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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Environmental Qualification of Electric Equipment; Removal of June 30, 1982 Deadline

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: In response to a ruling by the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"), the Commission published on March 7, 1984, a proposed rule deleting from power plant operating licenses a June 30, 1982, deadline for environmental qualification of electric equipment imposed by previous Commission order. After considering public comments received, the Commission is adopting the proposed rule as a final rule with a minor modification.[1] Licensees of operating power plants will therefore be expected to meet the schedule for environmental qualification set out in 10 CFR 50.49(g).

EFFECTIVE DATE: November 19, 1984.

FOR FURTHER INFORMATION CONTACT: William M. Shields, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492–8693.

SUPPLEMENTARY INFORMATION:

I. Background

Events leading up to this rulemaking were summarized in the notice of proposed rulemaking, 49 FR 8445 (March 7, 1984), and in the Commission's Policy Statement issued that same day, 49 FR 8422. In the notice of proposed rulemaking the Commission stated the issue presented to be: "Whether the deadline of June 30, 1982, shall be deleted from every operating license in which it appears, leaving the compliance schedule for completing the environmental qualification of safety-related electric equipment set by 10 CFR 50.49."[2] The Commission also set forth in the notice of proposed rulemaking a special procedure whereby plant-specific comments would be referred to the staff for review and consideration of possible enforcement action. The Commission noted that it would consider any generic implications resulting from review of plant-specific comments in deciding whether to delete the deadline for all plants. On August 7, 1984, in response to requests by some commentaters, the Commission extended the comment period to August 13, 1984. (49 FR 31432).

II. Public Comments

Twenty-two comments were received on the proposed rule. Nine favored adoption of the rule, twelve opposed the rule, and one comment discussed seismic issues not germane to the rulemaking. Of the nine comments favoring the rule, six were submitted by utility owners of power reactors, one by a law firm representing two such utilities, one by an individual, and one by the Nuclear Utility Group on Environmental Qualification, representing numerous power plant licensees. Of the twelve comments opposing the rule, five were filed by individualsj, four by intervenor groups, one by the Harvard Law School Environmental Law Society, one by the Union of Concerned Scientists, and one by the State of Maine. The comment related to seismic matters was filed by an attorney representing Georgians Against Nuclear Energy.

Most of the comments pro and con were relatively succinct and stated arguments addressed by the Commission in its policy statement. Those favoring deletion of the deadline pointed to the fact that the task of environmental qualification of all safety-related electric equipment in nuclear power plants has proven to be a much more difficult and extensive task than was originally thought. These commenters noted that great progress had been made, both prior to and following the previous deadline, and that the schedule in 10 CFR 50.49 is a realistic approach to completing the program at all facilities. Those opposing deletion of the deadline were generally dissatisfied with progress to date, and in some cases urged retention of the deadline as a reminder that environmental qualification had not been completed on the schedule originally set by the Commission. These commenters did not generally urge that plants be shut down to complete the effort, but did feel that deletion of the deadline would encourage utilities to further delay environmental qualification. Three comments focused on equipment qualification at specific facilities.

The Union of Concerned Scientists filed a lengthy comment in which the following major points are raised. Commission responses follow each point.

1. The Atomic Energy Act requires the Commission to consider all comments bearing on whether issuance of the proposed license amendments would be inimical to the public health and safety.

Commission Response. The gravamen of this contention is that the

[1] The Commission voted on September 4, 1984 to adopt the rule and an accompanying Statement of Consideration subject to the addition of separate views. Immediately thereafter, the Union of Concerned Scientists ("UCS") petitioned the Commission to reconsider its adoption of this rule. Under these circumstances, the Commission determined to review its action and to defer publication of the Statement of Consideration. While the Commission's review was pending, the D.C. Circuit directed the Commission to provide the Court a copy of the Final Rule and Statement of Consideration.

The Commission's review did not reveal any reasons for modifying the rule as adopted. Accordingly, UCS's petition is denied for the reasons stated in this modified Statement of Consideration which supplants the Statement of September 4, 1984. The Commission has forwarded a copy of this modified statement to the D.C. Circuit.

[2] Section 50.49(g) provides as follows:

(g) Each holder of an operating license issued prior to February 22, 1983, shall, by May 20, 1983 identify the electric equipment important to safety within the scope of this section already qualified and submit a schedule for either the qualification to the provisions of this section or for the replacement of the remaining electric equipment important to safety within the scope of this section. This schedule must establish a goal of final environmental qualification of the electric equipment within the scope of this section by the end of the second refueling outage after March 31, 1982 or by March 31, 1985, whichever is earlier. The Director of the Office of Nuclear Reactor Regulation may grant requests for extensions of this deadline to a date no later than November 30, 1985, for specific pieces of equipment if these requests are filed on a timely basis and demonstrate good cause for the extension, such as procurement lead time, test complications, and installation problems. In exceptional cases, the Commission itself may consider and grant extensions beyond November 30, 1985 for completion of environmental qualification.

Commission should not have stated, in the notice of proposed rulemaking, that the plant-specific comments would be treated via 10 CFR 2.206, because this tantamount to excluding evidence relevant to the rulemaking.

The Commission was quite clear in the notice of proposed rulemaking that comments which had a bearing only on a single facility were to be treated under 10 CFR 2.206 because the proposed rule was intended to lift an industry-wide deadline "set for purposes not directly related to safety." 49 FR 8445. However, the Commission also stated "that a number of comments, each raising issues about particular plants, would in the aggregate have a bearing on the Commission's proposal to eliminate the June 30, 1982, deadline." *Id.* The procedure outlined for staff review of plant-specific comments concluded as follows: "In deciding whether to make final the proposed elimination of the June 30, 1982 deadline, the Commission will consider the generic implications of the Director's preliminary judgments." *Id.* Thus, the Commission intended that all comments, both general and plant-specific, would be considered relevant to the final decision.

2. The stated basis for the proposed rule distorts the history of the environmental qualification issue and ignores the distinction between regulation and enforcement.

Commission Response. UCS argues that the Commission's characterization, in the notice of proposed rulemaking, that the June 30, 1982 deadline was not a "substantive safety standard" is erroneous. The Commission's position on this issue was set out at length in the notice of proposed rulemaking and accompanying Policy Statement, and has not changed. The June 30, 1982 deadline is not a substantive safety standard by which the safe operation of individual facilities was to be measured.

3. The rulemaking record cannot support the license amendments.

Commission Response. UCS contends that the rulemaking record is poorly organized, incomplete, and taken as a whole insufficient to support the issuance of a rule. UCS' position is that the rulemaking cannot be completed until licensee documentation has been received (as a result of recent staff-license meetings) and all final Safety Evaluation Reports been written, because "the Commission cannot amend reactor licenses . . without making a safety finding for each operating plant."

On the matter of the state of the record itself, the Commission and its staff have attempted to provide for public inspection all available material considered by the NRC. Several commenters requested and received specific records for individual facilities. The Commission believes that any interested person could have reviewed any documentation available for one or more plants within the comment period provided. Staff assistance was available whenever requested to locate specific data or to sort out complex files.

As for the substantial number of technical documents provided by licensees directly to the Franklin Research Center (FRC) for its review, but not provided to the NRC staff, the Commission believes that there was no legal requirement to make that documentation available for comment in this rulemaking. The technical documents relied on by the FRC were not necessary to the Commission's determination of the issue in this rulemaking, were not consulted by the Commission, and were therefore not part of the rulemaking record. The issue in this rulemaking was whether the June 30, 1982 deadline should be retained because either licensees were not diligently pursuing environmental qualification or because there were generic safety problems. The Technical Evaluation Reports ("TER") by the FRC, which are a part of the record, provided adequate documentation for resolving these issues. These TERs were based on the FRC's review of the technical documentation supplied to it by licensees. The identification of this technical documentation by FRC, together with the FRC's conclusions about the status of environmental qualification at the facilities being reviewed, was sufficient in itself to support the Commission's conclusion that licensees were diligently pursuing environmental qualification.

The TERs also evaluated the technical documentation and were the primary documents for the NRC staff's preparation of Safety Evaluation Reports ("SER"), also in the rulemaking record, which formed the basis for the Director of Nuclear Reactor Regulation's report to the Commission that there are no generic safety issues involving environmental qualification. Thus, the public had available to it all the material relied on by the NRC in resolving the issue presented by this rulemaking.

The issue of whether a plant-specific safety finding is involved for each facility has been discussed. The Commission has stated its position that the generic deadline was not a safety standard for each facility, and thus removing the deadline by rule does not require plant-specific findings.

4. There is no rational basis for the safety finding that is required to support the proposed license amendments.

Commission Response. In support of this argument, UCS restates many of the technical issues which were reviewed in the Commission's Policy Statement. In UCS' view, the documentation supporting qualification of some equipment is inadequate and does not support continued operation of the facility. UCS also argues that the NRC review of qualification data has been insufficiently detailed to reach valid conclusions about the safety of the facilities.

UCS misreads the court's decision in *UCS* v. *NRC*, 711 F.2d 370 (D.C. Cir. 1983) to support its contention that plant specific safety findings are required to support deletion of the deadline. The court did not say that any such finding was actually necessary before the deadline could be deleted. Rather, the court found that because in its view the Commission had apparently made a generic safety finding to support the Interim Rule, the Commission had to provide an opportunity to comment on that alleged safety finding.

The Commission has now explained that it does not rely on plant-specific safety findings in the present rule. Nothing in *UCS* v. *NRC* requires such findings. Plant-specific safety findings are not required for these proposed license amendments because these amendments do not have the effect of authorizing any plant operation not previously authorized, after full consideration for safety, when the facility licenses were issued. As explained above, the deadline was not set as a safety matter or as a cutoff date beyond which reactors could no longer operate if all of their equipment was not qualified. Rather, the purpose of the deadline was to urge licensee compliance with the environmental qualification program. Accordingly, those proposed license amendments do not involve the technical issues associated with the qualification status of various pieces of equipment at nuclear power plants. The justifications for continued operation are relevant to the deadline only to the extent that they reveal whether licensees have considered the effects of deficiencies in a timely manner. The Commission's review of the record shows that licensees have been actively attaining compliance with the environmental qualification requirements. Thus, the purpose of the deadline has been achieved. If there are individual instances of safety problems, the Commission has adequate enforcement tools, including shutdown orders, to deal with such problems. Thus, deletion of

the deadline does not affect public health and safety.

Furthermore, the Commission's staff is reviewing the qualification program at every operating facility and has also examined qualification data for many specific pieces of equipment. Where problems or deficiencies are identified, corrective action by the licensee is required. In some cases, a justification for continued operation (JCO) may be requested within a short time if facility operation is contemplated before the deficiency can be corrected. The proper remedy for any person disagreeing with the Commission's position on any given facility is to seek enforcement action via 10 CFR 2.206. One such petition has been received, filed by UCS, in regard to the emergency feedwater system at Three Mile Island Unit 1. The Commission's staff has reviewed the petitioner's allegation and found that the emergency feedwater system at Three Mile Island Unit 1 is environmentally qualified in accordance with 10 CFR 50.49. Therefore, the petition was denied.

UCS also alleged qualification deficiencies in four dockets, namely, Three Mile Island Unit 1, Kewaunee, San Onofre Unit 1, and Haddam Neck. These allegations will be dealt with in Section IV below.

III. Response To FUSE Comment And UCS Petition

One commenter, Floridians United For Safe Energy (FUSE), was highly critical of the Commission's prior actions on environmental qualification and requested that the Commission take 14 listed actions to correct the alleged deficiencies. These 14 actions are identical to those requested by the Union of Concerned Scientists (UCS) in a petition filed with the Commission of February 7, 1984. The Commission had decided that the first five of the 14 requested actions are relevant to this rulemaking, and accordingly, those issues will be stated and responded to below. The remaining nine issues have been dealt with separately as described in a letter to UCS.

Request 1. Direct the Staff to obtain immediately (within 10 days) from each nuclear power plant licensee and license applicant a report documenting the use of each deficient component listed in the UCS petition, and a detailed justification for continued operation pending qualification of the equipment. (The equipment listed was: solenoid valves, Barksdale pressure switches, Static-O-Ring pressure switches, ITT-Barton transmitters, Limitorque valve operators, Anaconda flexible conduit, Rockwell hydrogen recombiners, and O'Brien Electric Penetration Assembly, Model K Connectors.)

Commission Response. All of the above equipment highlighted by UCS have already been the subject of NRC Office of Inspection and Enforcement Information Notices. Licensees were required by 10 CFR 50.49 to identify all equipment remaining to be qualified, including the items cited by UCS where applicable, and to establish a schedule for qualification (which might involve analysis, testing or replacement) within the confines of § 50.49(g). If a licensee identifies unqualified equipment previously thought to be qualified, or overlooked in prior reviews, the licensee is required by § 50.49(h) to notify the Commission within 60 days if additional time may be needed to complete qualification.

Following receipt of the 10 CFR 50.49 submittals, the staff scheduled meetings with each licensee to discuss all remaining open issues regarding environmental qualification, and to identify the information necessary to issue a final safety evaluation report on environmental qualification for each facility. These meetings have been completed and the staff is now preparing an SER for each facility. Licensee approaches for resolving environmental qualification deficiencies include replacing equipment, performing additional testing and/or analysis, assembling additional qualification documentation, installing radiation shielding, and relocating equipment. Whenever equipment is identified which is not qualified for its application, the licensee has been required immediately to provide a justification for continued operation, if a justification had not been previously submitted. In a few cases where it appeared that licensee efforts had not been adequate, the staff has conducted an audit of licensee files and has made clear what steps need to be taken to demonstrate compliance with the Commission's environmental qualification requirements.

The Commission believes that this approach, which places the burden on licensees to complete environmental qualification on a reasonable schedule, is preferable to the ad hoc program proposed by UCS that could lead to delay in completion of the program at individual plants. In this area as in all other areas of NRC jurisdiction, the Commission relies on its licensees to carry out the regulatory requirements in a responsible manner, subject to NRC review and audit, and backed up by inspection and enforcement.

Request 2. Direct the staff to review this information within two weeks and make an independent determination as to whether there is justification for continued operation pending qualification of the equipment.

Commission Response. Even if the Commission were to receive all of the data covered by Request #1, the simple result implied by Request 2, *i.e., to determine whether* continued operation is or is not justifiable, would not obtain. As to each individual piece of equipment, at least the following steps must be carried out:

1. How is the item being used in the plant? For how long is it needed in an accident situation? Does it provide a critical function or indication, or is it in the "like to have" category? Is it backed up by other pieces of equipment?

2. What environment will the item of equipment see in each of a number of accident scenarios? Will it see a harsh environment in accidents for which it is needed or desired? Can it provide its function prior to being overwhelmed by environmental conditions?

3. What do the test data show concerning the item? Is it unqualified only in respect to one parameter or several? By what margin is it unqualified? Has it failed in every test, or has it passed some and failed some? Is the test data reliable or is there reason to question its validity?

4. If the item is clearly unqualified in its application, what risk is represented by continued operation? Can compensating measures such as procedures or valve alignments, etc., be used until a qualified piece of equipment can be installed? When will a qualified item be available, and when could it be installed?

The answers to these questions are not immediately obvious from a cursory review of a few documents. In each case the expertise of a number of persons experienced in a variety of disciplines must be called upon. Additional data may be needed which may or may not be immediately available. A site visit might be necessary to gain a clear picture of the item's use, location, configuration, and importance to plant operations. Arguments may arise over the interpretation of test data.

In short, UCS has greatly oversimplified the process of environmental qualification of safety-related electric equipment in nuclear power plants as a straightforward one, where answers immediately turn out yes or no. If the matter were that simple, the Commission and its licensees would not have been struggling for some five years to complete the program. In many cases environmental qualification efforts are at the edge of modern technology and material science. Tests must be carried

out under conditions which are difficult to create in the laboratory, and arguments arise over whether simulated conditions accurately represent the environment of a nuclear accident. Finally, reasonable disagreements can arise over the need for a piece of equipment, the environment it will see in an accident, the probability of that accident occurring over a brief period of time, and the consequences of equipment failure.

The Commission believes the phased but expeditious program mandated by 10 CFR 50.49 should continue. Where the staff feels that licensee efforts fall short of an acceptable level, action will be taken. Where information indicates that a serious, immediate safety hazard exists at a particular facility, prompt corrective action will be required including plant shutdown where necessary.

Request 3. Direct the staff at the conclusion of this review to order those plants for which adequate justification is not present to cease operation until the equipment in question is qualified or replaced.

Commission Response. As stated, if the Commission determines that plant operation is not justified with certain unqualified equipment, plant shutdown will be ordered. However, the Commission relies on licensees and its inspection program to report serious safety matters requiring immediate action.

Request 4. Provide a process for expeditious public comment on the Staff's determination and supporting submittals.

Commission Response. Whenever a licensee is requested to provide a justification for continued operation, the documentation is provided on the docket of that facility and is therefore available for public inspection. If any person believes that staff's acceptance of the licensee's position is in error, that person may request licensing action pursuant to 10 CFR 2.206.

Request 5. Commission may modify or affirm the Staff's action, taking into consideration public comments it has received.

Commission Response. If licensing action is sought on an individual facility pursuant to 10 CFR 2.206, the Commission has discretion under its rules to review the decision of the office director. *See* 10 CFR 2.206(c)(1).

IV. Plant Specific Comments

Four comments were filed which allege equipment qualification deficiencies at specific plants:

TMI, Kewaunee, San Onofre 1, Haddam Neck—UCS
Maine Yankee—Attorney General, State of Maine [3]
Pilgrim, Seabrook [4]—John F. Dougherty
Point Beach—Wisconsin's Environmental Decade

These comments have been reviewed by the NRC staff as provided in the notice of proposed rulemaking. The Director of Nuclear Reactor Regulation has found that the comments do not raise generic issues relevant to this rulemaking and has therefore recommended that these comments be treated according to 10 CFR 2.206. The Commission has agreed with this recommendation. The Director will review these comments according to the procedures specified in that regulation, and will take licensing action as he decides appropriate, if any. The status of environmental qualification at these facilities is set out below for information.

TMI-1

In response to the UCS 2.206 petition noted above, the staff has reviewed and evaluated the licensee's environmental qualification (EQ) program. Specifically, the qualification status of the emergency feedwater (EFW) system and electrical equipment associated with this system was assessed against the Commission's requirements and found to be in compliance. (DD-84-22).

As part of this effort, the staff met with the licensee and performed several audits of the licensee's EQ files. In response to the staff's findings during these audits, the licensee made substantial improvements in the EQ documentation for the EFW System and associated electrical equipment. The licensee is in the process of reviewing its EQ documentation for all other electrical equipment required to be qualified. The staff will audit the licensee's EQ documentation for several items of equipment other than the EFW system to ensure that the licensee's program complies with the Commission's requirements as set forth in 10 CFR 50.49.

[3] The State of Maine's comment also contains legal arguments which are responded to above in connection with the UCS comment and petition, and which the Commission has previously addressed in the notice of proposed rulemaking and accompanying policy statement issued March 7, 1984.

[4] Mr. Dougherty's comment regarding Seabrook did not deal with specific qualification deficiencies, but referred only to the licensee's financial difficulties. For this reason, Seabrook will not be discussed further below and will not be the subject of § 2.206 treatment.

Kewaunee

The staff has completed its Safety Evaluation Report for Kewaunee, and has concluded as follows:

1. Wisconsin Public Service's electrical equipment environmental qualification program complies with the requirements of 10 CFR 50.49.

2. The proposed resolutions for each of the environmental deficiencies identified in the February 2, 1983 SER and FRC TER are acceptable. There are no longer any outstanding justifications for continued operation for this facility.

San Onofre 1

This plant is currently not operating. The staff met with the licensee on December 20, 1983 to discuss resolution of the TER deficiencies. In order to ensure compliance with the Commission's requirements, this facility's EQ files were audited by the staff on October 2–4, 1984. Prior to return to service, the licensee is required to submit justifications for continued operation for all equipment which is within the scope of 10 CFR 50.49 and not fully qualified.

Haddam Neck

The staff met with the licensee on April 10, 1984 to discuss the resolution of the TER deficiencies. During that meeting, the licensee informed the staff that the temperature elements, cited by USC as having deficient JCO, will be replaced with qualified elements by March 31, 1985 in accordance with an extension granted by the NRC staff. (The staff had previously reviewed and accepted the JCO for these elements.)

In regard to the in-core thermocouples cited by USC, the licensee stated during the April 10 meeting that these devices are now fully qualified and thus a JCO is no longer required. Upon receipt of a final submittal from the licensee documenting the results of the April 10 meeting, the staff will prepare an SER reporting its evaluation, and will schedule a later audit of the licensee's EQ files to confirm compliance with the Commission's requirements.

Maine Yankee

The staff met with the licensee on April 4, 1984. The licensee's final submittal was dated May 31, 1984. The staff is now reviewing this submittal.

Pilgrim

The staff met with the licensee on May 22, 1984. The licensee made two submittals dated July 9, 1984 and August 3, 1984. The staff is now reviewing these submittals.

Point Beach Units 1 and 2

The staff has completed its Safety Evaluation Reports for both of these units. As to each unit the staff has concluded:

1. Wisconsin Electric's electrical equipment environmental qualification program complies with the requirements of 10 CFR 50.49.

2. The proposed resolution of each of the environmental qualification deficiencies identified in the December 22, 1982 SER and FRC TER are acceptable.

3. Continued operation until completion of the licensee's environmental qualification program will not present undue risk to the public health and safety.

The licensee's qualification files will be audited at a later date to confirm that all of the Commission's requirements have been met.

V. Decision on Final Rule

The Commission has reviewed the comments and does not find in them convincing arguments in favor of retaining the license condition deadlines. The Commission agrees with commenters who expressed impatience at the length of time which has already been devoted to the effort of achieving full qualification of safety-related equipment in nuclear power plants. The program has taken much longer than expected, and has involved difficulties and complexity not foreseen at the time the 1982 date was inserted in operating licenses.

However, the Commission believes that the approach most likely to accomplish completion of the program in the most expeditious and thorough fashion is that contained in 10 CFR 50.49. Under this program environmental qualification should be complete in calendar year 1985. The staff continues to monitor licensees' progress closely, and the Commission itself will maintain an active role in supervision of the program. For the present the Commission is satisfied that progress is adequate and that retention of the 1982 deadline on a generic basis would serve no purpose. Enforcement action will be taken on individual plants if circumstances warrant.[5]

The Commission is therefore adopting as a final rule the removal of the June 30, 1982, deadline from power plant operating licenses. In response to one of the public comments, which noted that some licensees may have license condition deadlines other than June 30, 1982, the proposed rule is being modified slightly by the addition of the words underlined: ". . . that the schedule in this paragraph supersedes the June 30, 1982, deadline, *or any other previously imposed date*, for environmental qualification of electric equipment contained in certain nuclear power operating licenses." Because the rule relieves a restriction, it is effective upon publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(1).

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant impact on a substantial number of small entities. The rule affects only licensees of nuclear power plants. These companies do not fall within the scope of "small entities" as set forth in the Regulatory Flexibility Act or the small business size standards set forth in the regulations of the Small Business Administration, 10 CFR Part 121.

Paperwork Reduction Act Statement

This rule contains no information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Environmental Impact Statement

The promulgation of this rule would not result in any activity affecting the environment. The rule relates to the schedule for compliance with a rule and as such is procedural in nature for the purposes of environmental analysis. Accordingly, the categorical exclusion in 10 CFR 51.22(c)(3) applies and no environmental assessment need be prepared.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Intergovernmental regulations, Incorporation by reference, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Recordkeeping and reporting requirements.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, notice is hereby given that the following amendment to 10 CFR Part 50 is adopted.

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 186, 189, 66 Stat. 936, 937, 948, 953, 954, 955, 956, as amended sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2223, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

(Sec. 50.7 also issued under Pub. L. 95–601, sec. 10.92 Stat. 2951 (42 U.S.C. 5851). Section 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 66 Stat. 939 (42 U.S.C. 2152). Secs. 50.80–50.81 also issued under sec. 184,66 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 66 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 66 Stat. 956 as amended (42 U.S.C. 2273), §§ 50.10(a), (b) and (c), 50.44, 50.46, 50.48, 50.54 and 50.58(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 220a(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161.68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 58 Stat. 950, as amended (42 U.S.C. 2202(o)).

§ 50.49 [Amended]

2. 10 CFR Part 50, § 50.49, paragraph (g) is amended by the addition of a sentence to the end thereof. Paragraph (g) is revised to read as follows:

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[5] In his separate views Commissioner Asselstine disavows his previous agreement with the Notice of Proposed Rulemaking and the Commission's Policy Statement. The Commission believes that this rulemaking record does not support such a change in position. In its Policy Statement, the Commission agreed that because the June 30, 1982 deadline was not intended as a cut-off date for operation, the establishment of that deadline did not contain an implicit judgment that operation beyond that date would require a safety finding. As the Commission's Policy Statement made clear, this rulemaking was conducted solely to respond to the remand in *UCS v. NRC*, 711 F.2d 370 (D.C. Cir. 1983) and should not be taken as an indication that the Commission had changed its mind to now believe that the 1982 deadline had plant-specific safety significance.

Nor does Commissioner Asselstine's reason for wanting to retain the deadline contradict the Commission's position. He states that "the Commission should retain [the deadline] as an effective enforcement tool to assure continued diligence by licensees in carrying out an effective equipment qualification program." Putting aside the issue of whether the Commission could even rely on this deadline as a basis for initiating enforcement actions at this late date, it is clear that Commissioner Asselstine would not use the deadline to enforce safety deficiencies, but would use it only for the purposes for which it was intended, *i.e.*, to assure licensee diligence in completing the environmental qualification. Thus, Commissioner Asselstine's reason for wanting to retain the deadline is not based on a difference over its intended use, but really on whether the record shows that the reasoning for imposing the deadline has been met. For the reasons given above, the Commission had found that the deadline accomplished its purpose: As a general matter, licensees are diligently pursuing effective environmental qualification programs. The fact that one facility, Three Mile Island, Unit 1 required additional prodding, prodding which the NRC staff reported as being successful, does not undercut the validity of this generic finding.

(g) Each holder of an operating license issued prior to February 22, 1983, shall, be May 20, 1983, identify the electric equipment important to safety within the scope of this section already qualified and submit a schedule for either the qualification to the provisions of this section or for the replacement of the remaining electric equipment important to safety within the scope of this section. This schedule must establish a goal of final environmental qualification of the electric equipment within the scope of this section by the end of the second refueling outage after March 31, 1982 or by March 31, 1985, whichever is earlier. The Director of the Office of Nuclear Reactor Regulation may grant requests for extensions of this deadline to a date no later than November 30, 1985, for specific pieces of equipment if these requests are filed on a timely basis and demonstrate good cause for the extension, such as procurement lead time, test complications, and installation problems. In exceptional cases, the Commission itself may consider and grant extensions beyond November 30, 1985, for completion of environmental qualification.

The schedule in this paragraph supersedes the June 30, 1982, deadline, or any other previously imposed date, for environmental qualification of electric equipment contained in certain nuclear power operating licenses.

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Commissioner Asselstine's separate views follow.

Dated at Washington, D.C. this 13th day of November, 1984.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

Commissioner Asselstine's Comments on the Notice of Final Rulemaking Regarding the Removal of the June 20, 1982 Deadline From Operating Licenses for Environmental Qualification of Electrical Equipment

I cannot agree with the Commission's final rule to remove the June 30, 1982 deadline from nuclear powerplant operating licenses for the environmental qualification of electrical equipment. The Commission's final rule fails to provide the safety justification needed to remove the June 30, 1982 deadline from plant operating licenses and is not adequately supported by the record of this rulemaking. Moreover, commenters were not afforded a fair opportunity to comment on some of the information that formed the basis for the NRC staff's safety judgments that plants without properly qualified electrical equipment can operate safely until ongoing equipment qualification efforts are completed. For these reasons, I conclude that the Commission should not remove the June 30, 1982 deadline from plant operating licenses at this time.

Implicit in the Commission's decision to impose a deadline for qualification of equipment is a safety judgment by the Commission that extended operation of nuclear plants without properly qualified equipment does not provide an adequate level of protection to the public health and safety. The June 30, 1982 deadline was intended to motivate licensees to pursue effective equipment qualification programs with due diligence, thereby correcting a widespread licensee recalcitrance in properly qualifying safety-related equipment. The Commission also set the deadline to ensure that safety related equipment was qualified within a reasonable period of time—two years.

