such written agreement may, but need not, be incorporated in a Memorandum of Understanding described in 24 CFR 111.104(a)(2). Upon execution of a satisfactory agreement, the Assistant Secretary shall cause notice of recognition under this Part to be published in the **Federal Register.**

(d) Recognition of a State or local fair housing law under this part shall remain in effect until withdrawn pursuant to § 115.8.

(e) Not less frequently than annually, the Assistant Secretary will cause to be published in the **Federal Register** a rule-related notice which sets forth:

(1) An updated, consolidated list of all State and local jurisdictions recognized as having substantially equivalent fair housing laws;

(2) A list of all jurisdictions whose recognition under this Part has been withdrawn since publication of the previous notice.

(3) A list of jurisdictions with respect to which notice of denial of recognition has been published pursuant to § 115.7(c) since issuance of the previous notice.

(4) A list of jurisdictions with respect to which a notice for comment has been published pursuant to paragraph (c) of this section since publication of the previous notice, or prior thereto, and whose request for recognition remains pending.

(5) A list of jurisdictions for which notice of proposed withdrawal of recognition has been published pursuant to § 115.8(c) since issuance of the previous notice, or prior thereto, and remains pending.

(6) A list of jurisdictions with which an agreement for interim referrals or other utilization of services has been entered pursuant to § 115.11 and remains in effect.

§ 115.7 Denial of recognition.

(a) If the Assistant Secretary determines, after application of the criteria set forth in § 115.3, that a State or local fair housing law, on its face, fails to provide rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing of the reasons therefor. Such advice may include specifications of respects in which the State or local law may be amended in order to provide substantially equivalent rights and remedies. The Assistant Secretary shall extend to the State or local official an opportunity to submit data, views, and arguments in opposition to the Assistant Secretary's determination and to request an opportunity for a conference in accordance with § 115.9. If no submission or request is made, no further action shall be required to be taken by the Assistant Secretary. If the State or local official submits materials but does not request a conference, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency. If after such evaluation the Assistant Secretary is still of the opinion that the law, on its face, fails to provide rights and remedies for allegedly discriminatory housing practices that are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing that recognition is denied.

(b) If the Assistant Secretary determines, after considering the materials and information submitted pursuant to § 115.5, any additional information obtained pursuant to § 115.6(a), and any written comments received pursuant to § 115.6(b), that it has not been demonstrated that in operation a State or local fair housing law in fact provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, the Assistant Secretary shall communicate such determination in writing to the State or local agency and shall allow the agency not less than 15 days to submit data, views, and arguments in opposition and to request an opportunity for a conference in accordance with § 115.9. If a request for a conference is not received within the time provided, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency and, if after such evaluation the Assistant Secretary is still of the opinion that recognition should be denied, the Assistant Secretary shall inform the submitting State or local official in writing that recognition is denied.

(c) Where comment on a request for recognition was invited in accordance with § 115.6(b) (or recognition was proposed in accordance with 24 CFR 115.4 as in effect prior to [effective date of rule]), notice of denial of recognition pursuant to this section shall be published in the **Federal Register.**

§ 115.8 Withdrawal of recognition.

(a) The Assistant Secretary shall periodically review the administration of fair housing laws recognized under this Part. If the Assistant Secretary finds, as a result of such review, as a result of a review upon the petition of an interested person or organization, or otherwise, that taken as a whole, the jurisdiction's administration of its fair housing law or the law on its face no longer meets the requirements of this Part, the Assistant Secretary shall propose to withdraw the recognition previously granted.

(b) Before the Assistant Secretary publishes notice of a proposed withdrawal of recognition, the Assistant Secretary shall inform the State or local agency in writing of his or her intention to withdraw recognition. The communication shall state the reasons for the proposed withdrawal and provide the agency not less than 15 days to submit data, views, and arguments in opposition and to request an opportunity

for a conference in accordance with § 115.9.

(c) Notice of a proposed withdrawal shall be published in the **Federal Register**. The notice shall allow the State or local agency and other interested persons and organizations not less than 30 days in which to file written comments on the proposal. Publication of such notice may, at the election of the Assistant Secretary, be deferred during the time periods specified in paragraph (b) of this section and during consideration of data received pursuant to such paragraph.