In deciding to remove the June 30, 1982 deadline from operating licenses, the Commission has concluded: (1) That the purpose of motivating licensees to pursue effective equipment qualification programs with due diligence has been achieved; (2) that extended operation of the plants beyond the June 30, 1982 deadline without fully qualified electrical equipment will not pose an undue risk to the public health and safety; and (3) that there is no generic equipment qualification problem common to many plants, such that a generic solution such as the June 30, 1982 deadline should be retained. More than two years after the expiration of the June 30, 1982 deadline, it appears that the Commission does not have an adequate factual basis for any of these conclusions.

I originally agreed with the course the Commission takes in its rulemaking and with the issuance of a new equipment qualification rule and policy statement. However, my agreement was based on assurances from the NRC staff that licensees were diligently pursuing adequate qualification programs and that the NRC was conducting an in-depth review of the information provided by licensees to support their justifications for continued operation (JCO's) or findings of qualification. Upon detailed examination it appears that these assurances were optimistic at best.

At the time the Commission issued this rule in proposed form, the staff advised the Commission that all licensees were cooperating in pursuing effective environmental qualification programs. See, Transcript of January 6, 1984 Commission meeting, p. 118. Yet, the record of this rulemaking disclosed several instances within the past few months in which licensees have failed to pursue effective equipment qualification efforts with due diligence. See, Union of Concerned Scientists' comments, pp. 22, 48–66. Many of these instances were confirmed by the NRC staff during the Commission meeting to consider this final rule. See, Transcript of September 4, 1984 Commission meeting, pp. 32–35, 64–68. Moreover, in those instances in which the Commission now argues that the environmental qualification deficiencies at specific plants identified by commenters have been corrected, the description of how those deficiencies have been corrected is so general as to be meaningless. This is hardly surprising since the first version of the proposed final rule submitted to the Commission in August failed to address *any* of the plant-specific deficiencies identified by commenters on the proposed rule. Given the evidence of continuing instances of licensee recalcitrance and the hurried and superficial reviews of the plant-specific deficiencies identified by commenters on the proposed rule, there is no basis in this rulemaking record for concluding that all licensees are now pursuing effective environmental qualification programs with due diligence.

Nor is there a basis for the Commission's conclusion that continued operation of nuclear plants presents no undue risk to the public health and safety. Although the staff assures us that there has been improvement in recent months, to date a considerable amount of safety-related equipment still has not been shown to be properly qualified. See, Transcript of September 4, 1984 Commission meeting, pp. 71–72. Justifications for continued operation (JCO's) for virtually all plants were submitted by the licensees in 1981. Reviews of these JCO's by the NRC staff and its contractors have repeatedly identified errors requiring further justifications. Further, even in the case of the more recent JCO's, the staff's inquiry has largely accepted the assertions made by the licensee that its equipment is qualified, and except in a very limited number of cases, the staff has not performed the detailed examination of supporting documentation needed to verify independently that either the equipment is properly qualified or that there is an adequate justification for continued operation. See, Transcript of September 4, 1984 Commission meeting, pp. 69–72. Nor is there any reason to believe that an in-depth examination of the licensee's documentation will occur any time in the near future. In the very few cases where staff has begun such in-depth reviews the evidence indicates

that licensee efforts have been inadequate. Thus, because there has been no in-depth review by the NRC, there is no reason to conclude, as the majority does, that there is indeed no generic problem with equipment. Rather, UCS's comments suggest that there may be generic problems with certain equipment, and the Commission has not adequately explained why the equipment identified indicates no generic problem.

Thus, the evidence indicates that all licensees are not diligently pursuing effective equipment qualification programs. The evidence also indicates that independent verification of the licensees' JCO's or assertions of qualification will not occur any time soon, and certainly not before the Commission's new deadline in 10 CFR 50.49 (March 31, 1985). Given this indeterminate state of affairs, the Commission lacks reasonable assurance that there will not in fact be extended operation of these plants with equipment unqualified to perform its safety related functions. Instead of eliminating the deadline, the Commission should retain it as an effective enforcement tool to assure diligence by licensees in carrying out an effective equipment qualification program.

Finally, it is clear that commenters were not afforded a fair opportunity to comment on the technical information that formed the basis for the licensees' assertions that equipment is properly qualified or for the JCO's. The Union of Concerned Scientists, for example, details a number of instances in which this information was not included in the rulemaking record. See, UCS comments, pp. 27–30, and UCS letter to Commission dated September 5, 1984. The absence of this information effectively denied commenters a fair opportunity to comment on the staff's judgments on equipment qualification and the JCO's.

The Commission majority explains that it was not legally required to make documents relied upon by Franklin Research Center (FRC) available for comment in this rulemaking. The majority explains that this documentation was not necessary to the Commission's determination of the issue in this rulemaking and that the staff's Technical Evaluation Reports (TER's) provided adequate justification for concluding that licensees are diligently pursuing environmental qualification and that there are no generic safety problems so that the June 30, 1982 deadline ought to be retained. The Commission's explanation misses the point. The Commission may have relied upon the FRC reviews in making its conclusions, but FRC in conducting the reviews upon which the Commission relies must have relied in turn upon the documentation the Commission now says is not relevant to the rulemaking. Had the Commission itself conducted reviews of this documentation instead of contracting out to FRC the underlying documentation for the Commission's decision surely would have to be available for comment. The mere identification of information without providing an opportunity to inspect that information and challenge the bases for FRC's and staff's conclusions hardly amounts to a fair opportunity to comment.

For all of these reasons I cannot concur in the Commission's action. I would retain the June 30, 1982 deadline to be used as an enforcement tool to ensure that licensees have effective environmental qualification programs. Further, the Commission ought to be more diligent in conducting in-depth reviews of licensee documentation so that plants do not continue to operate for extended periods of time with the state of their equipment basically indeterminate.

[FR Doc. 84-30299 Filed 11-16-84; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 140

[FHWA Docket No. 83-25]

Reimbursement; State Highway Agency Audit Expense

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: This document revises existing FHWA regulations by expanding the types of audit costs incurred by State highway agencies (SHA) that are eligible for Federal reimbursement. The revisions implement section 159 of the Surface Transportation Assistance Act of 1982 (STAA of 1982). Section 159 allows FHWA to reimburse States for costs incurred in performing Federal-aid project related audits which directly benefit the Federal-Aid Highway Program.

EFFECTIVE DATE: This final rule is effective December 19, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey C. Wood, Chief, Federal/State Financial Management Branch, (202) 426–0563, or Mr. Frank L. Calhoun, Office of the Chief Counsel, (202) 426–0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On January 6, 1983, the President signed into law the STAA of 1982 (Pub. L. 97–424, 96 Stat. 2097). Section 159 amends the definition of the term, "construction," in 23 U.S.C. 101(a) by adding, "and also includes costs incurred by the State in performing Federal-aid project related audits which directly benefit the Federal-Aid Highway Program." This enables the costs of audits to be eligible for Federal reimbursement in accordance with the provisions of title 23, U.S.C.

On February 24, 1984, the FWHA published a notice of proposed rulemaking (NPRM) (49 FR 6921) which proposed revisions to implement section 159. The NPRM proposed a revision to Part 140, Subpart G of 23 CFR. This subpart prescribes policies for reimbursing an SHA for the costs of salaries, wages, and related costs of its employees. Section 140.713(a) identifies several types of personnel whose costs are not reimbursable. Since internal auditing is listed as a nonreimbursable item, it was proposed to delete the words "internal auditing" from this section.

Part 140, Subpart H of 23 CFR establishes the SHA's responsibility for the audit of third party contract costs and the reimbursement criteria for Federal participation in the costs of these audits. Section 159 of the STAA of 1982 provides for the reimbursement of all audit costs which directly benefit the Federal-Aid Highway Program which is not limited only to the audits of third party contracts. To accomplish this, the FHWA proposed to revise Subpart H by: (1) Removing the term "Third Party Contract Costs" from the title, (2) removing the portion of § 140.801 relating to the audit of third party contract costs, (3) replacing the definition of "audit" in § 140.805 with the definition of "project related audits," (4) incorporating the provisions of § 140.807(a) and removing the term "third party contract," and (5) adding a new § 140.807(b) requiring audit costs be equitably distributed to all benefiting parties and to the major FHWA funding categories. As proposed, FHWA would determine, on a case-by-case basis, if necessary, which audits "directly benefit" Federal-aid highway projects

and meet other eligibility requirements for participation in audit expenses.

Three State highway agencies responded to the NPRM published on February 24, 1984. Two comments expressed support for the proposed revisions while the remaining commenter expressed an objection. However, the commenter objected to the proposal that reimbursable audit costs be restricted to those that directly benefit the Federal-aid highway program. Since this restriction is expressly mandated by section 159 of the STAA of 1982, the provision as proposed remains in the final rule.

In view of the above, the revisions as proposed in the February 24 NPRM are retained in the final rule in their entirety.

The FHWA has determined that this document contains neither a major proposal under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation. The anticipated impact of this proposal is so minimal as to not require preparation of a full regulatory evaluation. Audit costs represent a very small portion of the costs of the Federal-Aid Highway Program. Few, if any, States are expected to receive more than $100,000 annually of additional Federal funds as a result of the revised regulations. For this reason and under the criteria of the Regulatory Flexibility Act, it is hereby certified that this proposal will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, and under the authority of section 159 of the Surface Transportation Assistance Act of 1982, Pub. L. 97-424, 96 Stat. 2097; 23 U.S.C. 121 and 315; 49 CFR 1.48(b), the FHWA amends Title 23, Code of Federal Regulations, Part 140, Subparts G and H as set forth below.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 140

Accounting, Grant programs—transportation, Highways and roads.

Issued: November 8, 1984.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

The FHWA amends 23 CFR Part 140, Subparts G and H as set forth below.

PART 140—REIMBURSEMENT

Subpart G—Payroll and Related Expense of Public Employees; General Administration and Other Overhead; and Cost Accumulation Centers and Distribution Methods

1. Section 140.713 is amended by removing the words "internal auditing" from paragraph (a)(1). As revised paragraph (a)(1) reads as follows:

§ 140.713 General administration and other overhead.

(a)* * *

(1) Directors, department heads, legal, accounting, budgeting, personnel, and procurement units.

* * * * *

2. Subpart H is revised in its entirety to read as follows:

Subpart H—State Highway Agency Audit Expense

Sec.

140.801 Purpose.
140.803 Policy.
140.805 Definitions.
140.807 Reimbursable costs.

Authority: 23 U.S.C. 121 and 315; 49 CFR 1.48(b).

Subpart H—State Highway Agency Audit Expense

§ 140.801 Purpose.

To establish the reimbursement criteria for Federal participation in project related audit expenses.

§ 140.803 Policy.

Project related audits performed in accordance with generally accepted auditing standards (as modified by the Comptroller General of the United States) and applicable Federal laws and regulations are eligible for Federal participation. The State highway agency (SHA) may use other State, local public agency, and Federal audit organizations as well as licensed or certified public accounting firms to augment its audit force.

§ 140.805 Definitions.

(a) *Project related audits*—audits which directly benefit Federal-aid highway projects. Audits performed in accordance with the requirements of 23 CFR Part 12, audits of third party contract costs, and other audits providing assurance that a recipient has complied with FHWA regulations are all considered project related audits. Audits benefiting only nonfederal projects, those performed for SHA management use only, or those serving similar nonfederal purposes are not considered project related.

(b) *Third party contract costs*—project related costs incurred by railroads, utilities, consultants, governmental instrumentalities, universities, nonprofit organizations, construction contractors (force account work), and organizations engaged in right-of-way studies, planning, research, or related activities where the terms of a proposal or contract (including lump sum) necessitate an audit. Construction contracts (except force account work) are not included in this group.

§ 140.807 Reimbursable costs.

(a) Federal funds may be used to reimburse an SHA for the following types of project related audit costs:

(1) Salaries, wages, and related costs paid to public employees in accordance with Subpart G of this part,

(2) Payments by the SHA to any Federal, State, or local public agency audit organization, and

(3) Payments by the SHA to licensed or certified public accounting firms.

(b) Audit costs incurred by an SHA shall be equitably distributed to all benefiting parties. The portion of these costs allocated to the Federal-Aid Highway Program which are not directly related to a specific project or projects shall be equitably distributed, as a minimum, to the major FHWA funding categories in that State.

[FR Doc. 84-30249 Filed 11-16-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 5

Claims Collection

AGENCY: Office of the Secretary, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Part 5 of Title 31, Code of Federal Regulations, governs the collection of claims from Treasury employees. Since early 1979, § 5.3 has required that an uncollectible claim in excess of $100 be referred to the General Counsel or the head of the legal division of a bureau or office before it may be administratively terminated. This final rule raises from $100 to $300 the limit of

uncollectible claims which may be administratively terminated without such referral. The cost of collecting claims has increased since 1979 and the Department has determined that increasing the limit to $300 will reduce administrative burdens and be more cost-effective. Moreover, a survey of claims between $100 and $500 referred to counsel indicated that almost 90 percent subsequently are administratively terminated.

EFFECTIVE DATE: November 19, 1984.

FOR FURTHER INFORMATION CONTACT: Charles A. Pistole, Department of the Treasury, Room 2450, 1500 Pennsylvania Ave., NW., Washington, D.C. 20220 (202–566–2431, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Since the establishment of the $100 limit in 1979, the cost of processing claims has increased significantly. Since almost 90 percent of claims under $500 referred to counsel for consideration subsequently are administratively terminated, the continued referral of such claims is not cost-effective. The Department has determined that increasing the value of claims which must be referred to counsel to $300 will decrease administrative burdens and be more cost-effective.

Special Analyses

Because this document relates to agency management, the notice and comment requirements of 5 U.S.C. 553(b), the requirement for a delayed effective date of 5 U.S.C. 553(d), and the provisions of Executive Order 12291 are inapplicable. Because no notice of proposed rulemaking is required by 5 U.S.C. 553 or by any other statute, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) are inapplicable to this document.

Authority: This amendment is issued under the authority of 31 U.S.C. 3711, 96 Stat. 971 (1982).

List of Subjects in 31 CFR Part 5

Claims.

PART 5—[AMENDED]

§ 5.3 [Amended]

Section 5.3 of 31 CFR Part 5 is amended by changing "$100" to "$300."

Dated: October 15, 1984.

Terence C. Golden,

Assistant Secretary for Administration.

[FR Doc. 84–30216 Filed 11–16–84; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 84–76]

Marine Event; Annual Parker Thanksgiving Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Annual Parker Thanksgiving Regatta. This event will be held on 23 thru 25 November 1984 at Headgate Rock Dam. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on 23 November 1984 and terminate on 25 November 1984.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590–2331.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 45 days from the date of publication. Following normal rule making procedures would have been impracticable. The application to hold this event was not received until 19 September 1984, and there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Nevertheless, interested persons wishing to comment may do so by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 84–76) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may change in light of comments received.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District, and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Regulation

The Southern California Speedboat Club "Annual Parker Thanksgiving Regatta" will be conducted on 23 thru 25 November 1984 starting from Headgate Rock Dam. This event will have 60 to 70 hydroplanes and runabouts, 13 to 21 feet in length that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These regulations are 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, since the regulated area will be opened periodically for the passage of vessel traffic.

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).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Regulations

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

§ 100.35–11–84–76 Annual Parker Thanksgiving Regatta, Parker, AZ.

(a) *Regulated Area:* The following area may be closed intermittently to all vessel traffic. That portion of the Colorado River north of the city of Parker, AZ starting from Headgate Rock Dam, thence northeasterly along the natural flow of the river for one (01) mile, on Moovalya Lake.

(b) *Effective Dates:* These regulations will be effective from 7:00 AM to 5:00 PM Mountain Standard Time on 23 thru 25 November 1984.

(c) *Special Local Regulations:* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall block, anchor, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the

effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directors of the designated Patrol Commander. Failure to do so may result in citation for failure to comply.

(3) All vessels in close proximity shall operate at a safe and prudent speed which will create a minimum wake that will not affect participants.

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); 33 CFR 100.35))

Dated: 5 November 1984.

F.P. Schubert,

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

[FR Doc. 84-30289 Filed 11-16-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11 84-71]

Lake Havasu Classic; Thompson Bay, Lake Havasu, AZ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule will establish special local regulations during the Lake Havasu Classic. This event will be held on 21 through 24 November 1984 at Thompson Bay, Lake Havasu, Arizona. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on 21 November 1984 and terminate on 24 November 1984.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate, Long Beach, California 90822, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: On 1 October 1984, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (49 FR 38655). Interested persons were requested to submit comments and no comments were received.

Drafting information:

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Comments

Although no comments were received, interested persons wishing to comment may do so by submitting written arguments to the office listed under **FOR FURTHER INFORMATION CONTACT** in this preamble. Commenters should include their names and addresses, identify this notice (CGD11 84-71), and give reasons for their comments. Based on comments received, the regulation may be changed.

Discussion of Regulation

The Havasu Sports Federation's "Lake Havasu Classic" will be conducted on the Colorado River beginning 21 November 1984, east of Spectator Point in Thompson Bay, Lake Havasu. This event will have 75 tunnel and pleasure/modified V-bottom outboard boats, 10 to 20 feet in length that could pose hazards to navigation. Vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These regulations are 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, since the regulated area will be opened periodically for the passage of vessel traffic.

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).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Regulations

In consideration of the foregoing, the Coast Guard Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

§ 100.35-11-84-71 Lake Havasu Classic, Lake Havasu, Arizona.

(a) *Regulated Area.* The following area may be closed intermittently to all vessel traffic. That portion of Thompson Bay, Lake Havasu, Arizona starting approximately 100 yards on a bearing of 130° T off Spectator Point, thence due north approximately 1110 yards, thence 140° T approximately 2200 yards, thence due west approximately 2400 yards, then back to the starting point.

(b) *Effective Dates.* These regulations will be effective from 8:00 a.m. to 5:30 p.m. on 21 through 24 November 1984.

(c) *Special Local Regulations.* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall, block, anchor, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in citation for failure to comply.

(3) All vessels in close proximity shall operate at a safe and prudent speed which will create a minimum wake that will not affect participants.

(4) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); 33 CFR 100.35)

Dated: 5 November 1984.

F.P. Schubert,

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

[FR Doc 84-30287 Filed 11-16-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7 84-23]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Town of Jupiter, the Coast Guard is changing the regulations governing the Indiantown Road Bridge (State Road 706), mile 1006.2, Palm Beach County by permitting the number of openings to be limited

during certain periods. This change is being made because periods of peak vessel and vehicular traffic have increased.

This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on December 19, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, telephone: (305) 350–4103.

SUPPLEMENTARY INFORMATION: On 26 June 1984, the Coast Guard published proposed rule 49 FR 26608 concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated 10 July 1984. In each notice interested persons were given until 13 August 1984 to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Comments

No comments were received in response to the publication in the Federal Register or the Public Notice. Since the final rule will provide for more openings per hour than actually occurred during the 1983 winter season, it is not considered unreasonable to navigation and should provide for the needs of vehicular traffic by eliminating back to back openings which are a source of vehicular traffic congestion. Temporary regulations, on and experimental basis, were implemented in November 1983 providing for hour and half-hour openings 7 a.m. to 6 p.m. daily to evaluate the effects on navigation. A meeting was held in the Seventh Coast Guard District Office in May 1984 at which time, an alternate proposal for solicitation of comments on 20 minute openings was agreed upon by the Town of Jupiter. The Florida Council of Yacht Clubs objected to the hour and half-hour temporary regulations, but offered no objection to the proposed 20 minute openings.

Economic Assessment and Certification

These regulations are 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 has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations will exempt commercial vessels such as tugs with tows and regularly scheduled cruise vessels. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they 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 redesignating paragraph (i) of § 117.261 as (i)(1) and adding a new paragraph (i)(2) immediately after (i)(1) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

* * * * *

(i)(2) AIWW, mile 1006.2, State Road 706, Indiantown Road, Jupiter, Palm Beach County, Florida. From 1 November through 30 April, from 7:00 a.m. to 6:00 p.m., the draw need not open except on the hour, 20 minutes after the hour, and 40 minutes after the hour to pass all accumulated vessels. At all other times, the draw shall open on signal. Public vessels of the United States, tugs with tows, cruise vessels operated on a regular schedule, and vessels in distress shall be passed at any time.

* * * * *

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

Dated: November 7, 1984.

A.R. Larzelere,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 84–30268 Filed 11–16–84; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 707

[OPTS–120003; TSH–FRL 2720–5]

Notification of Chemical Export; Applicability of Final Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Statement of clarification.

SUMMARY: This notice clarifies the requirements for notification of chemical exports under section 12(b) of the Toxic Substances Control Act (TSCA). These notification requirements will be activated at the effective date of a Phase I final rule when a TSCA section 4 test rule is being promulgated in two phases.

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

SUPPLEMENTARY INFORMATION:

I. Background

Section 12(b) of TSCA requires that persons who export or intend to export certain chemical substances and mixtures must notify the Administrator of such export or intent to export. The Administrator in turn is required to notify the appropriate foreign governments of the availability of data or EPA's action with respect to the substance. Regulations interpreting the requirements of section 12(b) were published in the **Federal Register** of December 16, 1980 (45 FR 82844) and codified at 40 CFR Part 707. Also, a statement of clarification regarding the export of asbestos and asbestos containing mixtures was published in the **Federal Register** of July 21, 1981 (46 FR 37608.

Several regulatory actions or orders under TSCA trigger the section 12(b) export notification requirements, one of which is a data submission requirement under section 4. For the purposes of the section 12(b) activities, the Agency interprets a section 4 data submission requirement to mean the promulgation of a final test rule under section 4. The asbestos clarification cited above states this policy. Also, the EPA publication "A Guide for Chemical Importers/Exporters—Volume I: Overview" reiterates this statement. This publication may be obtained by contacting the TSCA Assistance Office.

The Agency has determined that it would be inappropriate to require notification of export of substances based upon a proposed section 4 test rule. Since the conditions of a proposed rule and the substances involved are subject to change, the Agency deemed that sending a notice of availability of data to foreign governments would be premature at that stage of rulemaking. However, promulgation of a final test rule represents the Agency's commitment to proceed with data collection with respect to specific

substances. While the results of required testing may not be available for some time, a notice to the foreign government about the export of such substances serves to alert them to the Agency's concern about the substances. It gives these governments the opportunity to request such data that the Agency may currently possess plus whatever data may become available as a result of testing activities.

II. Clarification Requested

After the section 12(b) rule was promulgated, the Agency began to utilize a two-phase process for developing certain test rules. See 47 FR 13012 (March 26, 1982). A Phase I final test rule identifies the substances to be tested and the effects or characteristics for which testing is required. It also requires manufacturers and/or processors of the substances to submit study plans for the conduct of the required testing. A Phase II final rule establishes the testing standards and the schedule for submission of the data resulting from such testing.

The first Phase I final rule will become effective on November 23, 1984. It requires testing of 1,1,1-trichloroethane (TCEA) for developmental toxicity (49 FR 39810). On September 26, 1984 the Agency received a letter from the Dow Chemical Company requesting an opinion as to whether the export notification requirements of TSCA section 12(b) will be triggered by the TCEA Phase I final rule.

The Agency has concluded that, in the case of a two-phase section 4 rulemaking, the section 12(b) requirements are activated by the Phase I final rule. The Phase I rule represents the Agency's final decision to proceed with required testing of a substance. This rulemaking will have been preceded by a proposal and an opportunity to comment so that issues regarding the reasons for required testing of a given substance will have been identified and resolved. Therefore, the Agency believes that delaying section 12(b) export notification requirements until the Phase II rule becomes effective would not be consistent with the purposes of section 12(b).

In most instances EPA expects to develop section 4 test rules in a single phase so as to speed the initiation of testing. However, EPA may continue to use the two-phase final rulemaking approach for certain substances. Therefore, this statement of clarification provides notice to those persons who export or intent to export a chemical substance or mixture subject to a Phase I final test rule that they must submit notices required by TSCA section 12(b)(1) and 40 CFR Part 707.

Dated: November 8, 1984.

Marcia E. Williams,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 84-30225 Filed 11-16-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Reorganization of the Office of Managing Director

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's rules to reflect the reorganization of the Office of Managing Director and to clarify the Managing Director's responsibilities under the functions of the Office. This action is taken to promote operational efficiency. Late submission to the FCC representative and to the Office of Federal Register caused the delay in publication.

EFFECTIVE DATE: August 1, 1984.

FOR FURTHER INFORMATION CONTACT: Karl Brimmer, (202) 632-3906.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Commission organization, Organization and functions (Government Agencies).

Order

In the matter of amendment of Part 0 of the Commission's Rules to reflect a reorganization of the Office of Managing Director.

Adopted: June 20, 1984.
Released: August 9, 1984.

By the Managing Director.

1. The Commission has approved changes in the organization of the Office of Managing Director. Implementation of the proposed changes requires amendment of § 0.12 of the Commission's Rules and Regulations.

2. In addition, the Managing Director, under delegated authority, is amending certain phrases to clarify his responsibilities under the functions of the Office. Implementation of the proposed change requires amendment of § 0.11 of the Commission's Rules and Regulations.

3. To promote operational efficiency, the Office of the Managing Director is being reorganized. Briefly: (1) The Management Services Branch of the Planning and Analysis Division be abolished and all its administrative management functions, with the exception of those functions related to forms management and paperwork reduction, be transferred with the staff performing the functions, to the Management Planning and Program Evaluation Office; (2) the Records Management Branch of the Information Processing Divison be transferred to the Planning and Analysis Division to be combined with the forms management and paperwork reduction functions into a new branch to be named the Information Resources Branch; (3) the planning and Analysis Division be assigned strategic long-range planning responsibilities for information resource management and be renamed Information Resources Planning Division; (4) the Systems and Technology Planning Branch be renamed Information Planning Branch to more closely identify it with the Information Resource Management planning, budgeting and acquisition functions; (5) the Network Management Staff be retitled the Office Automation Division; (6) the Systems Library Branch of the Computer Applications Division be abolished and its functions absorbed at the Division level; and (7) the 3 and 4 letter call sign assignment functions of the Call Sign Unit in the Information Processing Division be transferred to the immediate office of the Video Services Division of the Mass Media Bureau.

4. To clarify his responsibilities in the area of national defense, the Managing Director is amending the language describing his national defense functions.

5. The amendments adopted herein pertain to agency organization. The prior public notice and comment procedures and effective date provision of section 4 of the Administrative Procedure Act, 5 U.S.C. 553, are, therefore, inapplicable. Authority for the amendments adopted herein is contained in sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

6. In view of the foregoing, it is ordered, effective August 1, 1984, that Part 0 of the Rules and Regulations is amended as set forth in the Appendix hereto.

Federal Communications Commission.
Edward J. Minkel,
Managing Director.

PART 0—[AMENDED]

Appendix

Part 0 of Chapter I of Title 47 of the Federal Regulations is amended as follows:

§ 0.11 [Amended]

1. Paragraph (a)(10) of § 0.11 is amended by removing the words "alternative Commission representative to emergency planning groups of other agencies." and inserting, in their place, the words "FCC Defense Coordinator and Principal to both the National Communications System and to the Network Communications Security Committee."

2. § 0.12 is amended by revising (c), (e) (1) and (e)(4) to read as follows:

§ 0.12 Units in the Office.

* * * * *

(c) Management Planning and Program Evaluation Office.

(e) * * *

(1) Office Automation Division.

* * * * *

(4) Information Resources Planning Division.

* * * * *

[FR Doc. 84-30265 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-375; RM-4311]

TV Broadcast Station in Longview, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns UHF Television Channel 54 to Longview, Texas, as its third television assignment in response to a petition filed by Peggy Ann Rothchild.

EFFECTIVE DATE: January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV Broadcast Stations (Longview, Texas) MM Docket No. 83-375, RM-4311.

Adopted: October 29, 1984.
Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making* (48 FR 18844, published April 26, 1983) issued in response to a petition for rule making filed by Peggy Ann Rothchild ("Rothchild") proposing to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, to assign UHF Television Channel 54 to Longview, Texas, as its third television assignment. In response to the *Notice*, petitioner filed comments and restated her intention to apply for Channel 54 at Longview, Texas. KLMB-TV, Incorporated ("KLMB"), permittee of Station KLMG-TV, Longview, Texas, filed opposing comments and reply comments.

2. Rothchild, in her comments reiterates her continued intention to apply for a construction permit for Channel 54 if the channel is allocated to Longview, Texas.

3. KLMB generally opposes the proposed assignment in Longview, on the same grounds that it opposed the assignment of Channel 57 to Tyler, Texas. See, *Report and Order*, 48 FR 56588, published December 15, 1983. Here, as in Tyler, Texas, KLMB argues that the petition for rule making was not supported by an adequate engineering showing. In both instances, KLMB noted that the showing consisted merely of a computer printout prepared by Edward M. Johnson and Associates ("Johnson") and failed to state the underlying assumption of the data or to show the preclusive effects of the proposed assignments. KLMB questioned Johnson's qualifications, referring to a history of submissions to the Commission which raised questions as to his qualifications and veracity. This history is said to call into question whether Rothchild's engineering submission complies with the Commission's technical rules.

4. In *Tyler, Texas, supra*, we stated that the assignment of Channel 60 met the minimum separation requirements of § 73.610 of the Commission's Rules and would provide Tyler with a city-grade signal. We therefore determined that the Commission's technical requirements had been met. In addition, we stated that the additional matters raised by KLMB concerning technical qualifications and veracity were not matters for consideration in a rule making proceeding.

5. As for the technical information submitted here, the above factors cited in *Tyler* are controlling. The proposed assignment in Longview meets the minimum separation requirements of § 73.610 and will also provide Longview with a city grade signal. Any additional matters raised regarding the technical sufficiency of the proposal are outside the scope of this proceeding and should be raised during the application stage.

6. KLMB also argues, as it did in *Tyler, Texas*, that Longview cannot support an additional full service commercial station in Longview. KLMB alleges that the petition lacks any claim of Longview's future growth. KLMB asserts that Rothchild has failed to demonstrate any need for a new full service television station at Longview, which receives numerous alternative services. As we noted in *Tyler*, this is also a matter that is more appropriately raised at the application stage.

7. Lastly, KLMB asserts that Johnson has attempted to induce potential or existing low power applicants, including Rothchild, to seek full-service channel assignments and has done so by misleading them with erroneous interpretations of the rules and failing to inform them that full-service stations are more extensively regulated than are low power stations. Accordingly, argues KLMB, this raises questions as to the credibility of Rothchild's expressions of intent to apply for a new channel at Longview, especially since Rothchild's previous interests were confined to low power applications. As we concluded in *Tyler*, the sufficiency of the application eventually submitted for a full service station is a matter that can best be determined at the application stage.

8. Accordingly, since the proposal can provide a second local television service, and pursuant to authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective January 15, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the community listed below:

City	Channel No.
Longview, TX	16+,[1] 51-, and 54+

[1] Reserved for land mobile use.

9. It is further ordered, That this proceeding is terminated.

10. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-30285 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 82-357; RM-4103]

FM Broadcast Station in Terrell Hills, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes Class C FM Channel 294 for Channel 292A in Terrell Hills, Texas, and modifies the license for FM Station KESI, Terrell Hills, Texas, in response to a Petition for Reconsideration filed by S.I.T. Broadcasting Corp.

EFFECTIVE DATE: January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Memorandum Opinion and Order

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Terrell Hills, Texas) BC Docket No. 82-357, RM-4103.

Adopted: October 29, 1984.

Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the Petition for Reconsideration of the *Report and Order*, 48 FR 34779, published August 1, 1983, which denied the proposal to substitute Class C FM Channel 294 for Channel 292A in Terrell Hills, Texas, and to modify the license of SIT Broadcasting Corporation ("petitioner") for FM Station KESI, Terrell Hills, accordingly. In the alternative, KESI requested temporary authority to operate on Channel 294 pending a comparative hearing on the channel's permanent allocation. An opposition was submitted by Laura Pryor ("Pryor"). petitioner replied to the opposition.

2. In the *Notice of Proposed Rule Making*, 48 FR 31016, published July 16, 1982, we proposed the substitution of channels at Terrell Hills and the modification of Station KESI's license to specify operation on Channel 294 in lieu of Channel 292A in Terrell Hills, Texas, as requested. However, we also stated that in conformity with Commission precedent, as expressed in *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976), should another interest in the assignment be shown, the proposed modification could not be made and the channel, if assigned, would be open to competing applications. Individual comments were filed by Leroy P. Muehlstein, David K. Bamberger and Laura Pryor, each expressing an interest in applying for operation on the channel, if it were allotted.

3. In the *Report and Order, supra*, we concluded that the license of Station KESI could not be modified to specify operation on Channel 294 without a comparative hearing to determine which of the applicants was best qualified to operate a station in the public interest. We rejected petitioner's contention that modification of its license without a comparative hearing would not be inconsistent with our established policy in *Cheyenne, Wyoming supra*. This contention was based on alleged interference problems to the signal of Station KESI from blocking effect and from cross modulation of Stations KVAR and KTFM, San Antonio, Texas.

4. In a recent supplement to SIT's petition for reconsideration, petitioner reports, and attaches letters stating that all previous expressions of interest in Class C Channel 294 that were filed by other parties, have been withdrawn. Consequently petitioner argues that consistent with our holding in *Cheyenne*, KESI's license modification can now be routinely granted.

5. In light of the fact that all previous expressions of interest have been withdrawn, we are now in a position to grant the substitution of Channel 294 for Channel 292A in Terrell Hills, Texas, and the modification.

6. In view of the above, it is ordered, That the Petition for Reconsideration, filed herein by SIT Broadcasting Corporation, is granted.

7. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective January 15, 1985, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to the following community:

City	Channel No.
Terrell Hills, TX	294

8. It is further ordered, That pursuant to section 316(a) of the Communications Act of 1934, as amended, the license of Station KESI-FM, Terrell Hills, Texas, is modified to specify operation on Channel 294, subject to the following conditions:

(a) At least 30 days before operating on Channel 294, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.301 of the Commission's Rules.

9. It is further ordered, That the Secretary shall send a copy of this *Order* by certified mail, return receipt requested, to: SIT Broadcasting Corporation, c/o Thomas J. Keller, Verner, Liipfert, Bernhard, & McPherson, 1660 L Street, NW., Suite 1000, Washington, D.C. 20009.

10. It is further ordered, That this proceeding is terminated.

11. For further information concerning this proceeding, contact Arthur D. Scrutchins, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-30284 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1123; RM-4520]

FM Broadcast Station in Garberville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes Class C Channel 284 for Channel 261A at Garberville, California, and modifies the license for Station KERG(FM) accordingly, in response to a Petition for Reconsideration filed by the licensee, Daniel J. Healy.

EFFECTIVE DATE: January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Memorandum Opinion and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Garberville, California); MM Docket 83–1123, RM–4520.

Adopted: October 29, 1984.
Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. In response to a request from Daniel J. Healy, the Commission adopted the *Report and Order*, 49 FR 23057, published June 4, 1984, which substituted Channel 284C2 for Channel 261A at Garberville, California, and modified the license for Station KERG(FM) to specify Channel 284C2. Healy has filed a Petition for Reconsideration requesting that the assignment be upgraded to a Class C channel (284) and his station's license be modified accordingly.

2. In his Petiton for Reconsideration, Healy argues that the Commission's action was a departure from what he sought. He contends that the *Notice* did not specify that a Class C2 channel would be assigned to Garberville. As a final issue, Healy argues that his station suffers serious and continuing coverage problems, noting (1) that his present antenna site on Pratt Mountain is the only practical higher elevation with electric power near his city of license and (2) that a Class C2 operation at the present location with a 900 W BRP will not be sufficient to provide a competitive signal, even in the city of license. Based on the arguments presented, and the fact that no one opposed the assignment, Healy urges the Commission to reconsider its earlier action.

3. In the *Notice*, we held that the future implementation of Docket 80–90 would provide for Class C2 channels (equivalent to a Class B facility) and would permit a power increase to 0.9 kW to correspond with the current antenna height of Station KERG.

4. In the *Report and Order*, we assigned a Class C2 channel based on petitioners stated need, his present tower and his concern for cost efficiency. However, we believe that the petitioner has provided substantive arguments in favor of a reconsideration of our earlier decision. Therefore, in the interest of insuring expanded service to meet the needs of the Garberville area, we shall substitute Class C Channel 284 for Channel 261A at Garberville, California. As for the modification of license for Station KERG(FM), no other parties expressed an interest in applying for a Class C channel in response to the *Notice*. Therefore, the modification can be granted.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communciations Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commisson's Rules, it is ordered, That effective January 15, 1985, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to the following community:

City	Channel No.
Garberville, CA	284

6. It is further ordered, That pursuant to section 316(a) of the Communications Act of 1934, as amended, the license of Station KERG(FM), Garberville, California, is modified to specify operation on Channel 284, subject to the following conditions:

(a) At least 30 days before operating on Channel 233, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.301 of the Commission's Rules.

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning the above, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules, Mass Media Bureau.

[FR Doc. 84–30287 Filed 11–16–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–12; RM–4608]

FM Broadcast Station in Hobbs, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 275 to Hobbs, New Mexico, as that community's third commercial FM service, at the request of Smith Family Radio, Inc.

EFFECTIVE DATE: January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Hobbs, New Mexico); MM Docket No. 84–12, RM–4608.

Adopted: October 29, 1984.
Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 3219, published January 26, 1984, proposing the assignment of Channel 275 to Hobbs, New Mexico, as that community's third commercial FM service. The Notice was adopted in response to a petition filed by Smith Family Radio, Inc. ("petitioner"). Petitioner failed to file timely comments or reply comments to the proposal.[1] Reply comments were filed by Noalmark Broadcasting Corporation ("Noalmark"), licensee of KYKK, Humble City, New Mexico, and KZOR–FM, Hobbs, New Mexico.

2. Since Hobbs, New Mexico, is located within 320 kilometers (199 miles) of the common U.S.-Mexican border, concurrence of the Mexican government has been obtained.

3. Noalmark states that the proceeding should be terminated without finalization of the proposed assignment to Hobbs because petitioner failed to file supporting comments or to restate its intention to apply for the channel, if assigned. However, petitioner has corrected the oversight of failing to restate its interest.

4. In view of petitioner's interest in applying for the proposed assignment and since Hobbs could receive its third commercial FM service, we believe that the public interest would be served by assigning Channel 275 to Hobbs, New Mexico. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

5. Accordingly, pursuant to the authority contained in sections 4(i),

[1] Petitioner's comments were filed late. Petitioner did not file a request for acceptance of the late-filed comments nor did it provide an explanation why they were filed late. However, we will accept the comments for the purpose of permitting the petitioner to reaffirm its interest in the proposed channel.

5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective January 15, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following city.

City	Channel No.
Hobbs, NM	231, 239, and 275.

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–30288 Filed 11–16–84; 8:45 am]

BILLING CODE 6712–01–M–

47 CFR Part 73

[MM Docket No. 83–1000; RM–4577]

TV Broadcast Station in Battle Creek, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns UHF Television Channel 43 to Battle Creek, Michigan; as its second channel assignment in response to a petition filed by Wolverine Broadcasting Co.

EFFECTIVE DATE: January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV Broadcast Stations (Battle Creek, Michigan); MM Docket No. 83–1000, RM–4577.

Adopted: October 29, 1984.
Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 48 FR 45438, published October 5, 1983, issued in response to a petition for rule making filed by Wolverine Broadcasting Company ("Wolverine") proposing to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, by allotting UHF Television Channel 43 to Battle Creek, Michigan, as its second channel assignment. In response to the *Notice*, Wolverine filed comments and restated its intention to apply for Channel 43 at Battle Creek. Channel 41, Inc., ("WUHQ") licensee of UHF Station WUHQ–TV Battle Creek, (Channel 41) filed opposing and reply comments.

2. In the *Notice*, we stated that UHF Channel 43 could be allotted to Battle Creek provided that a site restriction of 25.3 miles north is imposed to avoid short-spacing to Stations WSJV (Channel 28), Elkhart, Indiana, WUHQ–TV (Channel 41), Battle Creek, and unused Channel *58 in Ann Arbor, Michigan. We further stated that due to the large site restriction, Wolverine ("petitioner") was requested to make a showing that it could provide the requisite 80 dBu city grade signal to Battle Creek from the restricted area.

3. In its comments WUHQ notes that generally the Commission does not allocate UHF stations within six channels of each other to the same community. Citing *Sixth Report and Order*, 41 F.C.C. 148, at par. 175 (1952). Consequently, WUHQ contends that the requested assignment of Channel 43 to the same community would create intermodulation interference. WUHQ questions whether Wolverine can provide a city grade signal to Battle Creek and still conform to the 20 miles separation required between Channels 41 and 43. WUHQ further questions whether petitioner, as the licensee of an AM station in the same community, can also operate a local television station. See § 73.636 of the Commission's Rules.

4. In reply, WUHQ argues that Wolverine failed to provide the information required by the Commission concerning its ability to provide a city-grade signal over Battle Creek. WUHQ also notes that while Wolverine purports to maintain a 75 mile separation from its proposed station to Station WSJV-TV, Elkhart/South Bend, a map provided by Wolverine, indicates that the proposed site would be short spaced to WSJV-TV. Finally, WUHQ, argues that if Wolverine's request to establish a site restriction three miles east of Ann Arbor for Channel 58 were granted, Ann Arbor would be deprived of local service since the transmitter would be located somewhat closer to Detroit and a licensee would have a tendency to provide service aimed at Detroit.

5. As noted above, the *Notice* originally proposed a 25.3 mile site restriction for Channel 43 in order to avoid short spacing to Stations WSJV–TV (Channel 28) Elkhart, Indiana, WUHQ–TV (Channel 41), Battle Creek, and unused Channel *58 in Ann Arbor, Michigan. After a further staff review of the information submitted, we agree with Wolverine that a site restriction of 3 miles east of Ann Arbor for unused Channel *58 would reduce the original 25.3 mile site restriction for Channel 43 to 4.7 miles north of the city, thereby allowing the assignment of Channel 43 in conformity with the Commission's minimum distance requirements.

6. Contrary to WUHQ's arguments, the new site restriction should not change the orientation of a future station on Channel *58 from Ann Arbor to Detroit. There is no evidence that a station on Channel *58 would be inclined to serve Detroit (a city 40 miles away) as opposed to Ann Arbor, its community of license due to a 3 mile site restriction east of the city.

7. WUHQ's concern that the allotment of Channel 43 to Battle Creek might create intermodulation interference to Channel 41 is misplaced. The Commission has concluded that so long as the 20 mile separation is observed between UHF stations within six channels of each other, there should be no objectionable interference. See, *Sacramento, California*, 55 R.R. 2d 259 (1983). Therefore, as we have already noted, Channel 43 can be allotted to Battle Creek in compliance with the Commission's minimum spacing requirements. With respect to WUHQ's allegations regarding Wolverine's possible multiple ownership violations (Section 73.686), the Commission has previously held that an applicant's qualifications are not germane to an allocation proceeding but should be considered in the context of the application process. See *Caldwell, Ohio*, 46 R.R. 2d 1453 (1980) and *Billings, Montana*, 51 R.R. 2d 259 (1982). Further Note 1, § 73.636 permits the Commission to consider waiving the rule on a case by case basis. In view of the above, we believe the public would be benefitted by the assignment of Channel 43 to Battle Creek as its second television broadcast service.

8. Accordingly, pursuant to the authority contained in section 4(1), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective January 15, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is

amended with respect to the community listed below:

City	Channel No.
Battle Creek, MI	41+, and 43–

9. It is further ordered, That this proceeding is terminated.

10. For further information concerning the above, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–30289 Filed 11–16–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 83–1377]

Amendment to Classify Certain Changes in TV and FM Facilities; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the Commission's vote in the Report and Order in this proceeding, concerning an amendment to classify certain changes in TV and FM facilities, published in the **Federal Register** on August 15, 1984, (49 FR 32586). Commissioner Patrick's statement is included.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 632–6485.

Erratum

In the matter of revision of §§ 73.3571, 73.3572 and 73.3573 of the Commission's Rules; MM Docket No 83–1377.

Released: November 9, 1984.

The Report and Order, FCC 84–298, released August 10, 1984, in the above-entitled matter is corrected to indicate "Commissioner Patrick dissenting in part and issuing a separate statement" after the phrase BY THE COMMISSION:

William J. Tricarico,

Secretary, Federal Communications Commission.

Statement of Commissioner Patrick attached.

Separate Statement of Commissioner Dennis R. Patrick Dissenting In Part

In re: Matter of Revision of §§ 73.3571, 73.3572 and 73.3573 of the Commission's Rules (Docket No. 83–1377).

I generally support this item. Reclassifying various changes as minor, rather than major, is warranted where it expedites application processing without contravening applicable legal or public policy constraints. I disagree, however, that the reclassification of ownership changes in Paragraph 9 as minor is either appropriate under the law or desirable as a matter of policy.

The controlling law is, I believe, section 309(c)(1) of the Act. Section 309(c)(1) exempts from the statutory public notice and 30-day waiting period otherwise required under section 309(b) "any minor amendment of an application to which such subsection is applicable." No definition of minor is given in that subsection, however.

The majority's reliance on section 309(c)(2)(B) of the Act suggests that they have looked to that section for elucidation of the major/minor distinction.[1] Section 309(c)(2)(B) requires formal procedures, *i.e.*, public notice and a 30-day comment period, to accompany an application for transfer or assignment of a license, unless the transfer or assignment "does not involve a substantial change in ownership or control." [2] Although it is not clear that this particular substantiality test was also intended to apply to the license application stage, it is certainly within the Commission discretion to so apply it.

Using this guidepost, I must disagree with the majority's conclusion, however.

Using this guidepost, I must disagree with the majority's conclusion, however. The Commission has always looked at ownership and control of individual owners, not of a group of owners as a whole, in determining whether a substantial change in ownership or control has occurred. Paragraph 9 of the Report & Order, however, permits focus on whether the *group's* ownership stays at 50% of its original share. The result is that in certain circumstances there could be a "substantial change in *individual* ownership or control" that is nonetheless categorized as "minor."

This appears to be directly at odds with the definition drawn from section 309(c)(2)(B). For example, under Paragraph 9, if a broadcast applicant is owned 94% by A and 6% by B, B could become the 100% owner and the change would be considered "minor". A change from 6% to 100% ownership would in almost all cases represent a substantial change in both ownership and control.[3] Such a change would also seem to be anything but "minor," as that word is commonly understood.

Even if I did not have questions about the legal propriety of the majority's change, I would have policy problems with the new rule. I would not have had problems amending the Commission's rules to permit an applicant under these circumstances to keep its file number and place in the processing line. I believe, however, that we ought not to streamline our procedures at the expense of giving notice and opportunity to file petitions to deny to members of the public where changes may be substantial. As I have indicated, a change from 6% to 100% ownership, which will now be within the ambits of a "minor" change, seems anything but minor. Regardless of its label, such a change warrants local notice and the opportunity to comment. Thus, although I can agree with my fellow commissioners that no overriding purpose would be served by having an applicant lose its file number and place in the processing line, I simply cannot agree that no overriding purpose would ever be served by permitting the public to file petitions to deny against a 100% owner whom they might not have filed against as a 6% owner.

[4]For these reasons, I respectfully dissent to Paragraph 9 of the First Report & Order.

[FR Doc. 84–30258 Filed 11–16–84; 8:45 am]

BILLING CODE 6712–01–M

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[1] Section 309(c)(2)(B) controls applications for transfer or assignment of authorizations, not license applications per se. The latter are the subject of this rulemaking. No explanation for the majority's reliance on this section is offered.

[2] The notice and waiting period requirements were adopted in order to give interested parties the opportunity to learn of the pendency of an application in order to file a petition to deny before its grant. *See* H.R. Rep. No. 1800, 86th Cong., 2d Sess. 11 (1960); S. Rep. No. 690, 86th Cong., 1st Sess. 2–5 (1959).

[3] There may be specific cases where the facts lead us to a different conclusion. For example, in a recent case we concluded that because a minority owner already had *de facto* control, acquisition of additional shares did not constitute a substantial change in ownership or control. Memorandum Opinion and Order Approving Applications to Transfer Control of Metromedia, Inc., 55 RR 2d 1278, *recon. denied*, 56 RR 2d 1198 (1984). My objection to the rule change in Paragraph 9 is that it makes a general exception a rule without reference to specific facts and circumstances.

Proposed Rules

Federal Register
Vol. 49, No. 224
Monday, November 19, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: These proposed regulations would revoke the Schedule A excepted service appointing authority used by agencies to hire cooks at other than fixed locations, because an adequate supply of candidates for most positions is available through competitive examinations. Revocation would bring the positions filled under the Schedule A appointing authority into the competitive service and permit noncompetitive conversion of their incumbents to competitive appointments. Before the effective date, positions for which examining is still impracticable may be placed under other excepted appointing authorities. Persons serving in those positions may be converted to excepted appointments under those authorities.

DATE: Comments must be received on or before January 18, 1985.

ADDRESS: Written comments may be sent or delivered to Richard B. Post, Associate Director for Staffing, Office of Personnel Management, 1900 E Street, Room 6F08, NW, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, Staffing Policy Analysis Division, Staffing Group, (202) 632–6000.

SUPPLEMENTARY INFORMATION: The Schedule A authority, 5 CFR 213.3102(b), was established in 1905 for use by all agencies to fill cook positions when the Civil Service Commission found examining to be impracticable. It was reissued in 1939, without the requirement for prior approval of individual exceptions, but with a prohibition against use to fill positions in fixed locations. It has not been amended since.

The authority has been used by relatively few agencies that operate construction or survey camps and dredges. When the Schedule A authority was established, competitive examinations did not produce enough candidates for cook positions in those activities. The availability of competitive applicants for the postions has improved, and many of the positions are now filled in the competitive service. The only positions for which examining is still impracticable are those in survey, construction, or dredging operations which, because of their high mobility or remote location, are characterized by frequent turnover, and for which an adequate labor force can be recruited only by immediate gate hiring on a local basis. Agencies that have such activities have received specific Schedule A authorities for use in local hires. Cook positions could be filled under those authorities as well as under 5 CFR 213.3102(b).

Because there is no longer a general need to fill cook positions outside the competitive service, continuation of an excepted appointing authority available to all agencies is not appropriate. The Office of Personnel Management, therefore, proposes to revoke the Schedule A appointing authority in 5 CFR 213.3102(b), effective 30 days after publication of the final rule. On the effective date, persons serving in positions filled under that authority may be brought into the competitive service in accordance with the provisions of 5 CFR 316.702. Qualified employees may subsequently be converted to competitive appointments under the provision of 5 CFR 315.701. Before the effective date, agencies that have positions filled under 5 CFR 213.3102(b) should review those positions to identify any for which examining is still impracticable. If any agency has another excepted appointing authority available that would be appropriate for filling its cook positions, current employees may be converted to excepted appointments under that authority. Requests to establish specific excepted appointing authority for any positions not covered by current exceptions must be submitted in accordance with the provisions of 5 CFR Part 213 and the instructions contained in chapter 213 of the Federal Personnel Manual.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain employees in Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees.

U.S. Office of Personnel Management.
Donald J. Devine,
Director.

PART 213—[AMENDED]

Accordingly, OPM proposes to amend 5 CFR Part 213 as follows:

1. The authority for Part 213 reads as follows:

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 comp., p. 218)

§ 213.3102 [Amended]

2. Paragraph (b) of § 213.3102 is removed and reserved.

[FR Doc. 84–30191 Filed 11–16–84; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 831

Collection of Debts Due the Retirement Fund

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing to revise its regulations on the collection of debts due the Civil Service Retirement and Disability Fund (retirement fund). These proposed regulations include changes to reflect provisions of Pub. L. 97–365, the Debt Collection Act of 1982 (DCA), enacted October 25, 1982. They also reflect the recent revision of the Federal Claims Collection Standards (FCCS) published jointly by the Department of Justice and the General Accounting Office on March 9, 1984 (49 FR 8889). Section 5514 of title 5, United States Code, requires an agency to prescribe regulations for the offset of debts from salary, and the FCCS require an agency to prescribe regulations for

the administrative offset of debts from other payments.

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

ADDRESS: Send comments to Lucretia F. Myers, Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Eugene R. Littleford or Patricia A. Rochester, (202) 632–4634.

SUPPLEMENTARY INFORMATION: These proposed regulations would revise Subpart M and delete Subpart P of Part 831, Title 5, Code of Federal Regulations, to implement the concepts and procedures outlined in the DCA and FCCS for debts owed the retirement fund.

Specifically, the proposed regulations would expand the scope of administrative offset, permit OPM to assess interest, administrative costs, and penalty charges, and authorize reports to consumer reporting agencies or contracting with a collection agency when a debt is delinquent. These new features and changes would result in a more cost-effective debt collection program.

Collection and Enforcement

In the past, OPM's collection efforts primarily focused on offsetting the debt from annuity and workers' compensation benefit payments and, when offset was not available, demands for payment and litigation. The DCA requires that administrative offset be in the best interests of the United States, enhance the likelihood of collection, and be cost effective. The proposed regulations state OPM's policy to demand payment in one lump sum. However, it is OPM's experience that most individuals owing debts to the retirement fund are financially unable to pay the full amount in one payment. Therefore, the proposed regulations would provide for administrative offset as well as other forms of installment payments. These arrangements enhance OPM's ability to collect debts and are convenient for the debtor.

The proposed regulations would expand debt collection methods as follows:

a. When a current employee or member of the Armed Forces or Reserves owes a debt to the retirement fund, OPM may, with the assistance of the paying agency, offset the debt from the employee's or member's current pay.

b. When an employee is due a back pay award under 5 U.S.C. 5596, a debt due the retirement fund and caused by the same unjustified or unwarrented personnel action may be offset from the award. Upon separation, employees are usually eligible for either a refund of contributions or an annuity. When the separation is later found to be an unwarranted or unjustified personnel action, it will be reversed. This reversal cancels the entitlement to any payments made from the retirement fund because of the separation. To the extent money is available from a back pay award, it will be offset by the amount of the payments made from the retirement fund. Any portion of the debt that cannot be collected from the back pay award will be pursued under an alternative collection method.

c. A debt may be offset from other payments due the debtor from other agencies in accordance with the FCCS.

To strengthen enforcement of collections, the proposed regulations would provide for assessing interest, penalty fees, and administrative costs when a debt is delinquent. Also, OPM plans to report delinquent debts to a consumer reporting agency and contract with private sector collection agencies for collection of debts.

Exemptions

Under the proposed regulations, not all actions to withhold money from annuity payments would be processed by the procedures described in § 831.1304. Frequently, annuitants make elections requiring additional deductions from their annuities. In many cases, OPM cannot process these elections in time to adjust the annuity payment on the appropriate effective date. As a result, the adjustment is made retroactively. Since annuitants initiate these elections and enjoy the benefits, they know, or should know, that they are consenting to deductions from their annuities. By effecting an election, annuitants are deemed to consent to such retroactive adjustments. To avoid financial hardship to annuitants, though, OPM would process retroactive adjustments covering more than 120 days in accordance with the procedures described in § 831.1304.

To relieve any financial hardship for the annuitant, OPM routinely makes interim, estimated payments to applicants for annuity. Such estimated payments continue until required evidence is available for computing the actual rate of annuity. Since these payments are made with the understanding that they will be recovered from the actual, accrued annuity due at the time of final processing of the claim, the annuitant will be deemed to consent to the recovery. To avoid financial hardship on the annuitant, this exception would be limited to adjustments that do not exceed the amount of the first regular annuity payment.

Administrative Due Process

The due process requirements of the DCA and FCCS are, for the most part, the same as those previously described in Subpart M of 5 CFR Part 831. The proposed regulations in § 831.1304 describe the debtor's rights. Except for the two debt exemptions described above, these rights apply regardless of the method used to collect the debt.

In some cases, rights are available in addition to those described in § 831.1304. For example, delinquent debtors would also be notified of their rights under § 831.1307 before OPM makes a report to a consumer reporting agency. Also, employees and members of the Armed Forces or Reserves would on request be granted a hearing on the repayment schedule, if a hearing has not previously been provided under § 831.1304.

In 1980, the United States Court of Appeals for the Ninth Circuit, (*Shannon v. Civil Service Commission*, 621 F.2d 1030) affirmed a 1977 District Court decision (444 F. Supp. 354) and held that the language in 5 U.S.C. 8346(b) concerning waiver of overpaid retirement benefits required (1) that an opportunity for waiver consideration be offered before any recovery could begin; and (2) that the standards for waiver in section 8346(b), i.e., "fault" and "equity and good conscience," involve questions of credibility and veracity that can only be resolved through an oral administrative evidentiary hearing. In the meantime, the Civil Service Commission (CSC) had issued regulations in 1979 providing for evidentiary hearings on unfavorable CSC waiver decisions before recovery could begin.

The language of section 8346(b) was amended by the Civil Service Reform Act of 1978 (Pub. L. 95–454, 92 Stat. 1111 (October 13, 1978)), to substitute OPM for the previously existing CSC. In addition, the Reform Act established a separate and independent agency, the Merit System Protection Board (MSPB), to handle appeals from OPM decisions.

The MSPB also offers an evidentiary hearing in the course of its judgment of appeals from OPM decisions. So, under current regulations, both OPM and MSPB offer evidentiary hearings on cases involving waivers—a duplication of effort that is both wasteful and inefficient.