(d) If a request for a conference in accordance with § 115.9 is not received within the time provided, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency and other interested persons or organizations, and if after such evaluation the Assistant Secretary is still of the opinion that recognition should be withdrawn, the Assistant Secretary shall withdraw such recognition and shall publish notice thereof in the **Federal Register**.

§ 115.9 Conferences.

(a) Whenever an opportunity for a conference is timely requested by a State or local agency in accordance with § 115.7 or § 115.8, the Assistant Secretary shall issue an order designating a conference officer who shall preside at the conference. The order shall indicate the issues to be resolved and any initial procedural instructions that might be appropriate for the particular conference. It shall fix the date, time and place of the conference. The date shall not be less than 20 days after the date of the order. The date and place shall be subject to change for good cause.

(b) A copy of the order shall be served on the State or local agency and: (1) In the case of a denial of recognition, on any person or organization that files a written comment in accordance with § 115.6(b); or (2) in the case of a withdrawal of recognition, on any person or organization that files a petition in accordance with § 115.8(a) or written comment in accordance with § 115.8(c). The agency and all such persons and organizations shall be deemed to be participants in the conference. After service of the order designating the conference officer and until the officer submits a recommended determination, all communications relating to the subject matter of the conference shall be addressed to that officer.

(c) The conference officer shall have full authority to regulate the course and conduct of the conference. A transcript shall be made of the proceedings at the conference. The transcript and all comments and petitions relating to the proceedings shall be made available for inspection by interested persons.

(d) The conference officer shall prepare proposed findings and a recommended determination, a copy of which shall be served on each participant. Within 20 days after such service, any participant may file written exceptions. After the expiration of the period for filing exceptions, the conference officer shall certify the entire record, including the proposed findings and recommended determination and the exceptions thereto, to the Assistant Secretary, who shall review the record and issue a final determination within 30 days. Where applicable, this determination shall be published in the **Federal Register**.

§ 115.10 Consequences of recognition.

(a) Where all alleged violations of the Act contained in a complaint received by the Assistant Secretary appear to constitute violations of a State or local fair housing law within a jurisdiction that has been recognized as having a substantially equivalent fair housing law, the complaint shall be referred promptly to the appropriate State or local agency, and no further action shall be taken by the Assistant Secretary with respect to such complaint, except as provided for by the Act and by §§ 105.18–105.20 of this chapter.

(b) No complaint shall be referred to a State or local agency if such complaint relates in whole or in part to conduct described in paragraphs (a)(5) (vii), (viii), or (ix) of § 115.3 (or to any other conduct), where such conduct is prohibited by the Act but is not prohibited by the applicable State or local law.

§ 115.11 Interim referrals.

If the Assistant Secretary determines, after application of the criteria set forth in § 115.3, that a State or local fair housing law on its face provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, but the law has not been in effect or the appropriate State or local agency in operation for a sufficient time to permit demonstration of compliance with the performance standards described in § 115.4, the Assistant Secretary may enter into a written agreement with the State or local agency providing for referral of complaints to such agency on such terms and conditions as the Assistant Secretary shall prescribe, or such other utilization of the services of such State or local agency and its employees as may be agreed, and providing further for procedures for communications between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the agency's administration and enforcement of such law and to assist the Assistant Secretary in making the determination required in paragraph (b) of § 115.2. Such agreement may provide for reactivation of referred complaints by the Assistant Secretary without regard to the limitations described in § 115.10. If such an agreement for interim referrals or other utilization of services is entered the Assistant Secretary may defer final determination under § 115.6 or § 115.7 for such reasonable period as the Assistant Secretary shall determine to be necessary in order to permit fair assessment of the agency's performance. However, an agreement under this section shall not be extended beyond the date of recognition pursuant to § 115.6(c) or denial of recognition pursuant to § 115.7. Notice of entry into an agreement under this section shall be published in the **Federal Register**.