Furthermore, as a result of the separation of functions under the Reform Act (the CSC formerly handled both the initial decision and the appeal), OPM's decisions on waiver are not final decisions as were the decisions of the CSC under the pre-Reform Act version of the statute. So the OPM hearing is a delay in the final waiver decison without any corresponding benefit to either the debtor or the Government.

In addition, the DCA requires, in the case of offset from salary, that the hearing be conducted by an official outside the supervision and control of the head of the agency. Consequently, the proposed regulations would eliminate OPM's hearing and continue the provision for hearing before the MSPB.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations are on administrative practices that will affect only the Federal Government.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government emplyees, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Donald J. Devine,

Director.

PART 831—RETIREMENT

Accordingly, OPM proposes to amend 5 CFR Part 831 as follows:

1. Paragraph (b)(2) of § 831.109 is revised to read as follows:

§ 831.109 Initial decision and reconsideration.

* * * * *

(b) *Actions covered elsewhere.*

* * * * *

(2) A request for reconsideration of a decision to collect a debt will be made in accordance with § 831.1304(b).

* * * * *

2. Subpart M of Part 831 is revised to read as follows:

Subpart M—Collection of Debts

Sec.

Authority: 5 U.S.C. 8347(a).

Subpart M—Collection of Debts

§ 831.1301 Purpose.

This subpart prescribes procedures to be followed by the Office of Personnel Management (OPM), which are consistent with the Federal Claims Collection Standards (FCCS) (Chapter II of Title 4, Code of Federal Regulations), in the collection of debts owed to the Civil Service Retirement and Disability Fund.

§ 831.1302 Scope.

This subpart covers the collection of debts due the Civil Service Retirement Fund, with the exception of the collection of court-imposed judgments, amounts referred to the Department of Justice because of fraud, and amounts collected from back pay awards in accordance with § 550.805(e)(2) of this chapter.

§ 831.1303 Definitions.

For the purposes of this subpart:

"Additional charges" means interest, penalties, and/or administrative costs owed on a debt.

"Annuitant" means a retired employee or Member, spouse, widow, widower, or child receiving recurring benefits under the provisions of subchapter III, chapter 83 of title 5, United States Code.

"Compromise" is an adjustment of the total amount of the debt to be collected based upon the considerations established by the FCCS (4 CFR Part 103).

"Consumer reporting agency" has the meaning provided in 31 U.S.C. 3701(a)(3).

"Debt" means a payment of benefits to an individual in the absence of entitlement or in excess of the amount to which an individual is properly entitled.

"Delinquent" has the same meaning provided in 4 CFR 101.2(b).

"FCCS" means the Federal Claims Collection Standards (Chapter II of Title 4, Code of Federal Regulations).

"Offset" means to withhold the amount of a debt, or a portion of that amount, from one or more payments due the debtor. Offset also means the amount withheld in this manner.

"Reconsideration" is the process of reexamining the individual's liability for the debt based on:

(1) Proper application of law and regulation; and

(2) Correctness of the mathematical computation.

"Repayment schedule" means the amount of each payment and number of payments to be made to liquidate the debt as determined by OPM.

"Retirement fund" means the Civil Service Retirement and Disability Fund.

"Voluntary repayment agreement" means an alternative to offset that is agreed to by OPM and includes a repayment schedule.

"Waiver" is a decision not to recover a debt under authority of 5 U.S.C. 8346(b).

§ 831.1304 Processing.

(a) *Notice.* Except as provided in § 831.1305, OPM will, before starting collection, tell the debtor in writing—

(1) The reason for and the amount of the debt;

(2) The date on which the full payment is due;

(3) OPM's policy on interest, penalties, and administrative charges;

(4) If payment in full would create financial hardship and offset is available, the types of payment(s) to be offset, the repayment schedule, the right to request an adjustment in the repayment schedule and the right to request a voluntary repayment agreement in lieu of offset;

(5) The individual's right to inspect and/or receive a copy of the Government's records relating to the debt;

(6) The method and time period (30 calendar days) for requesting reconsideration, waiver, and/or compromise, and, in the case of offset, an adjustment to the repayment schedule;

(7) The standards used by OPM for determining entitlement to waiver;

(8) The right to an evidentiary hearing on a waiver request (if OPM's waiver decision finds the individual liable), in accordance with paragraph (c)(2) of this section; and

(9) The fact that a timely filing of a request for reconsideration, waiver and/or compromise, or a later timely appeal of a waiver denial to the Merit Systems Protection Board, will stop collection proceedings, unless: (i) Failure to take the offset would substantially prejudice the Government's ability to collect the debt; and (ii) the time before the payment is to be made does not reasonably permit the completion of these procedures.

(b) *Requests for reconsideration, waiver, and/or compromise.* (1) A request for reconsideration, waiver, and/or compromise must be postmarked or, if hand delivered, received within 30

calendar days of the date of the notice detailed in paragraph (a) of this section. OPM may extend the time limit for filing when individuals can prove that they were not notified of the time and were not otherwise aware of it, or that they were prevented by circumstances beyond their control from making the request within the time limit.

(2) When a request for reconsideration, waiver, and/or compromise covered by this paragraph is properly filed before the death of the debtor, it will be processed to completion unless the relief sought is nullified by the debtor's death.

(3) Individuals requesting reconsideration, waiver, and/or compromise will be given a full opportunity to present any pertinent information and documentation supporting their position.

(4) An individual's request for waiver will be evaluated on the basis of the standards set forth in Subpart N of this part. An individual's request for compromise will be evaluated on the basis of standards set forth in the FCCS (4 CFR Part 103).

(c) *Reconsideration, waiver, and/or compromise decisions.* (1) OPM's decision will be based upon the individual's written submissions, evidence of record, and other pertinent available information.

(2) After consideration of all pertinent information, a written decision will be issued. The decision will state the extent of the individual's liability, and, for waiver and compromise requests, whether the debt will be waived or compromised. If the individual is determined to be liable for all or a portion of the debt, the decision will reaffirm or modify the conditions for the collection previously proposed under § 831.1304(a). The decision will state the individual's right to appeal to the Merit Systems Protection Board as provided by § 1201.3 of the title, and, in the case of a denial of waiver, that a timely appeal will stop collection of the debt.

§831.1305 Collection of debts.

(a) *Means of collection.* Collection of a debt may be made by means of offset, under § 831.1306 or any other statutory provision providing for offset of money due the debtor from the Federal Government, or by referral to the Justice Department for litigation (§ 831.1309). Referral may also be made to a collection agency under the provisions of the FCCS.

(b) *Additional charges.* Interest, penalties, and administrative costs will be assessed on the debt in accordance with standards established in the FCCS at 4 CFR 102.13. Additional charges will be waived when required by the FCCS. In addition, such charges may be waived when OPM determines collection would be against equity and good conscience using the standards prescribed in §§ 831.1403 through 831.1405 of this part or when waiver would be in the best interest of the United States.

(c) *Collection in installments.* Whenever feasible, debts will be collected in one lump sum. However, when the debtor is financially unable to pay in one lump sum or fails to respond to a demand for full payment and offset is available, installment payments may be effected. The amount of the installment payments will be set in accordance with the criteria in 4 CFR 102.11.

(d) *Commencement of collection.* (1) Except as provided in paragraph (d)(2) of this section, collection will begin after the time limits for requesting further rights stated in § 831.1304(a)(6) expire or OPM has issued decisions on all timely requests for those rights, and the Merit Systems Protection Board has acted on any timely appeal of a waiver denial, unless (i) failure to make an offset would substantially prejudice the Government's ability to collect the debt; and (ii) the time before the payment is to be made does not reasonably permit the completion of the proceedings in § 832.1304 or litigation. When offset begins without completion of the administrative review process, these procedures will be completed promptly and amounts recovered by offset but later found not owned will be refunded promptly.

(2) The procedures identified in § 831.1304 will not be applied when the debt is caused by (i) a retroactive adjustment in the periodic rate of annuity or any deduction taken from annuity when the adjustment is a result of the annuitant's election of different entitlements under law, if the adjustment is made within 120 days of the effective date of the election; or (ii) interim, estimated payments made before the formal determination of entitlement to annuity, if the amount is recouped from the total annuity payable on the first day of the month following the last advance payment, or the date the formal determination is made, whichever is later.

§ 831.1306 Collection by Administrative offset.

(a) *Offset of retirement payments.* A debt may be collected in whole or in part from a lump-sum retirement payment or recurring annuity payments.

(b) *Offset from other payments.* (1) A debt may be offset from other payments due the debtor from other agencies in accordance with 4 CFR 102.3, except that offset from back pay awarded under the provisions of 5 U.S.C. 5596 (and 5 CFR 550.801 *et seq.*) will be made in accordance with § 550.805(e)(2) of this chapter.

(2) When the debtor is an employee, or a member of the Armed Forces or a reserve component of the Armed Forces, OPM may effect collection action by offset of the debtor's pay in accordance with 5 U.S.C. 5514. Due process described in § 831.1304 will apply. The questions of fact and liability, and entitlements to waiver or compromise determined through that process are deemed correct and will not be amended under salary offset procedures. When the debtor did not receive a hearing on the amount of offset under § 831.1304 and requests such hearing, one will be conducted in accordance with Subpart K, Part 550 of this chapter.

§ 831.1307 Use of consumer reporting agencies.

(a) *Notice.* If a debtor's response to the notice described in § 831.1304(a) does not result in payment in full, payment by offset, or payment in accordance with a voluntary repayment agreement or other repayment schedule acceptable to OPM, and the debtor's rights under § 831.1304 have been exhausted, OPM may report the debtor to a consumer reporting agency. In addition, a debtor's failure to make subsequent payments in accordance with a repayment schedule may result in a report to a consumer reporting agency. Before making a report to a consumer reporting agency, OPM will notify the debtor in writing that (1) the payment is overdue; (2) OPM intends, after 60 days, to make a report as described in paragraph (b) of this section to a consumer reporting agency; (3) the debtor's right to dispute the liability has been exhausted under § 831.1304; and (4) the debtor may suspend OPM action or referral by paying the debt in one lump sum, or making payments current under a repayment schedule.

(b) *Report.* Whenever a debtor's response to the notice described in paragraph (a) of this section fails to comply with paragraph (a)(4) of this section and 60 days have elapsed since the notice was mailed, OPM may report to a consumer reporting agency that an individual is responsible for an unpaid debt and provide the following information.

(1) The individual's name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual.

(2) The amount, status, and history of the debt.

(3) The fact that the debt arose in connection with the administration of the Civil Service Retirement System.

(c) *Subsequent reports.* OMP will undate its report to the consumer reporting agency whenever it has knowledge of events that substantially change the status or the amount of the liability.

§ 831.1308 Referral for litigation.

From time to time and in a manner consistent with the General Accounting Office's and the Justice Department's instruction, OPM will refer certain overpayments to the Justice Department for litigation. Referral for litigation will suspend processing under this subpart.

Subpart P—[Removed]

3. Subpart P is removed and reserved.

§§ 831.1601—831.1605 [Reserved]

[FR Doc. 84-30190 Filed 11-16-84; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 971

[Amdt. 1]

Lettuce Grown in South Texas; Amendment No. 1 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the continuing handling regulation § 971.322 to require city destinations on inspection certificates and release forms. It would help the committee identify markets that would respond most favorably to market development projects. The amendment would promote orderly marketing of lettuce by providing marketing information.

DATES: Comments due December 4, 1984.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250. Four copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447–2036.

SUPPLEMENTARY INFORMATION: This proposed rule had been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Marketing Agreement No. 144 and Order No. 971 regulate the handling of lettuce grown in designated counties in South Texas. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The South Texas Lettuce Committee, established under the order, is responsible for its local administration.

Because requirements under this program have been changed infrequently, in October 1981 the committee recommended, and the Secretary approved, a regulation which would continue in effect from marketing season to marketing season indefinitely unless modified, suspended or terminated by the Secretary upon recommendation submitted by the committee or other information available to the Secretary.

At its public organizational meeting in McAllen, Texas, on October 10, 1984, the committee recommended that the regulation be revised to require that city destinations be shown on inspection certificates and release forms.

In an effort to increase trade awareness of South Texas lettuce in various markets, funds have been allocated to continue promotional and marketing research. The committee believes that requiring city destinations on inspection certificates and release forms should help it to identify markets that would respond favorably to future market development projects.

Although the proposed regulation would be effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Fruit and Vegetable Division. The Department will evaluate committee recommendations and information submitted by the committee and other available information and determine whether modification, suspension or termination of the regulations on shipments of South Texas lettuce would tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 971

Marketing agreements and orders, Lettuce, Texas.

PART 971—LETTUCE GROWN IN SOUTH TEXAS

Section 971.322(c) (46 FR 57024) is hereby proposed to be revised as follows:

§ 971.322 Handling regulation.

* * * * *

(c) *Inspection.* (1) No handler shall handle lettuce unless such lettuce is inspected by the Texas-Federal Inspection Service and an appropriate inspection certificate or release form with city destinations listed has been issued for it, except when relieved of such requirement by paragraph (d) or (e) of this section.

* * * * *

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

Dated: November 14, 1984.

Thomas R. Clark,

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

[FR Doc. 84-30312 Filed 11-16-84; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 8

[Docket No. 84–36]

Assessment of Fees; National Banks; District of Columbia Banks

Correction

In FR Doc. 84–30073 beginning on page 45102 in the issue of Wednesday, November 14, 1984, make the following corrections:

1. On page 45104, in the second column, in Table 2, in the second entry of the third column, "$.700" should read "$1,700". The corrected table reads as follows:

TABLE 2—PROPOSAL FOR SEMI-ANNUAL ASSESSMENT SCHEDULE FOR JANUARY 1985

If the bank's total assets (consolidated domestic and foreign subsidiaries) are—			The semi-annual assessment is—	
Over— (million)	But not over— (million)	This amount—	Plus	Of excess over— (million)
0	$1.7	0	0.001000	0
$1.7	15	$1,700	.000125	$1.7
15	85	3,363	.000100	15
85	165	10,363	.000065	85
165	835	15,563	.000055	165
835	1,670	52,413	.000045	835
1,670	5,010	89,988	.000040	1,670
5,010	16,695	223,588	.000034	5,010
16,695	33,390	620,878	.000032	16,695
33,390		1,155,118	.000021	33,390

2. On page 45105, in Table 4, the column heading "$100,00" should read "$100,000".

§ 8.2 **[Corrected]**

3. Also on page 45105, in § 8.2(a), in the table, the last entry in columns one, two, and five should each have read "X_9" and in column three "Y_9". The corrected table reads as follows:

If the bank's total assets (consolidated domestic and foreign subsidiaries) are—		The semi-annual assessment is—		
Over— col. A (million)	to But not over— col. B (million)	This amount— col. C	Plus col. D	Of excess over— col. E (million)
$0	X_1$	0	.001000	0
X_1$	X_2$	Y_1$	.000125	X_1$
X_2$	X_3$	Y_2$	.000100	X_2$
X_3$	X_4$	Y_3$	.000070	X_3$
X_4$	X_5$	Y_4$	.000055	X_4$
X_5$	X_6$	Y_5$	.000045	X_5$
X_6$	X_7$	Y_6$	.000040	X_6$
X_7$	X_8$	Y_7$	.000035	X_7$
X_8$	X_9$	Y_8$	.000032	X_8$
X_9$		Y_9$	.000021	X_9$

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353 and 355

[Docket No. 41050-4150]

Antidumping and Countervailing Duties

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Import Administration invites proposals from the public on regulatory changes to implement the provisions of the Trade and Tariff Act of 1984 concerning the imposition of antidumping and countervailing duties and to make improvements in the current regulations concerning antidumping and countervailing duties.

DATE: Written comments should be received no later than December 21, 1984.

ADDRESS: Address written comments to Stephen J. Powell, Assistant General Counsel for Import Administration, Room H3622, U.S. Department of Commerce, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The Department of Commerce is preparing to revise the regulations in 19 CFR Parts 353 and 355 concerning imposition of antidumping and countervailing duties. The revisions will implement amendments to title VII of the Tariff Act of 1930, as amended, made by title VI of the Trade and Tariff Act of 1984 (Pub. L. 98–573; October 30, 1984) and, as appropriate, will modify the regulations for the purpose of improving administrative efficiency and codifying existing administrative practices.

The Department is issuing this advance notice of proposed rulemaking to enable the public to offer written suggestions for the proposed rule. The formal notice of proposed rulemaking is expected to be published in February 1984, followed by an additional period for comments by the public.

Authority: 5 U.S.C. 301; 19 U.S.C. 1303 and 1671–1677g, as amended by the Trade and Tariff Act of 1984 (Title VI of Pub. L. 98–573; October 30, 1984).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-30256 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

[Docket No. 79P-0197]

New Animal Drug Requirements for Medicated Free-Choice Feeds

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the new animal drug requirements for medicated blocks to revise the approval requirements for use of new animal drugs in medicated blocks and other medicated free-choice feed products. The proposal is based on FDA's evaluation of the current regulatory requirements in light of a citizen petition filed jointly by the American Feed Manufacturers Association (AFMA) and the Animal Health Institute (AHI). The proposal would add a new optional method, within the framwork of existing requirements, for submitting data to the agency. It would not impose additional requirements.

DATE: Written comments on or before January 18, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard P. Lehmann, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3134.

SUPPLEMENTARY INFORMATION: In a citizen petition dated June 6, 1979, AFMA and AHI requested that FDA regulate medicated blocks and similar articles as medicated feeds rather than as new animal drugs. By letter dated March 12, 1980, FDA denied the citizen petition. On May 23, 1980, AFMA and AHI petitioned for reconsideration. After reconsidering the matter, FDA is issuing this proposal to grant the substance of the relief requested.

AFMA and AHI asked FDA to recognize that medicated block, liquid feed supplements, and similar "free-choice" articles are, under the provisions of the Federal Food, Drug, and Cosmetic Act (the act), "animal feeds bearing or containing new animal drugs" rather than "new animal drugs" and thus should be regulated as medicated feeds.

Section 510.455 (21 CFR 510.455) states that, in view of questions about the safety and effectiveness of drugs administered in medicated blocks, medicated blocks constitute new animal drugs. The petition contended that the agency has no legal authority to regulate medicated blocks under section 512(b) of the act (21 U.S.C. 360b(b)). It stated that a feedblock that does not contain medication meets the statutory definition of "animal feed" under section 201(x) of the act (21 U.S.C. 321(x)) because the blocks are "intended for use as a substantial source of nutrients in the diet of the animal," even if not intended to be the sole ration. Under section 201(w) of the act, a new animal drug includes drugs intended for use in feed, but does not include the animal feed. Thus, the petition contended that only the drug substance and not the entire medicated feedblock could be a "new animal drug."

The petition suggested specific approval requirements for medicated blocks and other medicated free-choice feeds under section 512(m) of the act. It further suggested eliminating the requirement of a new animal drug application (NADA) under section 512(b) of the act for the finished feed, while retaining this requirement for the drug substance. The petition recognized that use of medicated free-choice feeds pose questions not posed by other medicated feeds about composition of the feed and stability and consumption of the drug product in the animal feed. It stated, however, that the information necessary to respond to these questions could be submitted in medicated feed applications and that drug sponsors and feed manufacturers are willing to provide those data. The petition stated that the drug manufacturer and medicated feed applicant would each supply some of the data for each particular type of final formulation, demonstrating that a safe and effective dose of the drug would be provided by that particular free-choice product, and suggested the use of master files to permit each manufacturer to retain the confidentiality of its data.

The agency has reconsidered the petition. Although FDA continues to believe that in light of questions about safety and effectiveness it does have authority to regulate medicated blocks under section 512(b) of the act, it has concluded that the revisions suggested by AFMA and AHI would simplify the approval process in a manner consistent with the act and regulations. Accordingly, FDA proposes to grant in substance the relief sought.

The proposal set forth below would give an additional option to a drug sponsor. The existing regulation now allows two options. A drug sponsor may submit an NADA for a drug amenable to free-choice administration as a dosage form product under 21 CFR Part 520. Such an approved NADA would not provide a basis for the approval of medicated feed applications.

Alternatively, a sponsor may submit an NADA or supplemental NADA to provide for the manufacture of a finished free-choice feed under 21 CFR Part 558. Such supplemental NADA's are to contain safety and effectiveness data, including consumption and stability data, regarding free-choice administration of the new animal drug in specific products. These data can be generated and submitted by the drug manufacturer. The formula for the product is then published under 21 CFR Part 558 and provides a basis for approval of medicated feed applications that conform to the formula. The manufacturer of a free-choice feed product can also generate some or all of these data. In that case, the data can be incorporated into the supplemental NADA by reference to a master file submitted by the free-choice feed manufacturer.

The new option provides for the submission of data in a master file by a free-choice feed manufacturer as previously described. However, individual free-choice product formulations and product-specific data then would appear only in the master file of the appropriate feed manufacturer and would remain as confidential proprietary information belonging to that manufacturer.

Following approval of the NADA or initial supplemental NADA demonstrating that a new animal drug is suitable for free-choice administration in a particular product, a regulation or an amendment to an existing regulation in Part 558 would be published providing for such use. The regulation would state that free-choice administration of the new animal drug would be limited to specific uses in products covered by approved supplemental NADA's. A statement that the drug is approved for use only in specific free-choice products would be published as a part of the regulation.

A medicated feed application submitted for a free-choice product would have to contain, in relevant part, the exact formula of the product to be manufactured. It would be approved if (1) the formula is the same as the one for which acceptable data have been submitted in a master file by the medicated feed applicant, and use of the new animal drug in the formula was approved in a supplemental NADA that references the master file; or (2) the medicated feed applicant has provided written authority to reference a master file that has acceptable data for the formula in question and use of the new animal drug in the formula was approved in a supplemental NADA that references the master file.

Compared with the existing regulation, the proposal would provide greater flexibility to medicated block manufacturers. Although the existing regulation gives the new animal drug manufacturer the option of submitting an NADA for the manufacture of a medicated premix for the subsequent manufacture of a medicated block, in its Guidelines for the Manufacture and Control of Medicated Blocks issued January 1979, FDA's Center for Veterinary Medicine interpreted § 510.455 as requiring the publication of the exact formula of the finished medicated block. AFMA and AHI contend that manufacturers of medicated blocks need to protect the confidentiality of their data; otherwise, manufacturers will have no incentive to develop such data. Under the proposal, these data could remain as proprietary information of the finished medicated feed manufacturer.

FDA is concerned that variations in the formula of free-choice products may have an effect on their consumption and thus on the amount of drug consumed. If a drug product has been shown to be safe and effective for free-choice administration at a given level or a range of levels (usually this would be accomplished by the drug sponsor), approval for use in a free-choice product having a different formulation could be obtained by demonstrating that the new formulation is consumed at a rate that is consistent with the original approval and that the drug is stable in the new formulation. This approval would be accomplished, as described above, by filing a supplemental NADA providing for the free-choice administration of the new animal drug in the new formulation.

Section 510.455 now covers only medicated blocks. The proposal would also provide for other methods for free-choice administration, such as mineral mixes and liquid feed tank supplements ("lick tank" supplements) containing one or more animal drugs. The manufacture of such products will become subject to the current good manufacturing practice regulations for medicated feeds. In addition, the current regulation includes in paragraph (e) certain transitional provisions including time frames for the submission of information and data which have since expired. Therefore, the provisions of this paragraph are removed.

The petition asked FDA to revoke its existing Guidelines for the Manufacture and Control of Medicated Blocks and to adopt new guidelines suggested in the petition. If the proposal is adopted as a final rule, FDA will at that time consider adopting revised guidelines.

The agency has determined pursuant to 21 CFR 25.24(b)(12) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or comulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with Executive Order 12291, the economic effects of this proposal have been carefully analyzed, and it has been determined that the

proposed rule is not a major rule as defined by that Order. The basis for this determination is that the proposal would not impose any additional requirements for approval of new animal drugs for medicated free-choice feeds containing new animal drugs. It would only provide for a new optional method for submitting and referencing data.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal would be to reduce regulatory burdens currently affecting both large and small businesses. FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

Paperwork Reduction Act of 1980

Section 510.455(e) of this proposed rule contains collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Bruce Artim.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

PART 510—NEW ANIMAL DRUGS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 510 be amended by revising § 510.455, to read as follows:

§ 510.455 New animal drug requirements regarding free-choice administration in feeds.

(a) For the purpose of this section, free-choice administration of animal drugs in feeds involves feeds that are placed in feeding or grazing areas and are not intended to be consumed fully at a single feeding or to constitute the entire diet of the animal. Such methods of administering drugs include medicated blocks (agglomerated feed compressed into a solid mass and cohesive enough ot hold its form), mineral mixes, and liquid feed tank supplements ("lick tank" supplements) containing one or more animal drugs. The manufacture of medicated free-choice feeds is subject to the current good manufacturing practice regulations for medicated feeds.

(b) The Food and Drug Administration has concluded that there are questions about the safety and effectiveness of drugs when administered free-choice in feeds. Therefore, such methods of administration cause the drugs so administered to constitute new animal drugs, for which approved new animal drug applications (NADA's) are required. (See § 510.3(i).)

(c) An NADA or supplemental NADA for products for free-choice feeding submitted for approval under section 512(b) of the act should provide for:

(1) The manufacture of a finished product for the free-choice administration of a new animal drug. Such an approval will not provide a basis upon which an application can be approved under section 512(m) of the act; or

(2) The manufacture of a new animal drug premix for use in the subsequent manufacture of a free-choice medicated animal feed. The approved NADA will provide a basis upon which an application can be approved under section 512(m) of the act. Data for a specific free-choice product may, if desired, be generated and submitted to the Food and Drug Administration by the manufacturer of the free-choice feed in the form of a master file, which can be referenced in the NADA or supplemental NADA submitted by the new animal drug sponsor.

(d) Approval of the NADA or supplemental NADA submitted under paragraph (c) of this section will be reflected in a regulation in Part 558 of this chapter published under section 512(i) of this act. The regulation will either state the formulation of the approved free-choice product or specify the specific free-choice administration products in which the drug is approved for use. If the approval is for a premix, the regulation in Part 558 of this chapter will indicate that each use of the premix in a free-choice product must be the subject of an approved supplemental NADA.

(e) An application under 512(m) of the act to provide for manufacture of a specific free-choice feed from an approved premix may be submitted and will be approved if, in addition to the information required by the medicated feed application, it includes a reference to the exact formula of the product to be manufactured as follows:

(1) The formula is the same as the one published in the new animal drug regulation; or

(2) The data in a master file have been referenced in an NADA or supplemental NADA; and

(3) Use of the premix in the specific formulation has been approved on the basis that:

(i) The formula is the same as the one for which acceptable data have been submitted in a master file by the medicated feed applicant; or

(ii) The medicated feed applicant has provided written authority to reference a master file that has acceptable data for the formula in question.

Interested persons may, on or before January 18, 1985, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 11, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84–30197 Filed 11–16–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816, 817 and 855

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Use of Explosives; General Requirements; Certification of Blasters in Federal Program States and on Indian Lands

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

ACTION: Extension of Public Comment Period, Announcement of a Public Meeting and Public Hearing, Cancellation of Public Hearings.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) announces a public meeting on November 26, 1984 in Hearing Room C, House Office Building, 16th & Water

Streets, Olympia, Washington at 3:00 p.m., Pacific Standard Time (PST), and a public hearing on November 27, 1984 in Hearing Room C, House Office Building, 16th & Water Streets, Olympia, Washington at 10:00 a.m., PST, to receive testimony on OSM's proposed blaster certification program.

The proceedings at both the public meeting and the public hearing will be transcribed and placed in the administrative record. OSM also extends the comment period on the proposed rule until November 28, 1984. OSM cancels previously announced public hearings in Washington, Denver and Knoxville.

DATES: The public meeting will be held on November 26, 1984 at 3:00 p.m., Pacific Standard Time (PST). The public hearing will be held on November 27, 1984 at 10:00 a.m., PST. The comment period on the proposed rule is extended to 5:00 p.m. PST on November 29, 1984.

ADDRESS: Written Comments must be mailed to:

Administrative Record Room (Blaster Certification), Office of Surface Mining, P.O. Box 1420, Mills, Wyoming 82644

or hand-delivered to:

Office of Surface Mining, Freden Building, 935 Pendall Boulevard, Mills, Wyoming 82244.

FOR FURTHER INFORMATION CONTACT: James Kress, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: (202) 343-5361 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: On September 11, 1984, OSM published the proposed rule "Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Use of Explosives; General Requirements; Certification of Blasters in Federal Program States and on Indian Lands." 49 FR 35714. This rule proposes to revise 30 CFR Parts 816 and 817 and to add a new rule at 30 CFR Part 855. The proposed rule is needed to comply with 30 CFR 850.12, which requires that each regulatory authority promulgate a blaster certification program for surface coal mining operations.

The proposed rule included several erroneous dates which were corrected in a notice published September 25, 1984 (49 FR 37641). The corrected notice established a comment period closing November 27, 1984, and announced public hearings in Washington, D.C., Denver, and Knoxville. The notice also provided that OSM would hold hearings in nine additional States upon request, and would cancel any among the Washington, Denver and Knoxville hearings for which no requests to testify were received.

OSM received no request by the stated deadline to testify at the Washington, Denver, or Knoxville hearings. Therefore, all three are cancelled.

The Washington Irrigation and Development Company (WIDCO) requested both a public hearing and a public meeting in Washington. OSM will hold the public meeting at 3:00 p.m., PST, on November 26, 1984, in Hearing Room C, House Office Building, 16th & Water Streets, Olympia, Washington. OSM will hold the public hearing at the same location begining at 10:00 a.m., PST, on November 27, 1984. The proceedings at both the public meeting and the public hearing will be transcribed and placed in the administrative record for this rulemaking.

OSM received no requests to hold public hearings in the other eight States; thus, none will be held.

In order for all persons to have the opportunity to submit comments, and to enable OSM to give public notice of the Olympia hearing required under 30 CFR 736.12(b), OSM is extending the comment period on the proposed rule until 5:00 p.m., PST, on November 29, 1984.

Dated: November 13, 1984.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 84-30215 Filed 11-16-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-84-05]

Drawbridge Operation Regulations: Northeast River, Castle Hayne, NC

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Seaboard System Railroad, the Coast Guard is considering amending the regulations that govern the operation of the drawbridge across the Northeast River, mile 27.0 at Castle Hayne, North Carolina. The request is for 4 hours advance notice for draw openings at all times. This proposal is being made because of a significant decrease in draw openings over the past two years. The closing of a cement plant upstream of the bridge is the primary factor in the lack of demand for draw openings. In 1982 the bridge opened 186 times, in 1983 38 times, and it opened only 10 times between January and August of 1984. Approval of this request would allow the railroad to remove its bridge tender from the current 40 hour weekly attendance and probably still provide for the reasonable needs of navigation.

DATE: Comments must be received by December 19, 1984.

ADDRESS: Comments, if any, will be available for review from 8 A.M. to 4:30 P.M. Monday through Friday at Room 609, Fifth Coast Guard District, 431 Crawford Street, Portsmouth Virginia, 23705-5000.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify this proposed rule by Docket Number or bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The rule may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests are received and it is determined that an opportunity to make oral presentations will aid the rulemaking process.

Drafting Information: The drafter of this notice is W.J. Creed, Project Officer.

Discussion of Proposed Rule: The railroad made the request to open the bridge on 4 hours advance notice because of a significant decrease in water traffic over the past two years. The main reason for the decrease in water traffic is closing or a cement plant that was located upstream of the bridge. This cement plant has been permanently closed and the cement producing machinery has been dismantled and sent to an inland site. Therefore, the prospect for this cement plant reopening is nil. This fact, together with the fact that the bridge has opened only 10 times over the first eight months of 1984 gives rise toward a conclusion that the needs of navigation can be reasonably met by opening the bridge on 4 hours advance notice.

Economic Assessment and Certification: This proposed regulation has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. In

addition, the proposed regulation is considered to be nonsignificant in accordance with quidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation of the proposal has not been conducted because the expected economic impact is so minimal as to not warrant the evaluation. In accordance with section 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is also certified that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—[AMENDED]

Proposed Regulation: In consideration of the foregoing, the Coast Guard proposes to revise § 117.829 of Title 33, Code of Federal Regulations to read as follows:

§ 117.829 Northeast River.

The draw of the Seaboard System Railroad bridge across the Northeast River, mile 27.0, at Castle Hayne, North Carolina shall open signal if at least 4 hours notice is given.

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46 (c)(5); 33 CFR 1.05–1(g)(3))

Dated: October 30, 1984.

James C. Irwin,

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

[FR Doc. 84–30271 Filed 11–16–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 126 and 160

[CGD 84–039]

Radioactive Materials

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal solicits public comment on a change to regulations defining the terms "cargo of particular hazard" and "certain dangerous cargo". This action is necessary because the term "large quantity" radioactive shipment used in these definitions was deleted in a recent change to 49 CFR Parts 171 through 178. The intended effect of the proposed regulations is to substitute the new term "highway route controlled quantity" for the obsolete term "large quantity".

DATE: Comments must be submitted on or before January 3, 1985.

ADDRESSES: Comments should be mailed to Commandant (G–CMC) (CGD 84–039), U.S. Coast Guard, Washington, D.C. 20593. The comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G–CMC), Room 2110, Coast Guard Headquarters Building, 2100 2nd St. SW., Washington, D.C. Normal working hours are between 7:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Copies of the environmental assessment may also be inspected or copied at that address or obtained by a written request to the same address. To expedite processing, it is asked that requests for the environmental assessment not be included in the comments submitted.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael V. Franchini, Project Manager, Office of Marine Environment and Systems, telephone 202–426–1450. Normal working hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 84–039) and the specific proposals of this notice to which their comments apply, and give reasons for each comment. If acknowledgement is desired, a self-addressed, stamped post card should be enclosed. All comments received before expiration of the comment period will be considered before final action is taken on this proposal.

Drafting Information

The principal persons involved in drafting this proposed rulemaking are Lieutenant Ellis H. Davison, II, Project Manager, of the Office of Marine Environment and Systems, and Mr. Michael N. Mervin, Project Counsel, of the Office of Chief Counsel.

Background

On March 10, 1983 the Research and Special Programs Administration (RSPA) of the Department of Transportation published a final rule in the **Federal Register** (48 FR 10218) making a number of changes in the regulations governing shipment of radioactive materials. These changes were intended to maintain consistency between U.S. regulations and those of the International Atomic Energy Agency. Regulations contained in 49 CFR Parts 173 and 176 apply to marine-mode transportation of hazardous materials, and are cross-referenced in the Coast Guard's definitions of "cargo of particular hazard" (33 CFR 126.10) and "certain dangerous cargo" (33 CFR 160.203).

Two changes in 49 CFR Part 173 affect 33 CFR 126.10(c) and 33 CFR 160.203. The "Fissile Class III" package classification now appears in 49 CFR 173.455(a)(3), rather than 49 CFR 173.389(a)(3). In addition to renumbering the section, there are minor editorial changes.

The other change, from the term "large quantity" to "highway route controlled quantity", is a change in substance as well as terminology. Under the previous regulatory scheme the "large quantity" classification entailed additional packaging and handling requirements for radioactive materials. The use of operational controls has essentially been abandoned in the U.S. as well as world-wide. The package itself must be capable of maintaining its integrity without human intervention. The only remaining use for the term "large quantity" involved rules governing highway routing. For these reasons the term was changed to "highway route controlled". In addition, the technical classification system for radionuclides used previously for "large quantity", the "transport group" system, was changed to the "A_1/A_2" system for the new "highway route controlled quantity". The A_1/A_2 criteria were selected to duplicate the previous criteria as closely as practicable while establishing a more uniform level of safety.

The Coast Guard proposes retaining highway route controlled quantities of radioactive materials as cargoes of particular hazard and certain dangerous cargoes. Ports are frequently near major population centers and the restrictions applied to cargoes of particular hazard and certain dangerous cargoes provide a margin of safety similar to RSPA highway route restrictions.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that a full regulatory evaluation is unnecessary. RSPA expects (48 FR 10221) that some "special form radioactive materials" (Defined in 49 CFR 173.403(z)), previously large quantity radioactive materials, will not be highway route controlled quantity radioactive materials. These materials therefore would not be cargoes of particular hazard and certain dangerous

cargoes under the proposed rule. RSPA further expects that some normal form alpha-emitting nuclides that were not previously large quantity radioactive materials will be highway route controlled quantity radioactive materials. These materials would become cargoes of particular hazard and certain dangerous cargoes under the proposed rule. The Coast Guard expects that the net result of these countervailing effects would be either a small net cost reduction or a small net cost increase under the proposed rules, and, in any case, a minimal economic impact.

Regulatory Flexibility Act Certification

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities. As noted above, the changes would be countervailing and the net economic impact of the proposed regulations on waterfront facilities, both "large" and "small", would be minimal.

Environmental Assessment

Because of the small volume of radioactive materials shipped and the rarity of incidents involving radioactive material, the proposed change would have little or no effect on the environment. According to the U.S. Army Corps of Engineers report, *Waterborne Commerce of the United States,* radioactive materials accounted for 531,600 of the 20,111,500,000 short tons, or .003%, of cargo shipped by water in the U.S. between 1971 and 1981. They accounted for .06% of the 851,585,415 tons of chemicals over this period. For the same period, RSPA's Hazardous Materials Incident Reporting System (HMIRS) shows two incidents involving radioactive materials out of the 257 involving waterborne transportation of hazardous materials, of which one occurred in the United States.

These incidents involved a total of 3 pounds of radioactive materials, or .00006% of the approximately 4,890,000 pounds of hazardous materials involved in incidents reported in the HMIRS over that period. Although there is not enough data for any kind of statistical significance, the proportion of radioactive materials spilled, 1,000 times less than the proportion of radioactive materials shipped, appears to indicate that the previous regulatory system functioned well. The proposed action would be an improvement to this system.

An environmental assessment and a Finding of No Significant Impact have been prepared and are available as detailed under **ADDRESSES** above.

List of Subjects

33 CFR Part 126

Hazardous materials transportation, Harbors, Cargo vessels, Marine safety.

33 CFR Part 160

Hazardous materials transportation, Harbors, Cargo vessels, Marine safety, Navigation (water).

PART 126—[AMENDED]

In consideration of the preceding, it is proposed to amend Chapter I, Title 33 of the Code of Federal Regulations as follows:

1. By revising § 126.10(c) of Subchapter L to read as follows:

§ 126.10 Cargo of particular hazard.

* * * * *

(c) Highway route controlled quantity radioactive material, as defined in 49 CFR 173.403(l), or Fissile Class III shipments of fissile radioactive material, as defined in 49 CFR 173.455(a)(3).

* * * * *

PART 160—[AMENDED]

2. By revising § 160.203(c) of Subchapter P to read as follows:

§ 160.203 Definitions.

* * * * *

(c) Highway route controlled quantity radioactive material, as defined in 49 CFR 173.403(l), or Fissile Class III shipments of fissile radioactive material, as defined in 49 CFR 173.455(a)(3).

* * * * *

(33 U.S.C. 1225, 1231; 49 CFR 1.46(n)(4))

Dated: November 13, 1984.

J.W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 84-30273 Filed 11-16-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[OPTS-820040; TSH-FRL 2584-2]

Chemical Information Rules; Additional Automatic Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Toxic Substances Control Act section 8(a) Preliminary Assessment Information rule. The rule currently provides that all chemicals and mixtures designated by the Interagency Testing Committee (ITC) for testing consideration by the EPA within 12 months will be made subject to reporting by their manufacturers under the rule without separate proposal and comment. Chemicals are added to the rule by the Agency at the same time the ITC report is published. The amendment being proposed today would extend this automatic reporting provision to include those chemicals recommended by the ITC but not designated for action by the Agency within 12 months.

DATE: Comments on this proposal must be submitted on or before January 18, 1985.

ADDRESS: Written comments must bear the document control number OPTS-82004O. Submit an original plus two copies to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460

All written comments filed under this notice will be available for public inspection in Rm. E-107 at the address given above from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

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

SUPPLEMENTARY INFORMATION

I. Introduction

The Preliminary Assessment Information rule, issued by EPA and published in the **Federal Register** of June 22, 1982 (47 FR 26992), requires chemical manufacturers to complete EPA Form No. 7710-35 on selected chemicals and to submit the reports to the Agency. The rule is contained in 40 CFR Part 712. Form No. 7710-35 requires that manufacturers report general production, use and exposure information on chemicals listed in 40 CFR 712.30. On May 11, 1983 (48 FR 21294), the Agency amended this rule to provide for the addition to the rule's reporting requirements, without additional proposal and comment, of those chemical substances and mixtures designated for 12-month Agency response by the Interagency Testing Committee. Upon receipt of each ITC report, the Agency will issue a regulation adding the chemicals to 40 CFR 712.30 and requiring the submission of EPA Form No. 7710-35 on the

designated substances. Manufacturers must report within 90 days of the publication of each regulation.

The Agency is proposing today that chemicals recommended by the ITC but not designated for 12-month response also be made subject to the Preliminary Assessment Information rule without individual proposal and comment.

At this time, the Agency is also proposing similar automatic reporting requirements for non-designated ITC recommendations under the TSCA section 8(d) Health and Safety Data Reporting rule. Under that rule, persons are required to submit unpublished health and safety studies on chemical substances and designated mixtures which are listed in 40 CFR 716.17.

II. Need for Automatic Reporting

Within one year after the ITC designates a chemical substance or mixture for testing, EPA must initiate rulemaking to require testing under section 4 of TSCA or publish its reasons for not initiating rulemaking. The Agency needs preliminary assessment information to supplement available data for evaluating the need and basis for requiring additional testing. Further, this information is needed by the Agency in evaluating existing or future test data on the chemical by providing a preliminary basis for evaluating the likelihood that human or environmental exposures may achieve levels found to cause adverse effects in tests.

The Agency needs the preliminary assessment information quickly for designated chemicals in order to meet the statutorily mandated 12-month decision point. For this reason, the Agency issued the amendment, which was published in the **Federal Register** of May 11, 1983 (48 FR 21294), providing for addition to the rule without individual proposal and comment all chemicals designated by the ITC for 12-month response by the Agency.

During the later stages of development of that amendment, the ITC in its Eleventh Report added to its priority list six substances but did not designate them for EPA response within one year. This was the first time the ITC had recommended substances without designating them for a 12-month response period. The previously proposed amendment for automatic reporting on designated substances did discuss the possibility of automatic reporting for substances recommended but not designated for 12-month response. The Agency is now proposing for comment the automatic addition to the rule of recommended (non-designated) substances.

The Agency believes that automatic addition of ITC chemical substances and mixtures that are recommended but not designated by the ITC to the Preliminary Assessment Information rule will benefit both industry and EPA and will provide valuable information to the Agency in a timely manner.

III. Rationale for Automatic Reporting

A. Efficiency

In the past, the ITC has issued their reports containing designated substances on a regular and predictable time schedule which allows companies to plan their reporting activities for certain times of the year. Similarly, EPA can plan resource allocations for the processing and analysis of these reports when they are received.

Although non-designated chemicals may be included in future ITC reports along with designated chemicals, reporting by companies to the Agency may not occur at the same time, if EPA decides to propose reporting requirements for these substances, receive comment, and then promulgate a separate rule amendment. That is, at the time the ITC issues a report, the Agency will simultaneously add the designated chemicals to the final 8(a) rule, but only propose the non-designated chemicals for reporting. Thus, for one ITC report which contains both designated and non-designated chemicals; industry would be reporting at two different times; coincident with the ITC report publication for the designated chemicals and later for the non-designated chemicals. Since the Preliminary Assessment Information rule asks for the most current data when reporting, if a manufacturer decided to collect data for both the designated and non-designated chemicals at the same time, there is a possibility that the non-designated information could be outdated by the time reporting was required for those chemicals. Assuming that the ITC continues to recommend designated and non-designated chemicals twice a year, industry would have to plan for four data collection and reporting periods per year.

Reporting on designated and non-designated chemicals at the same time may save companies some start-up costs. Fixed costs are estimated to account for approximately half of the reporting cost for companies submitting Preliminary Assessment Information Reports (EPA Form No. 7710-35). (See preamble to the Preliminary Assessment Information rule, 47 FR 26992). One part of these fixed costs is associated with the time a company must allot for determining whether it produces a listed chemical and at which site. Some large companies which produce many products have indicated to the Agency that this search for production records accounted for a large part of their costs in reporting. Those companies, and others like them, will save money by collecting and reporting information to the Agency on both designated and non-designated chemcials at the same time.

Another part of this fixed cost is the time and effort needed for companies to familiarize those personnel who will complete the form with the requirements of the rule. If companies must report at different times for designated and non-designated chemicals, they may be unable to assign the same person to reporting activities for each amendment. Thus, the cost for instructing a new person may be incurred for companies which must report twice, rather than once, for a given ITC report.

The requirement for automatic reporting on both designated and non-designated ITC substances will also be a more efficient use of Agency resources. With automatic reporting on non-designated substances, the Agency will also be relieved of the additional cost associated with four additional rulemakings per year (two for proposals and two for final amendments adding these chemicals to the Preliminary Assessment Information rule). The savings to the Agency is estimated to be about $40,000.

The Agency requests comment on whether the relative burden of reporting on non-designated substances added automatically is less than reporting for these chemicals added through notice and comment.

B. Concurrent Analysis

In some cases, the Agency will be considering designated and non-designated members of a category concurrently. When the Agency is evaluating data on these related substances it will need information on all of the substances, whether or not they have been designated by the ITC. The Agency believes that it would be inefficient to have separate testing negotiations or rulemakings on different chemically-related substances that in all likelihood pose similar testing issues. Therefore, to make the best use of its resources, EPA prefers to consider designated and non-designated substances together.

The ITC's Tenth and Eleventh Reports (47 FR 22585 and 47 FR 54626) have already produced a situation of separate reporting on both non-designated and designated substances from the same category. In its Tenth Report, the ITC

designated 1,2,4-trimethylbenzene, while in its Eleventh Report the ITC recommended but did not designate mixed trimethylbenzenes, 1,2,3-trimethylbenzene, and 1,3,5-trimethylbenzene. Of the three domestic manufacturers of these substances (as determined from the TSCA Inventory), one manufacturer produced three of the substances (one designated and two non-designated), the second company manufactured two of the substances (one designated and one non-designated), and the remaining manufacturer produced only the designated member. Thus, for the first two companies, reporting at different times of the year would eliminate the efficiencies of reporting on the designated and non-designated substances at the same time.

C. Opportunity for Withdrawing Chemicals

Although this proposed regulation does not provide for notice and comment on the addition of ITC-recommended chemicals to the rule, the proposal will amend the rule to allow persons to submit requests for the removal of specific chemicals. Firms choosing to submit a request for the removal of a chemical added through the automatic mechanism should promptly submit to the Agency its reasons for that removal. The chemical may then be withdrawn from the rule at the Agency's discretion, for good cause. The Agency will issue a rule amendment for publication in the **Federal Register** when withdrawing a chemical from the rule. This amendment will remove the chemical from the reporting requirements of 40 CFR 712.30 and provide the reasons for that removal. A similar provision is being proposed today for addition to the section 8(d) rule.

Further, EPA's experience with both the section 8(a) and 8(d) rules has shown that despite adding many chemcials to the rules in the past, (section 8(a) 47 FR 27013, section 8(d) 47 FR 38780) very few of the comments received by the Agency directly questioned the appropriateness of a particular substance being subject to the rule. Not one of these comments subsequently led to the exclusion of an ITC chemical from the rule.

Finally, because of the ITC's chemical selection process, there is little likelihood that a substance will be recommended for testing that is no longer manufactured or imported, or has not been for many years, or is manufactured solely for use as a pesticide, food, or drug. Thus, the necessity of removing chemicals from the rule for any of the above reasons will be extremely remote.

In conclusion, EPA believes that amending the Preliminary Assessment Information rule to provide for automatic reporting on chemicals recommended but not designated by the ITC:

(1) Is necessary and will lead to an improved system of gathering information needed to evaluate such recommendations and the risks posed by those chemicals.

(2) Will reduce reporting costs for industry and processing costs for the Agency.

(3) Will still permit subject companies the opportunity to convince the Agency that reporting on particular chemicals may not be necessary.

IV. Chemical Limit

The Office of Management and Budget (OMB) during its review of this rule under Executive Order 12291 and the Paperwork Reduction Act suggested that the Agency put a numerical limit on the number of recommended chemicals, categories of chemicals and designated mixtures that would be subject to automatic reporting under sections 8(a) and 8(d) in any one year. EPA agreed to consider such a numerical limit since EPA's current capacity for evaluating candidates for the initiation of test rules is limited. If that limit is exceeded, the Agency will be unable to proceed with its evaluation of testing candidates in a timely manner. Further, with such a backlog information collected by EPA under sections 8(a) and 8(d) on those additional chemicals may go unused. This would result in an unnecessary reporting burden for the public and would be "of no practical utility" to the Agency, thus violating the Paperwork Reduction Act's standards for information collection;

Section 4(e)(1)(A) of TSCA permits the ITC to designate for EPA's response no more than 50 chemicals, designated mixtures and categories of chemicals per year. This limit was set by Congress in recognition of the excessive burden that adding too many chemicals would place on both EPA and the public. It thus is reasonable to conclude that EPA cannot practically and effectively use section 8(a) and 8(b) reported information on more than 50 chemicals per year. It is therefore proposed that a limit of 50 should apply to automatic reporting of all chemicals, designated mixtures and categories of chemicals, whether designated or merely recommended for testing by the ITC. This limit could be exceeded if necessary to obtain reporting on designated chemicals, but no automatic reporting would be required on recommended chemicals unless the total was less than 50 in any year.

In the event that the ITC designates and recommends a total of more than 50 chemicals, designated mixtures and categories of chemicals in a year, EPA could still require reporting on all of them. All of the designated chemicals could be listed for automatic reporting. The Agency could require automatic reporting on the recommended chemicals until the overall limit of 50 was reached; it could require reporting on the remainder by rulemaking if it believes it can effectively and promptly evaluate the reported data.

EPA has included language in § 712.1 of the proposed rule limiting the number of chemicals subject to automatic reporting. The Agency requests comment on whether such a limit should apply, what level it should be at, and how it should apply to designated and recommended chemicals.

V. Who Must Report

Persons subject to the Preliminary Assessment Information rule as specified in 40 CFR 712.20 and 712.25. Additional descriptions were published in the **Federal Register** of June 22, 1982, (47 FR 26992).

Generally, a manufacturer (or an importer) must submit a Preliminary Assessment Information Manufacturer's report (EPA Form No. 7710–35) for each subject chemical he manufactures. If he manufactures a chemical at more than one site, he would submit a form for each site.

A manufacturer is exempt from reporting if he qualifies as a small business by meeting the following two criteria during the reporting period: total annual parent company sales below $40 million, and total production of the listed chemical at the site below 45,000 kilograms. Also, companies with total annual sales below $4 million are exempt from reporting regardless of how much of the chemical is manufactured. EPA has separately proposed a generic definition of small manufacturers for TSCA section 8(a) rules published in the **Federal Register** of June 23, 1982 (47 FR 27206). If the final generic small manufacturers definition is issued before this rule is final, EPA plans to apply the generic definition to reporting under this rule. The Agency will periodically change the dollar values in this generic standard, if necessary, to reflect inflation.

VI. Release of Aggregate Data

For this amendment, the Agency will follow the procedures for release of

aggregate data and exemption requests from release of aggregate statistics described in the Rule Related Notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). As described in that notice, the Agency must receive a request for an exemption from release of aggregate data no later than the end of the reporting period.

VII. Economic Impact

The cost estimates of this proposal are based largely on methods and data developed for the original section 8(a) Preliminary Assessment Information rule. Some of the parameters used were revised as necessary to update costs to current levels.

Although the ITC in its Eleventh Report added six recommended but not designated chemicals to its priority list, three of those chemicals were actually suggested for testing in the Tenth Report. The Agency has assumed that a maximum of three chemicals will be recommended but not designated in each future ITC report. No chemicals were recommended but not designated in the ITC's Twelfth or Thirteenth Reports.

Assuming that two ITC reports will be issued each year, a total of six chemicals are assumed to be recommended but not designated in those reports. It is expected that for each chemical listed, approximately one manufacturer would be producing the substance and be required to report. The Agency expects 12 reports to be submitted from six to eight sites for chemicals that may be recommended but not designated each year by the ITC. The small manufacturer exemption will eliminate reporting by approximately one manufacturer and one to two sites (16 percent reduction) and reduce the number of reports submitted by two (20 percent reduction). A net total of about five to seven plant sites will be affected each year by amendments adding non-designated ITC chemicals and a maximum of about 10 reports will be expected per year for non-designated chemicals.

The current cost estimates are as follows:

Fixed costs: (cost of becoming familiar with the regulation and identifying which chemicals to report) = $590 per plant site

Variable Costs: (cost of completing the form, certification requirements, etc.) = $520 per report

Projected maximum annual reporting costs for chemicals recommended but not designated in future ITC reports are:

10 reports @ $520/report = $5,200

+5 to 7 familiarization cases @ $590/case = $2,950–$4,130

Yearly total = $8,150–$9,330

The corresponding maximum industry reporting burdens are:

Familiarization: 18 hours x 5 to 7 sites = 90–126

Reporting: 16 hours x 10 reports = 160

Total = 250–286 hours per year

Average burden-hours per site = 41–50

Average burden-hours per firm = 50–57

It is difficult to estimate the cost savings of one-time reporting for companies which produce both designated and non-designated substances from the same category that appear on the same ITC report. However, in such cases those manufacturers' reporting costs will be considerably reduced due to built-in efficiencies of reporting for both at the same time. (This assumes that manufacturers otherwise would not collect information on both types of chemicals at the same time since reporting periods may vary and the Agency requires manufacturers to report their most current information.) Also, by only listing ITC substances twice a year as compared to four times a year manufacturers will save the additional resources required in searching the list of subject chemicals and determining which, if any, of these chemicals they manufacture.

Maximum EPA data processing costs for chemicals recommended but not designated for 12-month Agency response are expected to be:

$80 per report × 10 reports/year = $800 year.

The elimination of separate proposed and final amendments adding non-designated chemicals to the Preliminary Assessment Information rule will reduce the Agency's costs as follows:

	Cost per person-month	Person-month per rulemaking	Cost per rule
Managerial	$10,843	.25	$2,711
Professional	8,434	.75	6,326
Clerical	3,614	.25	904
Total			9,941

Thus, promulgation of this amendment will save the Agency up to $40,000 per year by eliminating two proposed and two final amendments per year.

VIII. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review two weeks after publishing the final rule in the **Federal Register.** The effective date will be calculated from the promulgation date.

IX. Public Record

The public record for this proposed rulemaking is a continuation of the record (OPTS–82004) for the Preliminary Assessment Information rule published in the June 22, 1982, issue of the **Federal Register** (47 FR 26992). All documents, including the index to this public record, are available for inspection in the OPTS Reading Room, Rm. E–107, 401 M St. SW., Washington, D.C., from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this proposed rule. The Agency will supplement the record with the following types of additional information as it is received.

1. All comments on this proposed amendment.

2. All relevent support documents and studies.

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

4. Minutes, summaries, or transcripts of any public meetings held to develop this rule.

5. Any factual information considered by the Agency in developing the rule.

6. Reports Impact Analysis for 40 CFR Part 712 and this rulemaking.

7. Tenth through Thirteenth Reports of the ITC; 47 FR 22585 (Tenth Report) 47 FR 54626 (Eleventh Report), 48 FR 24443 (Twelfth Report) and 48 FR 55674 (Thirteenth Report).

EPA will identify the complete rulemaking record on or before the date of promulgation of the regulation, as prescribed by section 19(a)(3) of TSCA, and will accept additional material for inclusion in the record at any time between this notice and that date. The final rule will also permit persons to point out any errors or omissons in the record.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is

"major" and, therefore, requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it does not have an effect of $100 million or more on the economy.

This amendment was submitted to the OMB for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the record for this rulemaking.

B. Regulatory Flexibility Act

This amendment will not have a significant economic impact on small entities. Consistent with the purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, small manufacturers have been defined and excluded from manufacturer reporting requirements.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

(Sec. 8(a), Pub. L. 94–469, 90 Stat. 2003 (15 U.S.C. 2607(a)))

List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, Reporting and recordkeeping requirements.

Dated: November 2, 1984.

William D. Ruckelshaus,

Administrator.

PART 712—[AMENDED]

Therefore, it is proposed that 40 CFR Part 712 be amended as follows:

1. In § 712.1 by redesignating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 712.1 Scope and compliance.

* * * * *

(b) Chemical substances, categories of chemicals and designated mixtures which have been recommended by the Interagency Testing Committee for testing consideration by the Agency but not designated for Agency response within 12 months, will be added to § 712.30(c) only to the extent that the total number of such chemicals has not exceeded 50 in any one year.