Dated: July 31, 1984.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 84-21093 Filed 8-8-84; 8:45 am]

BILLING CODE 4210-28-M

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24 CFR Part 115

[Docket No. R-84-1141; FR-1878]

Recognition of Substantially Equivalent Fair Housing Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This rule amends 24 CFR Part 115, which provides for recognition by the Department of those State and local fair housing laws that provide rights and remedies substantially equivalent to those provided by Title VIII of the Civil Rights Act of 1968 (Act), to recognize the laws of several additional State and local jurisdictions as substantially equivalent, and to withdraw recognition from one previously recognized local law.

EFFECTIVE DATE: October 4, 1984.

FOR FURTHER INFORMATION CONTACT: Steven J. Sacks, Director, Federal, State and Local Programs Division, Room 5214, Department of Housing and Urban Development, 451 Seventh Street SW.,

Washington, D.C. 20410, (202) 426-3500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On February 16, 1984, the Department published a proposed rule (49 FR 5938) which would grant recognition to the fair housing laws of the following additional jurisdictions, in accordance with Section 810(c) of the Act and 24 CFR Part 115: (1) The States of Florida, North Carolina and Hawaii; and (2) the localities of Allentown, Pennsylvania; Park Forest, Illinois; Pensacola Florida; Tallahassee, Florida; Olathe, Kansas; Detroit, Michigan and Fort Worth, Texas.

The Department received five public comments. Three commenters (Coordinating Council on Human Relations, Detroit, Michigan; Iowa Civil Rights Commissioner; and Director of Human Relations, Saginaw, Michigan) supported recognition of the fair housing law of Detroit, Michigan. One commenter opposed recognition of the Detroit Law, and another opposed recognition of the fair housing law of Park Forest, Illinois.

I. The Civil Rights Commission of the State of Michigan objected to the recognition of the City of Detroit's ordinance on the ground that the State has preempted the field of civil rights and that the City lacks the power to enforce its ordinance. The Commission cited Opinion of the Michigan Attorney General No. 5353, 1977-78 *Op. Attorney General,* (as authority for its position and suggested that any contrary statements in the Michigan Court of Appeals opinion in *J. F. Cavanaugh & Co.* v. *City of Detroit,* 126, Mich App. 627 337 N.W. 2d 605 (1983), be regarded as *dicta.*

In view of the question raised by the State Commissioner, HUD recently has requested the opinion of the Attorney General of the State of Michigan as to whether the city of Detroit's Fair Housing Law is in conformity with Michigan law. Pending receipt and consideration of such opinion, the Department is deferring a final determination on the request for recognition of the Detroit Fair Housing Law.

II. The Chicago Far-South Suburban Branch, National Association for the Advancement of Colored People, objected to recognition of the fair housing law of the Village of Park Forest, Illinois, because of "integration maintenance" policies of the Village.

"Integration maintenance" refers generally to strategies pursued by local governments, particularly in some suburban areas, to preserve racial diversity and avoid "resegregation." Reference to controversies aroused by such strategies is made in a separate rulemaking document, published elsewhere in this issue of the **Federal Register** which adopts amendments to the procedures contained in 24 CFR Part 115. In that document, the Department emphasized that in its review of "integration maintenance" programs adopted by various communities, it had not found any ordinance or program that, in the Department's view, amounts to a quota. The Department's discussion of the issue continues:

> * * * Nevertheless, the Department does not deny that it is possible for some activities purportedly undertaken in the name of racial integration to have a limiting effect on the ability of some persons to select or apply for the housing of their choice. In housing contexts more than in other areas of affirmative action, the burden of these limitations may fall on minorities. See, e.g., *Burney* v. *Housing Authority for the County of Beaver,* 551 F. Supp. 746 (W.D. Pa. 1982) (low-income rental housing).
>
> The Department opposes activities that limit the free choice of any person, majority or minority, in selecting available housing. In a homeownership context, it may be possible that some elements of an "integration maintenance" program might operate to restrict the channels available to homeseekers more than to open them, in a manner that may be considered incompatible with the prohibitions of the Fair Housing Act. Such elements, for example, might include bans on "for sale" signs or on solicitations by real estate brokers, or race-conscious counselling by municipal agencies.

The Department has reviewed the application by Park Forest in the light of the above consideration. Park Forest, a community of approximately 26,000 population in the South suburbs of Chicago, has long been identified with the policy of preserving racial diversity. It has actively encouraged "testing" of real estate brokers and commencement of litigation alleging racial steering. Beyond this, its efforts appear to consist principally of promotional and educational programs regarding the benefits of interracial association. Its fair housing ordinance itself does not reflect an objective of promoting or maintaining racial "balance" in the community, nor does it contain provision of the sort referred to above ("for sale" sign or solicitation bans, municipal counselling) which might affect the openness of real estate marketing channels. The Department has found no basis for concluding that the fair housing law of Park Forest is susceptible of administration in a manner which might be in conflict with the prohibition against discrimination contained in the Fair Housing Act. Accordingly, the Department has determined to grant recognition under Part 115 to the fair housing ordinance adopted and administered by the Village of Park Forest.

III. The proposed rule also would withdraw recognition of the fair housing law of Wichita, Kansas, because that jurisdiction failed to forward a rebuttal or a request for a conference after being notified by HUD on October 12, 1983 that the Department intended to propose withdrawal of its recognition. The Department's proposed withdrawal was based on a determination that because of an amendment to the ordinance, adopted on July 5, 1983, it no longer provided rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those in Title VIII of the Civil Rights Act of 1968. This final rule withdraws Wichita, Kansas from the list of localities with substantially equivalent laws.

IV. Other Matters: As noted above, a rule is published elsewhere in this edition of the **Federal Register** which revises the procedures for granting recognition under 24 CFR Part 115. That rule becomes effective subsequent to the effective date of this rule. Accordingly, this rule is adopted pursuant to Part 115 as currently in effect.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect of 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.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, D.C. 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The

rule only carries out the Department's statutory responsibility as set out in section 810(c) of the Fair Housing Act, 42 U.S.C. 3610(c).

This rule was listed as Item Number 248 in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902, 15954) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program numbers and titles are: 14.400, Equal Opportunity in Housing and 14.401, Fair Housing Assistance Program.

List of Subjects in 24 CFR Part 115

Fair housing, Intergovernmental relations.

Accordingly, the Department amends 24 CFR Part 115 as follows:

PART 115—RECOGNITION OF SUBSTANTIALLY EQUIVALENT LAWS

Section 115.11 is revised to read as follows:

§ 115.11 Jurisdictions with Substantially Equivalent Laws.

The following jurisdictions are recognized as providing rights and remedies for alleged discriminatory housing practices substantially equivalent to those in the Act, and complaints will be referred to the appropriate State or local agency as provided in § 115.6.

States

Alaska
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Oregon
Pennsylvania
Rhode Island
South Dakota
Virginia
Washington
West Virginia
Wisconsin

Localities

Anchorage, Alaska
Phoenix, Arizona
District of Columbia
New Haven, Connecticut
Clearwater, Florida
Metropolitan Dade County, Florida
Jacksonville, Florida
Orlando, Florida
Pensacola, Florida
St. Petersburg, Florida
Tallahassee, Florida
Bloomington, Illinois
Evanston, Illinois
Park Forest, Illinois
Springfield, Illinois
Urbana, Illinois
Columbus, Indiana
East Chicago, Indiana
Fort Wayne, Indiana
Gary, Indiana
South Bend, Indiana
Iowa City, Iowa
Kansas City, Kansas
Olathe, Kansas
Salina, Kansas
Lexington-Fayette, Kentucky
Howard County, Maryland
Montgomery County, Maryland
Prince Georges County, Maryland
Minneapolis, Minnesota
St. Paul, Minnesota
Kansas City, Missouri
St. Louis, Missouri
Lincoln, Nebraska
Omaha, Nebraska
New York City, New York
Charlotte, North Carolina
Mecklenburg County, North Carolina
New Hanover County, North Carolina
Raleigh, North Carolina
Winston-Salem, North Carolina
Dayton, Ohio
Allentown, Pennsylvania
Harrisburg, Pennsylvania
Philadelphia, Pennsylvania
Pittsburgh, Pennsylvania
York, Pennsylvania
Sioux Falls, South Dakota
Knoxville, Tennessee
Fort Worth, Texas
King County, Washington
Seattle, Washington
Tacoma, Washington
Beckley, West Virginia
Charleston, West Virginia
Huntington, West Virginia
Beloit, Wisconsin