2. In § 712.30 by revising paragraph (c) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(c) Chemical substances, categories of chemicals, and designated mixtures that have been added by the Interagency Testing Committee, established under section 4 of TSCA, to the section 4(e) Priority List for testing consideration by the Agency, will become subject to this subpart 30 days after EPA lists the chemical substances or mixtures in the **Federal Register**. A Preliminary Assessment Information—Manufacturer's Report must be submitted for each chemical substance and mixture within 60 days after the effective date of the listing. At the discretion of the Assistant Administrator for Pesticides and Toxic Substances, a listed substance may be withdrawn, for good cause, from the rule's reporting requirements prior to the effective date. Any information submitted showing why a substance(s) or designated mixture(s) should not be subject to the rule must be received by EPA within 14 days after the date of publication of the notice under this paragraph. If a substance or designated mixture is removed, a **Federal Register** notice announcing this decision will be published no later than the effective date of the amendment. Any information submitted must be addressed to: Document Control Officer, Office of Pesticides and Toxic Substances (TS–793), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, ATTN: 8(a) Auto-ITC.

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[FR Doc. 84–30228 Filed 11–16–84; 8:45 am]
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40 CFR Part 716

[OPTS–84010; FRL 2584–3]

Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposal would amend the automatic reporting provision of the Health and Safety Data Reporting rule under section 8(d) of the Toxic Substances Control Act (TSCA) (40 CFR Part 716 Subpart A) published on September 2, 1982 (47 FR 38780). The amendment will change 40 CFR 716.18(b), to require without separate proposal and comment reporting of unpublished health and safety studies on chemicals recommended for testing by the Interagency Testing Committee (ITC) but not designated for action by EPA within 12 months. Two other amendments are also included. One would allow for the removal of ITC-recommended chemicals by the Assistant Administrator for Pesticides and Toxic Substances before the effective date of an amendment adding ITC-recommended chemicals to the section 8(d) rule. The other amendment would modify the procedures for requesting reporting deadline extensions.

DATE: Comments on this proposal must be submitted on or before January 18, 1985.

ADDRESS: Written comments must bear the document control number OPTS–84010. Submit an original plus two copies to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St., SW., Washington, D.C. 20460.

All written comments filed under this notice will be available for public inspection in Rm. E–107 at the address given above from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

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

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA issued a rule under section 8(d) of TSCA (40 CFR Part 716 Subpart A) published in the **Federal Register** of September 2, 1982 (47 FR 3870) which requires persons to submit unpublished health and safety studies on chemicals listed in § 716.17. The Agency will use the studies to support its investigations of the risks posed by chemicals, and, in particular, to support its decisions whether to require industry to test chemicals under section 4 of TSCA.

Persons subject to section 8(d) must submit copies of studies in their possession and lists of studies ongoing at the time of submission, or known to but not possessed by the submitter. Persons who are manufacturing or processing a chemical at the time it is listed in the rule, or are proposing to do so, are required to submit both copies and lists of studies for that chemical. Persons subject to the rule must submit lists of studies initiated within three years after a chemical is added to the

rule. If a study is listed by a company, that company must submit a copy of the study within 30 days of its completion.

The September 2, 1982 rule required reporting on chemcials recommended for testing by the Interagency Testing Committee in its First through Fifth Reports and a few other chemicals which were being reviewed by EPA. The Agency also included in that rule a provision for automatically making subject to the rule chemicals recommended for testing by the ITC and designated for twelve-month Agency response. Thus, every time the ITC designates a substance in one of its reports, the Agency will automatically add the substances to § 716.17(b) of the rule and require reporting within 90 days. Non-ITC chemicals are added to the rule after publication in the **Federal Register** of a notice of proposed amendment of § 716.17. There will be a 30-day public comment period on the notice; after consideration of the comments, a final amendment will identify the substances and mixtures added.

On September 2, 1982, EPA also proposed to amend § 716.17 by adding the chemicals designated for priority testing by the ITC in its Sixth through Tenth Reports (47 FR 38780). On March 30, 1983 (48 FR 13178) the final amendment adding these chemicals to the rule was published in the **Federal Register.**

Subsequent to publication of the original 8(d) rule, the Agency has used the automatic reporting provision described above to add chemicals designated by the ITC in its Eleventh, Twelfth and Thirteenth Reports (47 FR 54624, 48 FR 24386, 48 FR 55581.)

In addition to the chemicals designated by the ITC in its Eleventh Report, the ITC also added to its priority list six substances which it did not designate for EPA response within one year. This was the first time the ITC had recommended substances without designating them for 12-month response period. Although the language in § 716.18(b) does not specifically limit the Agency to only including designated substances, EPA will propose for public comment the automatic addition to the rule of recommended (non-designated) substances.

The Agency believes that automatic addition to the section 8(d) rule of chemical substances and mixtures that are recommended but not designated by the ITC will benefit both industry and EPA and will provide valuable information to the Agency in a more timely manner.

At this time, the Agency is also proposing similar automatic reporting requirements for non-designated ITC recommendations under the TSCA section 8(a) Preliminary Assessment Information rule. Under that rule, persons are required to report general production, use and exposure information to the Agency on chemicals listed in § 712.30.

II. Rationale for Automatic Reporting

A. Efficiency

In the past, the ITC has issued their reports containing designated substances on a regular and predictable time schedule which allowed companies to plan their reporting activities for certain times of the year. Similarly, EPA plans resource allocations for the processing and analysis of these reports when they are received.

Although non-designated chemicals may be included in future ITC reports along with designated chemicals, reporting by companies to the Agency may not occur at the same time, if EPA decides to propose reporting requirement for the non-designated substances, receive comment, and then promulgate a separate rule amendment adding these chemicals. That is, at the time the ITC issues a report, the Agency will simultaneously add the designated chemicals to the final 8(d) rule, but only propose the non-designated chemicals for reporting. Thus, for one ITC report which contains both designated and non-designated chemicals, industry would be reporting at two different times; coincident with the ITC report publication for the designated chemicals and later for the non-designated chemicals. Some companies may not search for studies on non-designated chemicals at the time the ITC recommends them because there is a chance that the Agency may never require reporting on them. Assuming that the ITC continues to recommend designated and non-designated chemicals twice a year, industry would have to plan for four file searches and reporting periods per year. The Agency believes that requiring automatic reporting on ITC non-designated chemicals is justified from an efficiency (resource) standpoint for the Government and industry. Respondents to the section 8(d) rule generally consist of a core group of companies that are large and are actively engaged in testing the chemicals they manufacture or process. Also, many of these companies have established procedures for responding to future additions of chemicals to the rule which usually occurs twice per year—approximately May and November. EPA believes that it would be less efficient for such companies to conduct four file searches per year instead of the two under the automatic provision. As will be discussed below, EPA would much prefer not to promulgate each section 8(d) amendment for non-designated chemical long after receipt of the ITC report because of the long delay in receiving studies essential to our assessment process.

The Agency requests comment on whether the relative burden of reporting on non-designated substances added automatically is less than reporting for these chemicals added through notice and comment.

B. Concurrent Analysis

In some cases, the Agency will be considering designated and non-designated members of a category concurrently. When the Agency is evaluating data on these related substances it will need information on all of the substances, whether or not they have been designated by the ITC. The Agency believes that it would be inefficient to have separate testing negotiations or rulemakings on different chemically-related substances that in all likelihood pose similar testing issues. Therefore, to make the best use of its resources, EPA prefers to consider designated and non-designated substances together.

The ITC's Tenth and Eleventh Reports (47 FR 22585 and 47 FR 54626) have already produced a situation of separate reporting on both non-designated and designated substances from the same category. In its Tenth Report, the ITC designated 1,2,4-trimethylbenzene, while in its Eleventh Report the ITC recommended but did not designate mixed trimethylbenzenes, 1,2,3-trimethylbenzene, and 1,3,5-trimethylbenzene. The section 8(d) reporting requirement for 1,2,4,-trimethylbenzene became effective on March 30, 1983 (48 FR 13178) while that for the other non-designated trimethylbenzene became effective on January 13, 1984 (49 FR 1696). Of the three domestic manufacturers of these substances (as determined from the TSCA Inventory), one manufacturer produced three of the substances (one designated and two non-designated), the second company manufactured two of the substances (one designated and one non-designated), and the remaining manufacturer produced only the designated member. Thus, for the first two companies, reporting at different times of the year eliminated the efficiencies of reporting on the designated and non-designated substances at the same time.

C. Opportunity for Withdrawing Chemicals

Although this proposed regulation does not provide for notice and comment on the addition of ITC-recommended chemicals to the rule, the proposal will amend the rule to allow persons to submit requests for the removal of specific chemicals. Firms choosing to submit a request for the removal of a chemical added through the automatic mechanism should promptly submit to the Agency its reasons for that removal. The chemical may then be withdrawn from the rule at the Agency's discretion, for good cause. The Agency will issue a rule amendment for publication in the **Federal Register** when withdrawing a chemical from the rule. This amendment will remove the chemical from the reporting requirements of the rule and provide the reasons for that removal.

Some possible reasons for removal could include: (1) The chemical is no longer manufactured and has not been for the last five years; (2) it is used entirely as a food, drug, or pesticide; or (3) some other factor exists that would clearly warrant the removal of the chemical from the rule. Any information submitted must be received by EPA within 14 days after the date of publication in the **Federal Register** of the amendment adding the chemical to the 8(d) rule. Based on the submitted information, the Assistant Administrator for Pesticides and Toxic Substances could revoke the reporting requirement for that chemical at his or her discretion. If a chemical is removed, a **Federal Register** notice announcing this decision will be published no later than the effective date of the amendment. This notice will explain why the chemical was removed.

Further, because of the ITC's chemical selection process, there is little likelihood that a chemical will be recommended for testing that is no longer manufactured or imported, or has not been for many years, or is manufactured solely for use as a pesticide, food, or drug. Thus, the necessity of removing chemicals from the rule for any of the above reasons will be extremely remote.

In conclusion, EPA believes that amending the section 8(d) rule to provide for automatic reporting on chemicals recommended but not designated by the ITC:

(1) Is necessary and will lead to an improved system of gathering information needed to evaluate such recommendations and the risks posed by those chemicals.

(2) Will reduce reporting costs for industry and processing costs for the Agency.

(3) Will still permit subject companies the opportunity to convince the Agency that reporting on particular chemicals may not be necessary.

III. Chemical Limit

The Office of Management and Budget (OMB) during its review of this rule under Executive Order 12291 and the Paperwork Reduction Act suggested that the Agency put a numerical limit on the number of recommended chemicals, categories of chemicals and designated mixtures that would be subject to automatic reporting under sections 8(a) and 8(d) in any one year. EPA agreed to consider such a numerical limit since EPA's current capacity for evaluating candidates for the initiation of test rules is limited. If that limit is exceeded, the Agency will be unable to proceed with its evaluation of testing candidates in a timely manner. Further, with such backlog information collected by EPA under sections 8(a) and 8(d) on those additional chemicals may go unused. This would result in an unnecessary reporting burden for the public and would be "of no practical utility" to the Agency, thus violating the Paperwork Reduction Act's standards for information collection.

Section 4(e)(1)(A) of TSCA permits the ITC to designate for EPA's response no more than 50 chemicals, designated mixtures and categories of chemicals per year. This limit was set by Congress in recognition of the excessive burden that adding too many chemicals would place on both EPA and the public. It thus is reasonable to conclude that EPA cannot practically and effectively use section 8(a) and 8(d) reported information on more than 50 chemicals per year. It is therefore proposed that a limit of 50 should apply to automatic reporting of all chemicals, designated mixtures and categories of chemicals, whether designated or merely recommended for testing by the ITC. This limit could be exceeded if necessary to obtain reporting on designated chemicals, but no automatic reporting would be required on recommended chemicals unless the total was less than 50 in any year.

In the event that the ITC designates and recommends a total of more that 50 chemicals, designated mixtures and categories of chemicals in a year, EPA could still require reporting on all of them. All of the designated chemicals could be listed for automatic reporting. The Agency could require automatic reporting on the recommended chemicals until the overall limit of 50 was reached; it could require reporting on the remainder by rulemaking if it believes it can effectively and promptly evaluate the reported data.

EPA has included language in § 716.1 of the proposed rule limiting the number of chemicals subject to automatic reporting. The Agency requests comment on whether such a limit should apply, what level it should be at, and how it should apply to designated and recommended chemicals.

IV. Additional Amendment

The Agency is also amending the section 8(d) rule by modifying § 716.14(c). This section provides for extensions to reporting deadlines. The section would be changed to require that extension requests must be postmarked on or before 40 days after the effective date of the listing of a chemical in § 716.17. EPA believes that this change is needed so that EPA staff will have adequate time to process the requests and notify each requester of the Agency's decision. Also, the extension requests must be addressed to the Office Director, Office of Toxic Substances, who will grant or deny the requests.

V. Who Must Report

Persons subject to the section 8(d) Health and Safety Data Reporting rule as specified in 40 CFR 716.4(b). Additional descriptions were published in the **Federal Register** of September 2, 1982 (47 FR 38780).

Generally, a person who manufactures or processes a chemical or designated mixture listed in § 716.17 at the time it is listed, or who has done so during the previous ten years, must comply with this rule.

VI. Confidentiality

A person submitting a health and safety study may claim all or part of the study confidential. However, health and safety information about a chemical that has been offered for commercial distribution or is subject to testing under section 4 or notice under section 5 can be withheld from disclosure only to the extent that disclosure would reveal (1) processing information and (2) percent composition of mixtures, or contains information the disclosure of which would clearly be an unwarranted invasion of the personal privacy (such as individual medical records), as provided in 5 U.S.C. 552(b)(6). EPA intends to vigorously challenge claims of confidentiality for health and safety studies that do not meet these standards.

VII. Economic Impact

The impact of this amendment, in terms of cost savings afforded firms now conducting separate rule reviews and file searches for designated and non-designated ITC chemicals, is derived below. In making these estimates, it is assumed that the ITC recommends but does not designate three chemicals in each of its two semi-annual reports. Furthermore, based on data for past ITC recommendations on designated chemicals it is estimated that compliance with the rule for these six chemicals will require approximately 30 firms to conduct a rule review. Of these 30 firms, about 16 will have studies on the subject chemicals to submit.

Cost of eliminating duplicative compliance steps are as follows:

A. Corporate rule review: 2 hours/firm × $70/hour managerial time × 30 potential respondent firms = $4,200/yr.

B. Corporate review (site identification): 3 hours/firm × $70/hour managerial time × 16 potential respondent firms = $3,360/yr.

C. File searches: 6 hours/site × $45/hour technical time × 16 potential respondent firms × 1.5 sites/firm = $6,480/yr.

Total savings = about $14,000/yr.

Savings per affected firm: $878.

These figures may overstate the effects of this amendment since some firms may already be evaluating both classes of ITC chemicals concurrently. However, since it is impossible to know how many firms are doing this versus waiting for the notice-and-comment process on non-designated chemicals, the total of $14,000 can be considered a reasonable upper bound on the annual cost savings which may accrue to affected firms if this amendment is adopted.

After considering these savings, the total cost to industry of reporting will be:

(1) *Title Listing*—(Assuming one list per respondent and one hour of effort at $18 per hour) 16 lists × 1hr./list × $18/hr. = $288.

(2) *Photocopying (materials)*—(Based on past averages of 22 studies per chemical and 50 pages per study) 6 chemicals × 22 × 50 pages × $.05/page = $330.

Photocopying (labor)—(Assume $18 per hour to copy and one half hour of labor per study) 6 chemicals × 22 × $18/hr. × 0.5 hr./study = $1,188.

(3) *Managerial Review*—(Assume one hour/study at $70 per hour) 6 chemicals × 22 × $70 × 1 = $9,240.

(4) *Ongoing Reporting*—(Assume 20 percent of respondents prepare submissions; labor = $70, time = 2 hrs. per submission) 16 respondents × .2 × $70 × 2 = $448.

(Ongoing reporting effective for three years) $448 × 3 = $1,344.

Total Cost to Industry = $12,386.

The proposal benefits the EPA since it will eliminate the need for a notice-and-comment rulemaking process twice per year for non-designated ITC chemicals. This will eliminate the need for four separate rulemaking efforts per year, i.e., two proposals and two final rules for section 8(d) reporting on non-designated chemicals. We estimate that each effort requires a total of three weeks of professional time, one week of managerial time, and one week of clerical time. Resource savings are estimated as follows:

	Cost per person-month	Person-month per rulemaking	Cost per rulemaking
Managerial	$10,843	.25	$2,711
Professional	8,434	.75	6,326
Clerical	3,614	.25	904
(Total)			$9,941

Thus, promulgation of this amendment will save the Agency up to $40,000 per year by eliminating two proposed and two final amendments per year.

VIII. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review two weeks after publishing the final rule in the **Federal Register**. The effective date will be calculated from the promulgation date.

IX. Public Record

EPA has established a public record (docket number OPTS-84010) for this proposed rulemaking document which, along with a complete index, is available for inspection in Rm. E-107, 401 M St., SW., Washington, D.C., 20460, from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this proposed rule. The Agency will supplement the record with additional information as it is received. The record includes the following categories of information.

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

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

3. Tenth through Thirteenth Reports of the ITC; 47 FR 22585 (Tenth Report) 47 FR 54626 (Eleventh Report), 48 FR 24443 (Twelfth Report) and 48 FR 55674 (Thirteenth Report).

EPA will identify the complete rulemaking record on or before the date of promulgation of the regulation, as prescribed by section 19(a)(3) of TSCA, and will accept additional material for inclusion in the record at any time between this notice and such designation. The final rule will also permit persons to point out any errors or omissions in the record.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a Regulatory Impact Analysis. EPA has determined that these amendments are not major because they do not have an effect of $100 million or more on the economy. They are expected to decrease the annual cost of compliance. They do not have a significant effect on competition, cost, or prices.

These amendments were submitted to OMB for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

These amendments will not have a significant economic impact on a number of small entities. They do not affect the size of the potential universe of respondents. The effects on small entities of reporting under the section 8(d) rule were discussed in the preamble to the September 2, 1982 rule.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

(Sec. 8(d), Pub. L. 94-469, 90 Stat. 2003 (15 U.S.C. 2607(d)))

List of Subjects in 40 CFR Part 716

Chemicals, Health and safety, Environmental protection, Hazardous

materials, Imports, Reporting and recordkeeping requirements.

Dated: November 2, 1984.

William D. Ruckelshaus,

Administrator.

PART 716—[AMENDED]

Therefore, it is proposed that 40 CFR Part 716 be amended as follows:

1. In § 716.1 by redesignating existing paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 716.1 Scope and compliance.

* * * * *

(b) Chemical substances, categories of chemicals and designated mixtures which have been recommended by the Interagency Testing Committee for testing consideration by the Agency but not designated for Agency response within 12 months, will be added to § 716.18 only to the extent that the total number of designated and recommended chemicals has not exceeded 50 in any one year.

* * * * *

2. In § 716.14, by revising paragraph (c) to read as follows:

§ 716.14 Reporting schedule.

* * * * *

(c) Respondents who cannot meet a deadline under this section may apply for a reasonable extension of time. Requests for extensions must be addressed to: Director, Office of Toxic Substances (TS–792), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attn: Section 8(d) extension. Extension requests must be postmarked on or before 40 days after the effective date of the listing of a chemical or designated mixture in § 716.17. The Office Director will grant or deny extension requests.

3. In § 716.18, by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 716.18 Additions to lists of chemicals and designated mixtures to which this subpart applies.

* * * * *

(b) Except as provided in paragraph (c) of this section, chemicals, categories of chemicals, and designated mixtures that have been added to the TSCA section 4(e) Priority List by the Interagency Testing Committee, established under section 4 of TSCA, will become subject to this Subpart 30 days after publication of a notice to that effect in the **Federal Register.**

(c) Prior to the effective date of an amendment under paragraph (b) of this section the Assistant Administrator for Pesticides and Toxic Substances may for good cause withdraw a chemical or designated mixture from the rule's reporting requirements. Any information submitted showing why a chemical or designated mixture should not be subject to the rule must be received by EPA within 14 days after the date of publication of the notice under paragraph (b) of this section. If a chemical or designated mixture is removed, a **Federal Register** notice announcing this decision will be published no later than the effective date of the amendment under paragraph (b) of this section. Any information submitted must be addressed to: Document Control Officer, Office of Pesticides and Toxic Substances, (TS–793), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attn: 8(d) Auto-ITC.

[FR Doc. 84–30224 Filed 11–16–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 799

[OPTS–42062; TSH–FRL 2690–3]

2-(2-Butoxyethoxy) Ethyl Acetate; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: On November 8, 1983, The Interagency Testing Committee (ITC) designated 2-(2-Butoxyethoxy)ethyl acetate, CAS No. 124–17–4, also known as diethylene glycol butyl ether acetate (DGBA), for priority testing consideration for reproductive effects, subchronic toxicity, and toxicokinetic studies. EPA is issuing this ANPR under section 4(a) of the Toxic Substances Control Act (TSCA) to (1) inform the public that EPA is expanding the scope of this rulemaking to include diethylene glycol butyl ether (DGBE), CAS No. 112–34–5; (2) define the testing EPA is considering proposing for both chemicals; and (3) seek public comment on EPA's plan to propose a test rule for these chemicals. This action constitutes EPA's response to the ITC for DGBA.

DATE: Written comments should be submitted on or before January 18, 1985.

ADDRESS: Written comments should bear the document control number [OPTS–42062] and should be submitted in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E–108, 401 M Street SW., Washington, D.C. 20460.

The public record supporting this action is available for inspection in Room E–107 at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Room E–542, 401 M Street SW., Washington, D.C. 20460, Toll Free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the U.S.A.: (Operator 202–554–1404).

SUPPLEMENTARY INFORMATION: The Interagency Testing Committee (ITC) in its Thirteenth Report to the Administrator, published in the **Federal Register** of December 14, 1983 (48 FR 55674), designated that DGBA be given priority consideration for health effects testing.

I. Background

Section 4(e) of TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.;* 15 U.S.C. 2601 *et seq.*) established the ITC to designate to EPA a list of chemicals to receive priority consideration for testing under section 4(a) of TSCA. EPA is required to respond within 12 months of the date of designation, either by initiating rulemaking under section 4(a) or publishing in the **Federal Register** reasons for not doing so.

The ITC designated DGBA for priority testing consideration in its Thirteenth Report. The specific designation was alkyloxyethylene acetates and included two chemical substances, DGBA and ethylene bis(oxyethylene) diacetate. The ITC recommended that both chemicals be tested for toxicokinetics, subchronic toxicity, and reproductive effects. The Agency is responding to the ethylene bis(oxyethylene) diacetate designation in a separate notice.

Under section 4(a)(1) of TSCA, the Administrator shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the enyironment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities,

and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding in which both exposure and toxicity information are considered to make the finding that the chemical may present an unreasonable risk. For the section 4(a)(1)(B)(i) finding, EPA considers only production, exposure, and release information to determine whether there is substantial production and significant or substantial exposure or substantial release. Thus, while EPA can require testing for an effect under section 4(a)(1)(A) only if there is a suspicion of a hazard, EPA can require testing under section 4(a)(1)(B) whether or not there are data suggesting adverse effects if the relevant production and exposure or release criteria are met.

For the findings under both sections 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the third finding, that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information. EPA's process for determining when these findings can be made is described in detail in EPA's first and second proposed test rules published in the Federal Register of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed in 45 FR 48528, and the section 4(a)(1)(B) finding is discussed in 46 FR 30300.

In evaluating the ITC's testing recommendations concerning DGBA, EPA considered all available relevant information, including the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); and published and unpublished data available to the Agency, including information submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716).

II. Response of EPA to the ITC

EPA has reviewed the ITC's report, the data upon which its testing recommendations were based, and information obtained from EPA's own information-gathering activities. The Agency has previously indicated that although it would generally initiate rulemaking for testing through publication of a proposed rule, it may in certain instances such as chemical categories and certain complex chemicals initiate action through publication of an advance notice of proposed rulemaking, as it is doing in this case. There are a number of reasons why the Agency has chosen to initiate rulemaking for DGBA and DGBE by issuing this ANPR.

First, rather than just responding to the ITC designation of DGBA alone, EPA is expanding this rulemaking proceeding by including a second chemical substance (DGBE). Addition of DGBE to this rulemaking has resulted from the Agency's review of information concerning both chemical substances, which are members of a larger chemical category—the glycol ethers. This review has led the Agency to conclude that both DGBA and DGBE are likely to have similar toxicological effects. Both DGBA and DGBE have similar acute and subchronic toxicity and both chemical substances affect the renal system in rats (see Unit III. E below). In addition, the acetate esters of other glycol ethers (methyl and ethyl ethylene glycols) have been shown to produce effects identical to their corresponding ethers (Ref. 7). Moreover, the ITC's concern for DGBA's potential to cause reproductive effects, which was based on an analogy to the effects of certain glycol ethers, also applies to DGBE (See Unit III. E). Finally, DGBE is believed to have similar or greater consumer and occupational exposures than DGBA (see Unit III. D). Thus, the Agency believes that DGBE and DGBA (which is the acetate ester of DGBE) should both be included in this TSCA section 4(a) rulemaking proceeding.

Second, expansion of this rulemaking to include DGBE has raised difficult scientific and policy issues that the Agency believes necessitate early public comment through this ANPR. For example, based upon information on structural analogs, DGBA is believed to rapidly metabolize to DGBE. If this is the case, it may be necessary to require testing of only DGBE because toxicological data on DGBE may allow EPA to predict the risks of human exposure posed by both DGBA and DGBE (see Unit V). The submission of early public comment on this issue will assist the Agency in ensuring that any proposal which the Agency issues will provide for only that testing which is necessary to reasonably determine or predict the health effects of DGBA and DGBE.

Finally, the manufacturers and/or importers of DGBE (who were notified of the Agency's concern in April 1984 (Ref. 16), recently submitted a number of studies on the toxic effects of DGBE. The Agency is still reviewing these studies and, because they were submitted only recently, EPA could not make a final assessment of whether the studies are adequate to evaluate the toxicological effects of DGBE and possibly DGBA prior to its statutory deadline for issuing this response to the ITC designation of DGBA. Issuance of this ANPR both initiates the section 4(a) rulemaking process and provides the public with an early opportunity to comment on the issue of whether these studies will provide sufficient data to reasonably determine or predict the health effects of concern not only for DGBE but also for the ITC-designated chemical substance DGBA.

III. General Information

A. Chemical Description

DGBE and DGBA are colorless, relatively nonpolar liquids with faint, sweet orders. A summary of the physical properties of DGBE and DGBA is presented in the table below. The chemicals are excellent solvents and cosolvents for high molecular weight resins (Ref. 10).

PHYSICAL PROPERTIES OF DGBE AND DGBA [1]

Property	DGBE	DGBA
Density (g per ml)	0.948	0.981
Molecular weight (g per mole)	162.3	204.3
Freezing point (°C)	−68.0	−32
Boiling point (°C)	230.4	246.8
Vapor pressure at 25°C (mm Hg)	0.043	<0.01
Flash point open cup (°C)	200.6	240.

[1] (Ref. 8).

B. Manufacturing

DGBE is manufactured by reacting n-butyl alcohol with ethylene oxide. DGBA is manufactured by reacting DGBE with acetic anhydride. Both chemicals are produced in enclosed processes with all waste streams recycled. DGBE is produced or imported by eight companies (Ref. 19). Production of DGBE in 1981 and 1982 was 50 and 48

million pounds, respectively (Ref. 11). DGBA is produced by only one company, Tennessee Eastman at Kingsport, Tennessee. Current production is confidential, but is in the range of 1 to 10 million pounds per year (Ref. 2).

C. Use

DGBE and DGBA are found in a number of industrial and consumer products. DGBE and DGBA are used in inks and industrial coatings as solvents and carriers. Unlike the lower molecular weight glycol ethers which rapidly evaporate, DGBE and DGBA serve to slow the rate of evaporation (Ref. 10). Inks and coatings containing DGBE and DGBA are usually oven dried (Refs. 2 and 20). DGBE and DGBA are also used as coalescing agents in consumer latex paint at concentrations of 0.5 to 3 percent by weight (Refs. 5, 12, and 21). Coalescing agents are compounds added to latex paints to act as plasticizers for the latex polymer. Plasticizers soften the colloidal latex particles and allow them to merge and form a uniform film upon drying. Coalescing agents slowly volatilize from paint over several days following application (Ref. 12). DGBE and DGBA also serve as solvents in the manufacture of microelectronics (Ref. 3).

DGBE is also used as a diluent in brake fluids, and as a component of cutting oils (Ref. 10), and in a number of consumer and industrial products including metal cleaners, paint removers, stamp pad inks, floor cleaners and floor wax strippers, floor finishes, spray cleaners, and penetrating oils (Ref. 6).