Authority: Section 810(c) of the Civil Rights Act of 1968, 42 U.S.C. 3610, Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 1, 1984.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 84-21157 Filed 8-8-84; 8:45 am]

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Thursday, August 9, 1984

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SUBSCRIPTIONS AND ORDERS

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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

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

30679-30910.....1
30911-31050.....2
31051-31254.....3
31255-31388.....6
31389-31658.....7
31659-31844.....8
31845-32052.....9

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

5 CFR

Ch. XIV.....31051

7 CFR

726.....31052
908.....31389
910.....31054, 31255
921.....31255
930.....31389
958.....31257
1207.....31390
1980.....31258

Proposed Rules:

Ch. IV.....30963
1.....31292
2.....30911
402.....31696
403.....31696
404.....31696
408.....31696
409.....31696
410.....31696
411.....31696
413.....31696
414.....31696
415.....31696
416.....31696
417.....31696
418.....31696
419.....31696
420.....31696
421.....31696
422.....31696
423.....31696
424.....31696
425.....31696
427.....31696
428.....31696
429.....31696
430.....31696
431.....31696
432.....31696
433.....31696
434.....31696
435.....31696
436.....31696
437.....31696
438.....31696
439.....31696
440.....31696
441.....31696
442.....30964, 31696
443.....31696
444.....31696
445.....31696
446.....31696
447.....31696
800.....30911
810.....31432, 31697
1006.....30720, 31072
1007.....31072
1011.....31072
1012.....30720, 31072
1013.....31072
1046.....31072
1076.....30964
1093.....31072
1094.....31072
1096.....31072
1097.....31072
1098.....31072
1099.....31072
1102.....31072
1108.....31072

8 CFR

100.....31054, 31845
205.....30679
238.....31258

Proposed Rules:

239.....31293

9 CFR

78.....31659
81.....31055

10 CFR

9.....31259
600.....31390

Proposed Rules:

50.....30726, 31432
55.....31700
73.....30726, 30735, 30738
1017.....31236

12 CFR

7.....30920
701.....30679, 30682, 30683

Proposed Rules:

602.....31293
721.....30739
741.....30740
746.....30740

13 CFR

102.....31660

Proposed Rules:

129.....31899

14 CFR

39.....31057-31059, 31660, 31661
71.....30688, 31060, 31259, 31664
97.....30923

Proposed Rules:

25.....31830
39.....30965, 31074, 31295, 31433, 31702, 31703
71.....31075-31077, 31298, 31434
73.....31435
121.....31298
152.....31078

221 ... 30742
223 ... 30746
250 ... 30742
255 ... 30742, 31439
298 ... 30742

16 CFR

13 ... 31845
305 ... 31061
Proposed Rules:
13 ... 30967, 31440, 31901, 31903
460 ... 31906
1205 ... 31908

17 CFR

240 ... 31846
249 ... 31846
270 ... 31062, 31064
Proposed Rules:
1 ... 31442
240 ... 31300

18 CFR

154 ... 31259
Proposed Rules:
Ch. I ... 31705

19 CFR

6 ... 31248
12 ... 31248
18 ... 31248
19 ... 31248
141 ... 31248
143 ... 31248
144 ... 31248
146 ... 31248
151 ... 31850

20 CFR

626 ... 31664
627 ... 31664
628 ... 31664
629 ... 31664
630 ... 31664

21 CFR

14 ... 30688
74 ... 31852
81 ... 30925, 30926, 31852
82 ... 31852
178 ... 30689
193 ... 30702, 31666
510 ... 31065
558 ... 30927, 31065, 31280, 31281
561 ... 31667
680 ... 31394
1240 ... 31065
Proposed Rules:
101 ... 31301
510 ... 31444
1308 ... 30748

23 CFR

Proposed Rules:
630 ... 31079

24 CFR

40 ... 31620
105 ... 32042
111 ... 32042
115 ... 32042, 32049
200 ... 31853-31857
251 ... 32016
290 ... 31858
570 ... 31069
880 ... 31281, 31395
881 ... 31281, 31395
882 ... 31858
883 ... 31281, 31395
884 ... 31281, 31395
886 ... 31281, 31285,
965 ... 31399
968 ... 31860
1700 ... 31366
1710 ... 31366, 31372
1730 ... 31366
3280 ... 31996
Proposed Rules:
203 ... 31444
570 ... 31446

26 CFR

Proposed Rules:
1 ... 30971, 31080, 31086
5 ... 31080

27 CFR

4 ... 31667
5 ... 31667
7 ... 31667

29 CFR

1601 ... 31410
1621 ... 31411
1952 ... 31676

30 CFR

870 ... 31412
931 ... 30689
935 ... 31676
946 ... 30927
Proposed Rules:
913 ... 31448
935 ... 31912
938 ... 31913
943 ... 30972
950 ... 30973

31 CFR

Proposed Rules:
210 ... 31450
223 ... 31454

32 CFR

58 ... 31862
65 ... 31862
83 ... 31864
224 ... 31865
2003 ... 31412
Proposed Rules:
155 ... 31455

33 CFR

100 ... 30930-30932, 31286, 31866
110 ... 31287
117 ... 30933, 31867
165 ... 31286
401 ... 30934
Proposed Rules:
100 ... 30974, 30975, 31459
117 ... 30976, 30977
165 ... 30978

34 CFR

7 ... 31679
8 ... 31679
10 ... 31679
21 ... 31868
67 ... 31679
222 ... 31628
621 ... 31679
Proposed Rules:
200 ... 31914
204 ... 31918

35 CFR

251 ... 31070

36 CFR

264 ... 31413
Proposed Rules:
9 ... 31086

37 CFR

Proposed Rules:
2 ... 30749, 31460

38 CFR

2 ... 30691
Proposed Rules:
1 ... 30979

39 CFR

262 ... 30693

40 CFR

Ch. I ... 31680
52 ... 30694, 30695, 30696, 30694, 30936, 31413-31416, 31683-31687
81 ... 30697, 30698, 31689
87 ... 31873
122 ... 31840
123 ... 31840
147 ... 30698, 31875
152 ... 30884, 30909
162 ... 30884
180 ... 30699, 30700, 30701, 31690-31694
271 ... 31417
403 ... 31212
Proposed Rules:
Ch. I ... 31706
50 ... 31923
52 ... 31086
80 ... 31032
81 ... 31091, 31093
122 ... 31843
124 ... 31462
125 ... 31462
180 ... 30751, 31716
270 ... 31094
271 ... 31301
455 ... 30752
763 ... 31302
773 ... 31302

41 CFR

101-19 ... 31625
Proposed Rules:
101-11 ... 31302

42 CFR

57 ... 30702

43 CFR

2880 ... 31208
Public Land Orders:
6558 ... 31695
6559 ... 31876
Proposed Rules:
1880 ... 31473
2650 ... 31475
2880 ... 31094

44 CFR

64 ... 30708
Proposed Rules:
67 ... 31095

45 CFR

1622 ... 30939

47 CFR

Ch. I ... 30710
1 ... 30943
73 ... 30712, 30946, 31288, 31289, 31877
Proposed Rules:
Ch. I ... 31115, 31926
22 ... 31115, 31716
69 ... 31118
73 ... 30752-30760, 31115, 31119, 31303-31307, 31719-31731
81 ... 31115, 31734
83 ... 31734, 31736
87 ... 31734
90 ... 31115

48 CFR

713 ... 31898

49 CFR

1 ... 31290
1011 ... 31070
1115 ... 31070
1160 ... 31070
Proposed Rules:
393 ... 30980
571 ... 31740

50 CFR

10 ... 31290
17 ... 31418
20 ... 31421
250 ... 31657
285 ... 30713
638 ... 31427
652 ... 30946, 31430
654 ... 30713
658 ... 30713
661 ... 30948, 31430
662 ... 31291
663 ... 30948, 31431
674 ... 30951
Proposed Rules:
17 ... 31112
651 ... 31307

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 July 26, 1984.