D. Potential Exposure

EPA believes at the present time that the largest exposures to DGBE and DGBA will occur from their use as coalescing agents in latex paints and as solvents in consumer products. Exposures during manufacture and processing are believed to be low. Actual chemical production occurs only a few weeks per year and in enclosed processes. They are used in low concentrations in various products and their low vapor pressure minimizes their potential for inhalation exposure in other uses (Refs. 2, 5 and 6).

A study of coalescing agents indicates that DGBE and DGBA will be slowly released from latex wall paint to the air over several days following application (Ref. 12). While DGBA and DGBE have low vapor pressures, releases of the glycol ethers from the large surface areas of painted walls are estimated to result in concentrations of 1 to 5 parts per million (ppm) in consumers' homes. Consumers exposed to these levels are estimated to receive doses of 1 to 10 milligrams per kilogram per day (mg/kg/day). While consumers would be exposed to these levels for only a few days per year, painters would be exposed each workday (Ref. 9).

The estimated dosage from dermal exposure to DGBE and DGBA in latex paint is believed to be much less than that by inhalation. While painters and consumers received significant dermal exposure to latex paints, dermal contact with DGBE and DGBA in the paints is expected to be minimal. Both compounds are reported to partition into the latex polymer particles from the solvent portion of latex paints; as a result, they would be relatively unavailable for dermal absorption (Ref. 12).

DGBE is also used in a wide variety of commercial and consumer products. Some commercial products have considerable dermal exposure, such as cutting fluids and brake fluids. Consumer products containing DGBE such as cleaners, waxes, and penetrating oils also have potential for dermal exposure. Levels of DGBE in commercial products is not known, but DGBE is present in consumer products at levels up to 10 percent (Ref. 6).

E. Health Effects

Little toxicological information has been found on DGBE and DGBA. DGBE and DGBA have relatively low acute toxicities with the rat oral median lethal doses (LD_{50}s) greater than 5,000 milligrams per kilogram (mg/kg). At doses slightly less than the LD_{50}, DGBE has been reported to cause narcosis (Ref. 8). In rabbits, dermal LD_{50}s differ from oral LD_{50}s by a factor of only two, indicating that both chemicals are absorbed through the skin (Refs. 1 and 15). The chemicals are relatively nonirritating to the skin and eye (Refs. 1 and 8). The limited subchronic data indicate that in rats, oral doses of 500 to 1,000 mg/kg/day of either chemical affect the renal system, causing degeneration of the kidney tubules (Refs. 1 and 4). DGBA has also been reported to cause hematuria (Ref. 1).

DGBE and DGBA are also suspected of causing reproductive and other effects based upon analogy to other glycol ethers, and to ethylene glycol butyl ether (EGBE) in particular. EGBE has been reported to cause teratogenic and fetotoxic effects, renal toxicity, hematuria, and hemolysis (erythrocyte fragility) (Ref. 13).

Erythrocyte fragility has been reported as the lowest observed effect for EGBE with an inhalation no-observed-effect concentration of 32 ppm (Ref. 14). No information has been found on the mutagenicity and oncogenicity of DGBA and DGBE.

EPA has no information on the environmental effects of DGBE and DGBA. The ITC had no concerns over DGBA's environmental effects due to its predicted rapid degradation in the environment. Based upon its own analysis, the Agency agrees with the ITC that DGBA will rapidly degrade (Ref. 18). The Agency also believes that DGBE will degrade in a similar manner to DGBA (Ref. 17).

IV. Tentative EPA Decision

A. Preliminary Finding

At this time, EPA believes that DGBE and DGBA may meet the criteria for a finding under section 4(a)(1)(B)(i) of TSCA. This belief is based upon the potential for substantial human exposure presented in Unit III. D above. EPA also believes that DGBA and DGBE may meet the criteria for a finding under section 4(a)(1)(A)(i) for hematological effects. EGBE, a close analog to DGBA and DGBE, is reported to have a no-observed-effect level for hematological effects close to the levels estimated for exposures from latex paint (Ref. 14). The Agency believes that the available data may be inadequate to reasonably determine or predict the health effects of these chemicals and that testing is necessary to develop such data.

B. Testing Under Consideration

In order to assess the potential hazards of DGBE and DGBA, EPA is considering proposing testing DGBE and DGBA for the following effects: Subchronic toxicity (including neurotoxic and behavioral toxicity and renal and hematological effects), developmental effects, reproductive toxicity, mutagenicity and carcinogenicity. The subchronic toxicity testing is being considered on the basis of the lack of no-observed-effect levels for the reported renal effects. Testing for developmental, hematological, and reproductive effects is based upon analogy to the effects of other glycol ethers. Neurotoxic effects testing is based upon the narcosis reported for DGBE (See Unit V. 4 below). Evidence of mutagenicity and carcinogenicity have not been reported nor is EPA aware of any evidence of these effects in other glycol ethers. However, because of the specific emphasis TSCA places upon carcinogenicity and mutagenicity, the Agency is proposing mutagenicity testing with oncogenicity testing if the mutagenicity testing is positive.

At the present time, EPA is considering requiring the following test

program for both compounds. A 90-day subchronic oral study would be performed with a complete histopathology of reproductive organs including: ovaries, testes, uterus, cervix and vagina, epididymides, seminal vesicles, and prostate and pituitary glands. Effects observed in these organs would trigger a requirement for full reproductive effects testing. Neurotoxicity and behavioral toxicity testing would also be performed on the test animals. As part of the 90-day subchronic study, a satellite group is proposed to evaluate hematological effects. Hematological testing would consist of serial sacrifices with blood counts, measurements of blood chemistry, and bone marrow studies over the first 2 weeks of dosing. This schedule is being considered because of the transitory blood effects reported for EGBE (Ref. 13). Developmental effects testing by the oral route would be required as would a tiered mutagenicity test sequence. Positive findings in certain mutagenicity tests would lead to further mutagenicity testing and, in some cases, to carcinogenicity testing. EPA is also considering requiring comparative pharmacokinetics for the inhalation and oral routes of exposure to allow an evaluation of the effect of the route of exposure upon the effects of DGBA and DGBE.

V. Issues for Comments

1. EPA requests comments on the testing program set forth in this advance notice for DGBE and DGBA.

2. EPA is considering testing of only DGBE if DGBA can be shown to rapidly metabolize to DGBE. Is such an approach approprite for these two substances? If so, what testing is necessary to demonstrate that this metabolism occurs and to permit the use of DGBE test data in assessing the risks of exposure to DGBA?

3. EPA is considering proposing testing for toxic effects by oral administration of doses while the major route of exposure for DGBE and DGBA will be inhalation and to a lesser extent dermal contact. EPA recognizes the toxicological problems in extrapolation of dose response data from one route of exposure to another. However, the Agency believes that the low vapor pressures of DGBE and DGBA may prevent inhalation dosing of the animals at levels sufficient to reliably evaluate the chemicals' toxic effects. EPA requests comments and information on the effect of the route of administration on the toxicology of these chemicals.

4. EPA is considering requiring neurotoxicity testing for DGBA and DGBE. Neurotoxicity testing is being considered because of the report that DGBE caused narcosis when administered at doses near the acute LD_{50}, and also because another glycol ether, ethylene, glycol methyl ether, has been reported to cause neuropathy in workers (Ref. 6). However, DGBE and DGBA have not been reported to cause neurotoxic effects when tested at lower doses for longer periods of time (Refs. 1 and 4). Further, ethylene glycol ethyl and butyl ethers, which are structurally closer to DGBE and DGBA then ethylene glycol mehtyl ether, do not cause neuropathy. EPA recognizes that consumer and commercial exposures from latex paints result in doses several orders of magnitude below the levels of DGBE reported to cause narcosis, but in the absence of test data, the Agency is reluctant to conclude that the substances are unlikely to present unreasonable risks of neurotoxicity. EPA is therefore requesting comments on the need for neurotoxicity testing.

VI. Development of Rulemaking

After reviewing the ITC report and other available information, EPA believes that there is sufficient reason to proceed with the development of a test rule for DGBE and DGBA. A bibliography of all published and unpublished studies received by the Agency is available for review as part of the public record (see Unit VII below). In publishing this ANPR, EPA wishes to receive comments on the testing being considered and the basis for requiring that testing.

The Agency will analyze all comments, production and use patterns, available data, and other relevant issues raised on comments on this ANPR.

VII. Public Record

EPA has established a public record for this ANPR, docket number [OPTS–42062]. The record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notice containing the designation of DGBA to the priority list (48 FR 55674) and all comments on DGBA received in response to that notice.

(2) Communications (public).

(a) Letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(3) Published and unpublished data.

(4) Technical support document.

B. References

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(13) Tyler T.R., G. Millicously, D.E. Dodd, I.M. Pritts, K.A. France, L.C. Fisher. "A teratologic evaluation of ethylene glycol monobutyl ether in Fisher 344 rats and New Zealand White rabbits following inhalation exposure," Bushy Run Research Center, R.D. 4, Mellon Rd. Export, PA 15632. 1983.

(14) Tyler T.R. "Acute and subchronic toxicity of ethylene glycol monobutyl ether," Union Carbide Corporation, Corporate Applied Toxicology, P.O. Box 8361, South Charleston, WV 25303. 1983.

(15) Union Carbide Corp. Toxicology studies data sheet: butyl carbitol. Union Carbide Corp., Corporate Applied Toxicology, P.O. Box 8361, South Charleston, WV 1966.

(16) USEPA. (April) U.S. Environmental Protection Agency. Office of Toxic

Substances. Letter to diethylene glycol butyl ether manufacturers and users. 1984.

(17) USEPA. (May 1). Behavior/distribution of diethylene glycol butyl ether in the environment. Intraagency memorandum from R. Kinerson to P. Price, Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, DC 20460. 1948.

(18) USEPA. (November 20) U.S. Environmental Protection Agency. ENPART analysis of DGBA, TGD, and oleylamine. Interagency memorandum to Test Rules Development Branch, Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, DC 20460. 1984.

(19) USEPA. U.S. Environmental Protection Agency. TSCA Chemical Substances Inventory (public portion). Washington, DC 20460. 1984.

(20) Volpe, P. (Nov. 18), National Association of Printing Ink Manufacturers, Harrison, NY. Personal communication with A. Engelkemeir, Dynamac Corp., 11140 Rockville Pike, Rockville, MD 20852. 1983.

(21) Woebkenberg, J. (Dec 8). SCM Glidden Corp., 6151 Sprague Rd., Strongsville, OH 44136. Personal Communication with A. Engelkemeir, Dynamac Corp., 11140 Rockville Pike, Rockville, MD 20852. 1983.

This record includes basic information considered by the Agency in developing this notice and is available for public inspection and copying in the OPTS Reading Room, Rm. E–107, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays (401 M St., SW., Washington, D.C. 20460). The Agency will supplement the record periodically with additional relevant information received.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous material, Chemicals.

(Sec. 4, Pub. L. 94–469, 90 Stat. 2003; 15 U.S.C. 2601)

Dated: November 8, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84–30229 Filed 11–16–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 799

[OPTS–42061; FRL 2690–5]

Oleylamine; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing that manufacturers and processors of oleyamine (9-octadecenylamine, ODA) be required, under the Toxic Substances Control Act, to perform testing for (1) developmental toxicity, (2) 90-day dermal subchronic toxicity which will include neurobehavioral observations, emphasis on reproductive system histopathology, and a dermal absorption determination, and (3) mutagenicity using a tiered scheme with triggers to oncogenicity testing. This proposed rule is in response to the Interagency Testing Committee's designation of ODA for priority consideration of health effects testing.

DATES: Submit written comments on or before January 18, 1985. Make requests to submit oral comments by January 3, 1985. If requests are made to submit oral comments, EPA will hold a public meeting on February 4, 1985, on this rule in Washington, D.C. For further information on arranging to speak at the meeting see Unit VI of this preamble.

ADDRESS: Submit written comments in triplicate identified by the document control number (OPTS–42061) to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St. SW., Washington, D.C. 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Rm. E–543, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: EPA is issuing a proposed test rule under section 4(a) of TSCA in response to the Interagency Testing Committee's designation of oleylamine for health effects testing consideration.

I. Introduction

Section 4(e) of TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated oleylamine (9-octadecenylamine, or ODA, CAS #112–90–3) for priority consideration in its 13th Report and submitted it to EPA on November 25, 1983. The submission was published in the Federal Register of December 14, 1983 (48 FR 55674). (Hereafter "ODA" will refer to the substance, 9-octadecenylamine, and the term "oleylamine" will refer to commerical fatty amine mixtures containing 65 to 76 percent ODA.) The ITC recommended that ODA be considered for a staged testing program, beginning with toxicokinetics and then testing for mutagenicity and teratogenicity if percutaneous absorption is demonstrated. This notice of proposed rulemaking serves as EPA's response to the recommendations of the ITC for ODA. The bases of these recommendations were as follows: production of 4.5 to 5.5 million pounds per year, estimated occupational exposure of 3,155 workers, positive data from dietary and intraperitoneal teratogenicity studies, and lack of sufficient data to characterize the effects of concern for ODA.

Under section 4(a) of TSCA, the Administrator shall by rule require testing of a chemical substance or mixture to develop approrpriate test data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

In making a section 4(a)(1)(A)(i) finding, EPA considers both exposure and toxicity information to make the finding that the chemical may present an unreasonable risk. For the first finding under section 4(a)(1)(B), EPA considers only production, exposure and release information to determine if there is substantial production and significant or substantial exposure or substantial release. For the second finding under both sections 4(a)(1)(A) and 4(a)(1)(B), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure or environmental release of the chemical. In making the third finding that testing is

necessary. EPA considers whether any ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's approach to determining when these findings are appropriately made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) findings are discussed in 45 FR 48528 and 46 FR 30300 and the section 4(a)(1)(B) findings are discussed in 46 FR 30300.

In evaluating the ITC's testing recommendations for ODA, EPA considered all available relevant information including the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of ODA under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); unpublished health and safety studies submitted by manufacturers and processors of ODA under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716); and other published and unpublished data available to the Agency.

II. Proposed Rule

On the basis of its evaluation as described in this proposed rule and the technical support document (Ref. 1), EPA is proposing for ODA oral developmental toxicity [1] testing, a tiered mutagenicity testing scheme with the capacity to trigger oncogenicity testing (see further explanation in section VI–E of Ref. 1; see also II.H of this notice), and a 90-day dermal subchronic toxicity test. The 90-day test is to include neurobehavioral observations, emphasis on reproductive system histopathology and a dermal absorption determination. The Agency is proposing this testing under the authority of section 4(a)(1)(B) of TSCA; the developmental toxicity testing is also being proposed under section 4(a)(1)(A).

A. Profile

ODA (CAS No. 112–90–3) is a yellow liquid with an ammoniacal ordor. Typical fatty amine mixtures (67 percent ODA) have a boiling range of 275–344 °C at 760 mm HG and a specific gravity of 0.819 at 38 °C. ODA's solubility in water is estimated to be 0.5×10^{-3} mg/l or less at 20 °C, its estimated vapor pressure is 0.5×10^{-4} mm Hg at 10 °C and its estimated log P (octanol-water partition coefficient) ranges from 7.5 to 8.1.

$CH_3(CH_2)_7Ch=CH(CH_2)_7CH_2NH_2$

9=octadecenylamine (ODA)

Industry estimates of production of oleylamine in 1982 range from 5.5 to 6.5 million pounds, and the U.S. International Trade Commission (USITC) reports 1982 oleylamine production to be 4.952 million pounds. Both of these production figures are for fatty amine mixtures called oleylamine by the producers. EPA estimates that the ODA contained in all the fatty amine mixtures produced in 1982 amounts to between 18 and 29 million pounds. ODA is produced by six firms: Akzo Chemie America; Witco Chemcial Corp.; Jetco Chemicals, Inc.; Sherex Chemical Company, Inc.; Borg-Warner Corp.; and Tomah Products, Inc. Production is conducted at nine sites. Akzo uses a continuous reaction process and the others use closed batch reactors. Akzo produces over fifty percent of the total U.S. production. ODA's major use in which human exposure is probable is as an additive to petroleum lubricants or as an intermediate for such additives. It is also used as a collector agent in ore flotation, in asphalt preparation, in a concrete mold release agent and in the manufacture of paper, paperboard, and glues. For a more detailed discussion of properties, productions, uses and exposure of oleylamine and other ODA-containing mixtures, see the oleylamine support document available from the TSCA Assistance Office.

B. Findings

EPA is basing its proposed testing of ODA on the authority of sections 4(a)(1)(A) and 4(a)(1)(B) of TSCA.

1. The section 4(a)(1)(A) findings for developmental effects are as follows:

a. EPA finds that the manufacture, processing, and use of ODA may present an unreasonable risk of injury to human health due to developmental toxicity because (1) available animal studies suggest that ODA may cause such effects and (2) in excess of 2.8 million individuals are potentially exposed to ODA as a result of its manufacture, processing, and use. The primary route of human entry is thought to be dermal absorption of ODA-containing lubricants.

b. EPA also finds that there are insufficient animal and human data to reasonably determine or predict the developmental toxicity of ODA. The finding of "may present an unreasonable risk" of adverse developmental effects is based in part on a study (Ref. 2) in which pregnant mice (4-5 per dose group) were exposed to single doses of ODA either by intraperitonal (i.p.) injection (200, 400, 800, or 1,600 mg/kg) or orally (200, 800, or 3,200 mg/kg). Maternal lethality was produced in the two highest i.p. groups and the highest oral group. Dose-related increases occurred in percentages of fetal resorption (all groups) and skeletal malformations (400 and 800 mg/kg i.p. groups). Dose-related decreases occurred in fetal body weights in all i.p. groups.

These data are not adequate to characterize the potential developmental toxicity of ODA. The study was too limited in design, and analysis and reporting of results provided too little information to adequately assess ODA's potential as a developmental hazard.

Rabbit and rat studies (Refs. 3 through 7) also support a finding of a potential unreasonable risk of adverse developmental effects. In each of these studies pregnant rabbits or rats (14–22 per dose group) were exposed orally to a 1:1 mixture of ODA hydrofluoride and cetylamine hydrofluoride (1.2, 6.0, and 30 mg/kg/day) during all or part of the gestation period until sacrifice or day 21 postnatally. Teratological, fertility, reproductive, and perinatal and postnatal observations were made. Compared to controls, there were increased intrauterine deaths at the majority of dose levels in the majority of groups, and ossification variations and malformations at the higher three dose levels in approximately one-half of the test groups.

These data are also not adequate to characterize the potential adverse developmental effects of ODA. The effects were not always observed at levels of statistical significance; there was evidence of inconsistent observations from study to study; and it cannot be determined to what extent the adverse effects observed may have been influenced by the presence of the hydrofluoride or cetylamine constituents.

c. EPA finds that additional developmental effects testing of ODA is necessary to develop adequate data to evaluate reasonably the developmental risks posed by exposure to ODA.

2. The section 4(a)(1)(B) findings are as follows:

a. EPA finds that ODA is produced in substantial quantities. Production of oleylamine was reported by the USITC to be 4.952 million pounds in 1982. Production estimates for ODA, however, range to 29 million pounds for 1982

[1] The Agency has concluded that the term "developmental toxicity" is more appropriate than the term "teratogenicity" and therefore it will be used in place of the term "teratogenicity". For a more complete discussion see 49 FR 39810 (October 10, 1984).

when the ODA portion of captive production as well as production of all commercial OSA-containing substances is taken into account.

b. EPA also finds that there may be substantial human exposure to ODA. On the basis of the National Occupational Hazard Survey conducted in 1972–1974, eight occupations in six industries involving an estimated 3,155 workers were found to be subject to exposure to ODA-containing products of various kinds. The major human exposure route is thought to be dermal absorption from ODA-containing lubricants handled by mechanics and workers in other machine-related occupations. For 1984, the Bureau of Labor Statistics has identified eight mechanic and other machine-related occupations which involve approximately 2.8 million workers.

c. EPA finds that there are insufficient data available to reasonably determine or predict the effects of this exposure in the areas of developmental toxicity, mutagenicity, oncogenicity, subchronic toxicity, neurobehavioral effects, reproductive histopathology and dermal absorption. EPA, therefore, finds that testing of ODA is necessary to develop such data.

The analysis on which the above findings are based is presented in the oleylamine support document which is a part of this rulemaking record (Ref. 1). EPA is proposing limited initial testing of ODA rather than the full range of testing often used by the Agency under section 4(a)(1)(B) of TSCA.

In cases of section 4(a)(1)(B) findings for chemicals with widespread exposure at moderate to high concentration levels, such as 1,1,1-trichloroethane, EPA has generally followed a policy that data from a broad range of tests are necessary to reasonably determine or predict the risks that may be presented by the chemical's manufacture, processing, distribution in commerce, use, and disposal. Such tests include mutagenicity, acute toxicity, acute dermal irritation/corrosion, acute eye irritation/corrosion, skin sensitization, oncogenicity, chronic effects, reproductive effects, teratogenicity, and neurotoxicity (**Federal Register**, June 5, 1981, 46 FR 30302). EPA would require testing for all such effects for which adequate data are not available. However, in cases where EPA finds that there is substantial production and that a substantial number of persons may be exposed, but that such exposure is typically to low levels of a chemical, EPA makes a case-by-case judgment as to what testing should be required. The use of a screening approach seems appropriate for low-level exposure to chemicals for which little or no toxicity data exist. Adverse effects would only be expected at these exposure levels for highly toxic chemicals. Screening tests should enable EPA to identify significant toxicities of the chemical and determine what, if any, further testing is necessary.

The low-level exposure situation appears to apply to ODA. Specifically, the Agency notes that use of ODA is not expected to expand to types of products other than the current use in lubricants and related products, and that product concentrations are limited to 1 percent or less of oleylamine. Thus, in conjunction with existing data on acute effects and the developmental toxicity testing proposed above, EPA believes that for ODA a screening approach consisting of mutagenicity tests and a 90-day dermal subchronic test with reproductive system histopathology and neurobehavioral observations is appropriate. The dermal route of administration reflects the expected human exposure pattern. The added reproductive system histopathology in the subchronic test will screen for reproductive toxicity. Similarly, a functional observation battery will screen for neurotoxic effects, and mutagenicity testing will screen for oncogenic potential. In all cases, positive results could lead to a determination that more testing should be done; negative results would provide reasonable assurance of little or no potential risk.

From data for structurally similar chemicals, EPA believes that some dermal absorption of ODA will occur (see section VI.A of Support Document). Therefore, the Agency is not following the ITC's recommendation of an initial toxicokinetics study with testing for specific health effects if percutaneous absorption is demonstrated. However, EPA is proposing that a dermal absorption determination be conducted as part of the 90-day subchronic study to provide data relevent to interpreting the oral test for developmental effects.

The ITC recommendations and EPA's proposed tests are summarized below:

TESTING FOR OLEYLAMINE

Test	ITC recommendation	EPA proposal
Toxicokinetics	X	X[a]
Genotoxicity	Conditional[b]	X
Teratogenicity	Conditional[b]	X (Developmental toxicity)
Oncogenicity		Conditional[c]
90-Day dermal subchronic toxicity.		X
Neurobehavioral observations.		X[a]
Reproductive system histopathology.		X[a]

[a] Included in 90-day subchronic testing.
[b] Depends on toxicokinetics results.
[c] Depends on genotoxicity results.

EPA is not proposing an oncogenicity bioassay based on the section 4(a)(1)(B) finding because EPA considers the required mutagenicity tests as an appropriate first tier for oncogenicity. However, EPA finds that if certain of the required mutagenicity tests produce positive results, this will be sufficient to indicate that ODA may present an unreasonable risk of oncogenic effects. In such circumstances, EPA finds that without data from a 2-year bioassay there will be insufficient data to predict oncogenicity, and testing will be necessary to develop oncogenicity data.

The scheme for triggering to higher-tier mutagenicity and oncogenicity testing is similar to that proposed for the cresols (48 FR 31812, July 11, 1983) and the C9 aromatic hydrocarbons (48 FR 23088, May 23, 1983). The tier testing scheme proposed for ODA is described in detail in unit V.1.D. of the oleylamine support document which is part of this rule-making record. The Agency has received and evaluated comments on these notices and is reviewing its policy on the use of triggers between mutagenicity tests and from mutagenicity tests to oncogenicity testing. EPA will publish the results of this review in the near future. The Agency does not request further comment in this area, but those wishing to comment may do so.

C. Test Substance

ODA is routinely manufactured, sold, and used industrially as a fatty-amine mixture. Laboratory grade ODA (97 percent pure) is used in much smaller quantities. EPA is proposing that the test substance be the purest commercial form of ODA in a suitable vehicle. Comments are requested in unit II.H of this preamble on whether the commercial or laboratory grade ODA would be the most appropriate test substance. The vehicle should be one such as mineral oil for which there are historical toxicological data and which will not interfere with test results.

D. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Administrator makes section 4(a) findings (manufacturing, processing,

distribution in commerce, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the findings occur during use, distribution, or disposal. Because EPA has found that the manufacture, processing and use of ODA may present an unreasonable risk of developmental effects and that the use of ODA-containing substances may give rise to substantial human exposure (unit II.B), EPA is proposing that persons who manufacture or process, or who intend to manufacture or process substances containing this chemical at any time from the effective date of this test rule to the end of the reimbursement period, be subject to the rule. The end of the reimbursement period will be 5 years, or an amount of time equal to that which was required to develop data if more than 5 years, after the submission of the last final report required under the final test rule. As discussed in unit II.E, EPA expects that manufacturers will conduct testing and that processors will ordinarily be exempted from testing.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement.

E. Test Rule Development and Exemptions

Test rule development for ODA will be conducted as a two-phase process under the regulations in 40 CFR Part 790 (49 FR 39774, October 10, 1984). In this proposed phase I rule, EPA is proposing that specific testing be required for ODA. This phase of the rulemaking will allow the public to comment on the decision to require testing and the specific types of tests to be required. Phase II will begin after promulgation of the final phase I rule. In phase II, EPA will receive proposed study plans for the specific test requirements adopted in the phase I rule. EPA will make those study plans available for public comment. After comment, the Agency will adopt the study plans, as proposed or modified, as specific test standards for the tests required by the phase I rule. Persons who submit the study plans will be obligated to perform the tests in accordance with the test standards adopted.

EPA's final regulations for the issuance of exemptions from two-phase test rule testing requirements are in 40 CFR Part 790 (49 FR 39774, October 10, 1984). In accordance with these rules, any manufacturer or processor subject to a phase I test rule may submit an application to EPA for an exemption from submitting study plans and from conducting any or all of the tests required under such a rule. If manufacturers perform all the required testing, processors will be granted exemptions automatically without having to file applications.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for ODA. As noted in unit II.C, EPA has specified that the highest purity ODA commercially available be used for testing.

F. Reporting Requirements

EPA is proposing that all data developed under this rule be developed and reported in accordance with the final TSCA Good Laboratory Practice (GLP) Standards (40 CFR Part 792).

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the phase II rulemaking in which study plans are approved.

TSCA section 14(b)(1)(A)(ii) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

G. Enforcement Provisions

Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to (1) establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA. The Agency considers that failure to comply with any aspect of a section 4 rule or the submission of invalid data would be violations of section 15 of TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *." The Agency considers a testing facility to be a place where the chemical is held or stored, and therefore subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by authorized representatives of the EPA for the purpose of determining compliance with this rule. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to TSCA Good Laboratory Practice Standards and the test standards adopted in the phase II rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they had never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. Each day of operation in violation may constitute a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors

listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

H. Issues

1. EPA believes that manufacturers of any ODA-containing substances should be subject to this proposed rule. However, some such substances contain very small quantities of ODA. Of the 22.2 million pounds of primary fatty amine mixtures produced in the U.S. in 1982 (Ref. 10), 6 percent or 1.3 million pounds contained less than 20 percent ODA; some contained as little as 1 percent. The Agency requests comment from interested parties as to whether there is an ODA concentration below which a manufacturer of such a substance need not be required to perform testing.

2. EPA finds that ODA is produced in substantial quantities and that a substantial number of people are potentially exposed to it, but that exposures are to products containing low concentrations of ODA. The Agency requests comment from interested parties on the issue of whether the reproductive toxicity and neurotoxicity screening tests proposed for ODA are adequate, given the low expected exposure levels of ODA.

3. The ITC recommended an initial toxicokinetics study on ODA with mutagenicity and teratogenicity studies if percutaneous absorption is demonstrated. EPA proposes health studies initially, with dermal absorption as a part of a 90-day subchronic test. Because the Agency's analysis suggests that some dermal absorption is likely (Ref. 1), EPA believes health effects testing would still be necessary to determine the significance of whatever absorption did take place. ODA producers recommend an initial toxicokinetics study to determine ODA absorption (Ref. 9). They feel that a low degree of absorption would eliminate any need for further tests. The Agency requests comment from other interested parties on the issue of whether dermal toxicokinetics studies should precede other testing of ODA, and if so, how a suitable level of dermal absorption might be selected to serve as a trigger for additional health effects testing.

4. EPA has proposed that the route of administration of ODA be dermal in a 90-day dermal subchronic test and a 2-year oncogenicity test (if such testing is indicated by prior mutagenicity tests) because the primary route of human exposure is dermal absorption. However, certain difficulties are encountered when the dermal route of exposure is used. For example, due to scratching or licking by the test animal, it may be difficult to determine the actual amount of test substance available for absorption. The Agency requests comment from interested parties as to whether the dermal or some other route of administration of ODA should be used in the 90-day subchronic or oncogenicity tests.

5. Although the primary route of human exposure to ODA is by dermal absorption, EPA has proposed developmental toxicity testing by the oral route. This is based on the fact that the available data base on developmental toxicity testing by the dermal absorption route is extremely small whereas that for oral testing is considerable. For this reason EPA believes the advantage of being better able to interpret data obtained by the oral route outweighs that of the expected human exposure (dermal) route. The Agency requests comment from interested parties as to whether the oral route is the most appropriate for animal studies of developmental toxicity in this case.

6. EPA has proposed that reproductive system histopathology studies be conducted in conjunction with a 90-day dermal subchronic test with ODA. Organs to be studied are vagina, uterus, ovaries, testes, epididymus, seminal vesicles, and prostate. The Agency requests comment as to the adequacy of these studies as indicators of potential reproductive system effects.

7. EPA is proposing that the test substance be the purest commercial form of ODA. The purest ODA generally used in commerce consists of fatty amine mixtures containing 65 to 76 percent ODA. A laboratory grade is also available which is 97 percent ODA. In general, the Agency prefers that the purest available form of a chemical be used for testing, in order that interpretation of test data will not be complicated by the presence of substantial quantities of other substances. For many substances, a large fraction of the expected exposure is to a high purity material. In the case of ODA, however, only a very small number of laboratory workers may be exposed to 97 percent ODA. The Agency requests comment on which substance should be tested in this instance.

III. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis; this analysis consists of evaluating each chemical, or chemical group on four principal market characteristics: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis for ODA, along with a consideration of the cost of the required tests, indicate that the potential for an adverse economic impact is very low; therefore, a Level II analysis, which quantifies the potential for adverse economic impact, was not needed for ODA.

Total testing costs for the testing in this proposed rule for ODA are estimated to range from $391,593 to $1,174,628 depending on the need to perform higher-tiered mutagenicity and oncogenicity testing. The annualized costs range is $101,468 to $304,365 per year based upon specific test requirements. On the basis of an estimated total ODA production volume of 18 to 29 million pounds per year, the cost of testing represents approximately 0.6 to 1.7 cents per pound of ODA contained in the various amine products. These costs represent between 0.01 to as much as 1 percent of amine product value depending on ODA content.

The potential for significant adverse economic effects due to this test rule is small. The market characteristics of ODA-containing products indicate that the potential for adverse economic impact as a result of the small additional product cost increases is low. This suggests that the ecomonic impact would be minimal.

For a more complete and thorough discussion of the methodology used to conduct the economic analysis of this test rule see Ref. 8. A copy of this document is available in the public record for this rulemaking, docket number [OPTS–42061].

IV. Availability of Test Facilities and Personnel

Section 4(b)(1) requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs

negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing", October 1981, can be obtained through the National Technical Information Service (Publication No. PB 82-140773).

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this proposed rule.

V. Guidelines and Study Plans

The following guidelines/study plans and other relevant sources of information cited in this proposed test rulemaking are available from the following sources:

1. National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703-487-4650).

NTIS publication No.	Title	Price
PB 83-153916	Pesticide Assessment Guidelines	$16.00
PB 84-233295	New and Revised Health Effects Test Guidelines	25.00

2. Hemisphere Publishing Corp., 1025 Vermont Avenue, NW., Washington, D.C. 20095, (202-783-3958).

Dermatotoxicology, 2nd Ed., 1983 Editors: F. F. Marzulli and H. I. Maiback.....$64.50

3. OECD Publications and Information Center, Suite 120, 1750 Pennsylvania Avenue, NW., Washington, D.C. 20006, (202-724-1857).

OECD Guidelines for the Testing of Chemicals..... $80.00

VI. Public Meetings

If persons indicate to EPA that they wish to present comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting on February 4, 1985, in Washington, D.C. This meeting will be held after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. Information on the exact time and place of the meeting will be available from the TSCA Assistance Office. Toll Free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the U.S.A.: (Operator-202-554-1404).

Persons who wish to attend or present comments at the meeting should call the TSCA Assistance Office by January 3, 1985. While the meeting will be open to the public, active participation will be limited to those persons who have arranged to present comments and to designated EPA participants. Attendees should call the TSCA Assistance Office before making travel plans because the meeting will not be held if members of the public do not indicate they wish to make oral comments.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VII. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review two weeks after publishing the final rule in the **Federal Register** The effective date will be calculated from the promulgation date.

VIII. Public Record

EPA has established a public record for this rulemaking, docket number [OPTS-42061]. This record includes the basic information considered by the Agency in developing this proposal, and appropriate **Federal Register** notices. The agency will supplement the record with additional information as it is received.

The record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the designation of ODA to the priority list (48 FR 55674, December 14, 1983) and all comments on ODA received in response to that notice.

(b) Notice of proposed test rule on ODA.

(c) Notice of final rule on EPA's TSCA good laboratory practice standards (48 FR 53922, November 29, 1983).

(d) Notice of final rule on test rule development and exemption procedures (49 FR 39774, October 10, 1984).

(e) Notice of final rule on 1,1,1-trichloroethane establishing Part 799 General Provisions (49 FR 39810, October 10, 1984).

(f) Notice of final rule on data reimbursement policy and procedures (48 FR 31786, July 11, 1983).

(2) Support Documents: consisting of:

(a) ODA technical support document.

(b) Economic analysis support document.

(3) Minutes of informal meetings.

(4) Communications before proposal consisting of:

(a) Written public and intra-agency or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Summaries of meetings.

(d) Reports—published and unpublished factual materials, including contractor's reports.

B. References

(1) USEPA. U.S. Environmenal Protection Agency. Assessment of testing needs: oleylamine (9-octadecenylamine) support document. Washington, D.C. Office of Toxic Substances. 1984.

(2) Eifinger, F.F. and Koehler, F. "Comparative Teratological Studies with Organic Fluoride Compounds, their Bases and Amines." Dtsch. zahnaerztl. Z. 32:861-866. (In German; English translation) 1977.

(3) Bio/dynamics Inc. A segment III perinatal and postnatal study of amine fluoride 335/242 in rats. Project No. 72R-819. Philadelphia, PA: Menley and James Laboratories. 1973.

(4) Bio/dynamics Inc. Amine fluoride 335/242 segment II rabbit teratology study. Project No. 72R-818. Philadelphia, PA: Menley and James Laboratories. 1973.

(5) Bio/dynamics Inc. A segment I rat fertility study of amine fluoride 335/242. Project No. 72R-817. Philadelphia, PA: Menley & James Laboratories. 1973.

(6) Bio/dynamics Inc. A segment II rat teratology study of amine fluoride 335/242. Project No. 72R-820. Philadelphia, PA: Menley and James Laboratories. 1973.

(7) Bio/dynamics Inc. Segment II rat teratology study of amine fluoride 335/242 (repeat of previous study). Project No. 73R-880. Philadelphia, PA: Menley and James Laboratories. 1973.

(8) USEPA. U.S. Environmental Protection Agency. Economic Impact Analysis of Proposed Test Rule for 9-Octadecenylamine. Washington, D.C. Office of Toxic Substances. 1984.

(9) USEPA. U.S. Environmenal Protection Agency report of meeting with representatives of Akzo Chemie America and Chemical Manufacturers Association. May 9, 1984.

(10) USITC. International Trade Commission. Synthetic Organic Chemicals. U.S. production and sales, 1982. Washington, D.C.: U.S. Government Printing Office, USITC pub. 1422. 1983.

Confidential business information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Room, Rm. E-107, 401 M St. SW., Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

IX. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. According to section 1, definition (b) "major rule" means any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the estimated annual cost of all the testing proposed for ODA is $115,048 to $344,625 per year over the testing and reimbursement period. Second, because the cost of the required testing will be distributed over a large production volume, the rule will have only very minor effects on users' prices for this chemical, even if all test costs are passed on. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic effects of any type as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments received from OMB are included in the Public Record for this rulemaking.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulated, will not have a significant impact on a substantial number of small entities for the following reasons:

1. All six manufacturers are large businesses or subsidiaries of large businesses. There are no small manufacturers of this chemical.

2. Small processors are not expected to perform testing themselves, or participate in the organization of the testing efforts.

3. Small processors will experience only very minor costs if any in securing exemption from testing requirements and are unlikely to be affected by reimbursement requirements.

4. The magnitude of the unit costs of testing is relatively low, or less than two cents per pound in the upper bound case. Thus, any testing costs passed on to small processors through price increases will be small.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*, and has assigned OMB control number 2070—0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous material, Chemicals.

(Sec. 4, Pub. L. 94-469, 90 Stat. 2006; 15 U.S.C. 2603)

Dated: November 8, 1984.

William D. Ruckelshaus,

Administrator.

PART 799—[AMENDED]

Therefore, it is proposed that 40 CFR Part 799 be amended by adding § 799.3300 to read as follows:

§ 799.3300 Oleylamine.

(a) *Identification of test substance.* (1) 9-Octadecenylamine (hereafter ODA) (CAS No. 112-90-3) shall be tested in accordance with this part.

(2) The ODA test substance shall be the purest commercial form: Laboratory grade (97 percent ODA). The vehicle shall be one such as mineral oil for which there are adequate historical toxicological data and which will not interfere in the test results.

(b) *Persons required to submit study plans, conduct tests and submit data.* All persons who manufacture or process substances containing ODA from the effective date of the final rule to the end of the reimbursement period shall submit letters of intent to test, exemption applications, and study plans and shall conduct tests and submit data as specified in this section and Part 790 of this chapter. (Information collection requirements approved by the Office of Management and Budget under control number 2070-0033.)

(c) *Health effects testing*—(1) *Developmental effects*—(i) *Required testing.* An oral developmental toxicity test shall be conducted with ODA in two mammalian species, preferably rat and rabbit.

(ii) *Study plans.* For guidance in preparing study plans, the New and Revised Health Effects Test Guidelines, published by NTIS (PB 84-233295) should be consulted. Additional guidance may be obtained from the Pesticide Assessment Guidelines, published by NTIS (PB 83-153916).

(2) *Mutagenic effects—Chromosomal aberrations—(i) Required testing.* (A) An *in vitro* cytogenetics test shall be conducted with ODA.

(B) An *in vivo* cytogenetics test shall be conducted with ODA if the *in vitro* cytogenetics test conducted pursuant to paragraph (c)(2)(i)(A) of this section produces a negative result.

(C) A dominant lethal assay shall be conducted with ODA if either the *in vitro* or *in vivo* cytogenetics test conducted pursuant to paragraph (c)(2)(i) (A) or (B) of this section produces a positive result.

(D) A heritable translocation assay shall be conducted with ODA if the dominant lethal assay conducted pursuant to paragraph (c)(2)(i)(C) of this section produces a positive result.

(ii) *Study plans.* For guidance in preparing study plans, the New and Revised Health Effects Test Guidelines, published by NTIS (PB 84-233295), should be consulted. Additional guidance may be obtained from the Pesticide Assessment Guidelines, published by NTIS (PB 83-153916).

(3) *Mutagenic effects—Gene Mutations*—(i) *Required testing.* (A) A *Salmonella typhimurium* mammalian microsomal reverse mutation assay (hereinafter "Ames assay") shall be conducted with ODA.

(B) A gene mutation in somatic cells assay shall be conducted with ODA if the Ames assay conducted pursuant to paragraph (c)(3)(i)(A) of this section produces a negative result.

(C) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted for ODA if either the Ames assay or the gene mutation in somatic cells assay conducted pursuant to paragraph (c)(3)(i) (A) or (B) of this section produces a positive result.

(D) A mouse specific locus test shall be conducted for ODA if the sex-linked recessive lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(3)(i)(C) of this section produces a positive result.

(ii) *Study plans.* For guidance in preparing study plans, the New and Revised Health Effects Test Guidelines, published by NTIS (PB 84-233295), should be consulted. Additional

guidance may be obtained from the Pesticide Assessment Guidelines, published by NTIS (PB 83-153916).

(4) *Oncogenicity*—(i) *Required testing.* A 2-year, dermal oncogenicity bioassay shall be conducted with ODA if positive results are obtained in any of the following mutagenic effect tests conducted pursuant to paragraph (c) (2) or (3) of this section:

(A) The gene mutation assay in mammalian cells.

(B) The sex-linked recessive lethal gene mutation assay in *Drosophila melanogaster.*

(C) The *in vitro* cytogenetics assay, or

(D) the *in vivo* cytogenetics assay.

(ii) *Study plans.* For guidance in preparing study plans, the New and Revised Health Effects Test Guidelines, published by the NTIS (PB 84-233295), should be consulted. Additional guidance may be obtained from the Organization for Economic Cooperation and Development (OECD) "Guidelines for the Testing of Chemicals" as adopted by the OECD Council on May 12, 1981, and the Pesticide Assessment Guidelines, published by NTIS (PB 83-153916).

(5) *Subchronic effects*—(i) *Required testing.* A 90-day dermal subchronic toxicity test shall be conducted with ODA. Neurobehavioral observations, reproductive system histopathology, and a dermal absorption determination shall be included.

(ii) *Study plans.* For guidance in preparing study plans, the New and Revised Health Effects Test Guidelines, published by the NTIS (PB 84-233295), and *Dermatotoxicology,* 2nd Ed., published by the Hemisphere Publishing Corp. should be consulted. Additional guidance may be obtained from the Pesticide Guidelines, published by NTIS (PB 83-153916).

(d) *Availability of guidelines.* The guidelines cited in this proposed rule are available from:

(1) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703-487-4650).

NTIS publication	Title
PB 83-153916 PB 84-233295	Pesticide Assessment Guidelines New and Revised Health Effects Test Guidelines

(2) Hemisphere Publishing Corp., 1025 Vermont Ave, NW., Washington, D.C. 20095, (202-783-3958).
Dermatotoxicology, 2nd Ed., 1983
Editors: F. F. Marzulli and H. I. Maiback.

(3) OECD Publications and Information Center, Suite 120, 1750 Pennsylvania Ave., NW., Washington, D.C. 20006, (202-724-1857). OECD Guidelines for the Testing of Chemicals.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 95

Automatic Data Processing Equipment and Services; Conditions for Federal Financial Participation

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: In September 1978, Health and Human Services (HHS) published a regulation containing requirements that State and local governments must observe to claim Federal reimbursement for the costs of automatic data processing (ADP) equipment and services. The regulations are applicable to certain public assistance programs under the Social Security Act. The regulations were modified in February 1980 to implement certain changes.

These regulations change requirements for the claiming of Federal matching funds for the acquisition of automatic data processing (ADP) equipment and services in the administration of public assistance programs under the Social Security Act titles I, IV, X, XIV, XVI (AABD), XIX and XX.

The change modifies the regulation to conform to recent legislative changes and raises the HHS prior approval threshold for most State and local government acquisitions. The purpose of the change is to:

—Simplify and make these regulations consistent, to the maximum extent possible, with those regulations that govern availability of FFP at the enhanced matching rate for computerized systems that support programs under title IV-A, IV-D and XIX of the Social Security Act;

—Allow States more flexibility in implementing small systems; and

—Reduce paperwork.

DATES: Comments must be received by January 18, 1985. If we receive substantive comments, HHS will reissue the NPRM at a later date. We will consider comments submitted in response to the present effort to update Office of Management and Budget Circular A-102, to the extent that such comments relate to provisions of these proposed regulations.

ADDRESSES: Send written comments to: Joseph F. Costa, Director, Office of Public and State Data Systems, OMAS, Hubert H. Humphrey Building Room 514-E, 200 Independence Ave., SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Joseph F. Costa (202) 245-7488.

SUPPLEMENTARY INFORMATION: HHS, then Health, Education, and Welfare (HEW), published final regulations "Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation", Subpart F of 45 CFR Part 95 in the **Federal Register,** page 44851, on September 29, 1978. These regulations required State and local governments to obtain prior written approval by the Department for the acquisition of ADP equipment or ADP services when the acquisition costs exceeded $25,000. These regulations were modified by a rule change published in the **Federal Register,** page 10794, on February 19, 1980, to raise the prior approval threshold to $100,000 for acquisitions costing that amount or more in Federal and State funds over a twelve-month period and to $200,000 in Federal and State funds for the total acquisition. The change also required States to submit a brief prior notice of acquisition for ADP equipment and services that cost $25,000 to $100,000 over a twelve-month period.

In analyzing State requests made since the 1980 regulation change, HHS found that State requests for acquisitions costing between $100,000 and $200,000 represent 9.9 percent of the total number of requests but only 1.4 percent of the dollar amount requested. Additionally, HHS found that States had submitted only 109 prior notices during the three-year period. Therefore, HHS is raising the prior approval threshold to $200,000 for acquisitions costing that amount or more in Federal and State funds over a twelve-month period and to $300,000 in Federal and State funds for the total acquisition; and is eliminating the prior notice requirement, thus reducing paperwork requirements. The changes also modify the regulation to conform to recent legislative changes in administration of some Social Security Act programs and to clarify the regulatory language.

Specifics of the changes are:

1. The Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272, June 17, 1980) amended title IV of the Social Security Act by adding Part E—Federal Payments for Foster Care and Adoption Assistance. We are adding title IV-E to the applicable list of programs covered under this regulation. This is based on

the provisions in section 474 of the Social Security Act. The title IV–E program is administered by the Office of Human Development Services, HHS. We are retaining title IV–B because of the Interaction of program and information systems requirements between titles IV–A, IV–B and IV–E.

2. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) established seven block grant programs to be administered by the Secretary of Health and Human Services. Section 2352 of this Act amends title XX of the Social Security Act to establish a social services block grant. Since the States must assume administration of a block grant in its entirety, all references to the title XX program will be deleted from this regulation. Section 2352 of this Act also deleted the social services programs in Puerto Rico, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands under titles I, IV–A, X, XIV and XVI (AABD). All references to these social service programs have also been deleted.

3. Sections 405 and 406 of Pub. L. 96–265 modified title IV–D and title IV–A of the Social Security Act respectively to provide enhanced FFP for States which opt to plan, design, develop, improve and install computerized systems which meet the functional and administrative requirements stated in Pub. L. 96–265 and delineated in regulations promulgated by the Department on September 30, 1981. The regulation citations are 45 CFR Parts 205 and 307. Title XIX of the Social Security Act also authorizes enhanced FFP for Medicaid systems. The title XIX enhanced funding regulation citation is 42 CFR Part 433, Subpart C. The proposed changes to Part 95 cross-reference the regulations for higher level matching in Federal financial participation available for certain ADP systems.

4. We are making minor amendments to Section 95.605 to include certain definitions now included in regulations governing enhanced funding for titles IV–A, IV–D and XIX. The definitions that are common to multiple programs will be included in 45 CFR Part 95, Subpart F and eliminated from the companion regulations for titles IV–A, IV–D and XIX. This will eliminate redundant and/or conflicting term definitions from the regulations governing ADP systems, equipment and services. The term definitions affected are:

—Advance planning document is modified to include the requirement for a statement of alternative considerations and a requirements analysis. Definitions of these terms are added to § 95.605.

—"Automatic data processing equipment" is expanded to include the term "hardware" to be interchangeable with "automatic data processing equipment". Hardware is the terminology used in Pub. L. 96–265 that authorizes titles IV–A and IV–D of the Social Security Act to provide enhanced funding for States that design, develop, improve and install computerized systems which meet the functional and administrative requirements stated in Pub. L. 96–265.

—"Design or system design" was included in § 95.605 under the term "system design". The modified definition standardizes the term as defined in regulations governing enhanced funding for systems authorized under titles IV–A, IV–D and XIX.

—"Development", "Installation", and "Operation" are term definitions not included previously in 45 CFR Part 95, Subpart F but that were included in Parts 205 and 307 of this title for specific requirements for titles IV–A and IV–D and 42 CFR Part 433, Subpart C for specific requirements of title XIX. Inclusion of these definitions in this section standardizes the definitions for the multiple programs and eliminates the repetition of the terms in the companion regulations.

—"Enhanced matching rate" is being added to define the term used for the higher level matching rate for FFP authorized for certain ADP systems by 45 CFR Part 205 and § 307.30 for titles IV–A and IV–D and 42 CFR Part 433, Subpart C for title XIX.

—"Software" is modified to clarify and simplify the term definition.

—Service agreement is modified to define the meaning of the word "primarily" used in item (f) of the current definition, and to add the period of time the agreement covers to its definition (new item (g)), and the requirement for a schedule of expected total charges to the titles covered by this regulation for the period of the service agreement (new item (h)). The current regulation requires the service provider to obtain HHS prior approval for ADP equipment and ADP services that are acquired primarily to support the titles covered by this subpart. ADP equipment and services are considered to be primarily acquired to support the titles covered by this subpart when the titles may reasonably be expected to be billed for more than 50 percent of the total charges made to all users of the equipment and services. If, however, the titles covered by this regulation are to be directly charged for the cost of the purchase or lease of ADP equipment or services acquired for a central processing facility, the provisions of § 95.611(a) apply.

If the public finds these revised definitions to be acceptable, we will rescind other conflicting definitions contained in Parts 205 and 307 of this title and 45 CFR Part 433, Subpart C, to the extent that statutory requirements permit, when we publish these regulations in final form.

5. Section 95.611(a), is modified to raise the prior approval threshold of $100,000 to provide that a State shall obtain prior written approval from the Department when it plans to acquire ADP equipment or services that it anticipates will have total acquisition costs of $200,000 or more in State and Federal funds over a twelve-month period, or $300,000 or more in Federal and State funds for the total acquisition, unless the acquisition is noncompetitive from a commercial source, or the State plans to acquire ADP equipment or services with proposed FFP at the enhanced matching rate. The State requests for funding of ADP acquisitions costing between $100,000 and $200,000 since the February 1980 rule change that raised the threshold to $100,000, represent 1.4 percent of the total dollar amount requested and 9.9 percent of the total number of State requests received. By raising the threshold to $200,000, HHS will continue to prior approve most State expenditures but will substantially reduce the number of required State submittals. The purpose of the change is to allow States to implement small systems or system changes more quickly; simplify the process of State application for Federal financial participation in the costs of ADP systems; and reduce paperwork burden.

Section 95.611(b)(2) is changed to specify when a State is required to obtain HHS prior approval of a service agreement. Section 95.611(b)(3) is changed to modify the requirement for prior approval of request for proposal (RFP). States currently are required to submit each RFP for prior approval. The modified regulation will require prior approval of the RFP only for complex procurements or when the grantee has a history of performance problems.

6. Section 95.612 presently requires a State to notify HHS when it acquires ADP equipment or services that will cost $25,000 to $100,000 over a twelve-month period in Federal and State funds. This requirement is eliminated by these proposed changes. Experience since the implementation of the prior notice rule indicates that most acquisitions are for larger amounts. Since imposition of the prior notice rule in February 1980, States have submitted only 109 prior notices. In

order to maintain proper oversight of State acquisitions costing below the proposed new threshold of $200,000, HHS will conduct periodic on-site surveys as required in the proposed new § 95.621(d).

7. Section 95.613 is modified by adding the phrase "regardless of any conditions for prior approval" to the first sentence of the section. The revised sentence will read: "Procurements of ADP equipment and services are subject to the procurement standards prescribed by Subpart P of 45 CFR Part 74 regardless of any conditions for prior approval." This added phrase emphasizes that Federal procurement standards, including free and open competition, apply to all acquisitions notwithstanding the fact that HHS will only require prior approval of acquisitions that cost in excess of $200,000.

8. We are making a minor modification to the title of § 95.615 to clarify the language of the requirement pertaining to access to State agency ADP records and systems. The clarification is intended to emphasize that State agencies must allow HHS access to ADP systems and all records pertaining to the systems from planning through operational stages including cost records of the agency, contractors and subcontractors.

9. We are proposing three changes to § 95.617, Software and ownership rights. The changes, intended as language clarification only, are:

—The first sentence under § 95.617(a) is amended to include the phrase "must include a clause in all procurement instruments that provides that the State or local government". The sentence will now read: "The State or local government must include a clause in all procurement instruments that provides that the State or local government will have all ownership rights in software or modification thereof and associated documentation designed, developed or installed with Federal financial participation under this subpart."

—The title of § 95.617(b) is being changed from "Exemption" to "Federal license" because that term more aptly describes the subject of the regulatory provision.

—The regulation provision reference in § 95.617(c) is being changed from "of this subpart" to "in paragraphs (a) and (b) of this section" to point directly to the referenced provisions.

10. We are changing the last phrase in § 95.619 to simplify the language by substituting "a shorter period is justified" for "the elapsed shorter period of time is sufficient to justify the Federal funds involved". The requirement will read: "ADP systems designed, developed, or installed with Federal financial participation shall be used for a period of time specified in the advance planning document, unless the Department determines that a shorter period is justified."

11. We are adding a provision at § 95.621(d) that states that HHS will conduct periodic on-site reviews to assure that State acquisitions costing less than $200,000 were made in accordance with 45 CFR Part 74 and to determine the efficiency, economy and effectiveness of the acquired equipment or service.

12. We are changing § 95.623 to remove the specification that waiver of HHS prior approval can be made only for acquisitions prior to the effective date of these regulations. The change will permit HHS to waive the prior approval requirement in those instances where a State failed to obtain prior approval of acquisitions, as long as a State submits a waiver request within six months following an acquisition, the acquisition is justified and beneficial to the Department's programs, and the Department finds that it would have prior approved the acquisition if a proper request for such approval had been made by the State agency. This change is intended to cover acquisitions under unusual circumstances and is not to be viewed by States as a relaxation of the prior approval requirement.

13. A new § 95.625, Increased FFP for certain ADP systems, is being added to cross reference the general regulatory provisions governing ADP acquisitions of this subpart to the specific regulatory provisions that States must meet to qualify for enhanced funding for ADP systems that support State plans for titles IV-A, IV-D and XIX of the Social Security Act. The section states availability of enhanced matching for certain systems and gives the regulatory citations of specific requirements for such systems.

14. The section heading for § 95.631 and § 95.633 is being changed from "Cost Allocation Plan" to "Federal Financial Participation in Costs of ADP Acquisitions" to more accurately reflect the subject of the sections.

15. Section 95.631 is being changed as follows: The title of § 95.631 is changed from "Relationship to the approved cost allocation plan" to "Cost identification for purpose of FFP claims." As with the section heading, this change is being made more accurately title the subject of the section. The provisions of the section have been restated to describe in a straightforward manner, the methods States must use in identifying, accounting for, and claiming FFP for costs incurred in system development and operation and in acquiring service from a State operated central data processing facility.

16. We are revising § 95.641 (now entitled "Exemption from Subpart G of this part") to explain more clearly the relation of Subpart G of Part 95 to ADP equipment and this Subpart F.

Subpart G concerns "Equipment Acquired Under Public Assistance Programs." Among other things, Subpart G permits a State to charge the cost of equipment having a unit acquisition cost of more than $25,000 only by means of depreciation or use allowances, not by claiming the full cost in the year of acquisition. Section 95.641 of this Subpart F, as we propose to revise the section, explains that, although that restriction applies to ADP equipment as well as other equipment, the Department will, in the case of ADP equipment, consider requests for waivers of the restriction. The revised text also explains that, if the acquisition of the equipment is part of an advance planning document that is subject to the prior approval requirements of this Subpart F, the State may submit the request for waiver as part of the advance planning document.

17. We are deleting § 95.643. The purpose of that section is to waive for HHS public assistance programs any prior approval requirements for ADP costs in the OMB principles for determining allowable costs of governments (OMB Circular A–87). However, we find the section redundant and unnecessary. The charging of ADP equipment under these programs is fully treated in Subpart G of Part 95. ADP services require prior approval only as specifically provided in this Subpart F.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule because it will not have an annual impact on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions, or otherwise meet the thresholds of the Executive Order.

Regulatory Flexibility Analysis

Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. This rule has no significant effect on a substantial number of small

entities. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, the Department has previously obtained OMB clearance of the process described in this document under which the States may apply for and obtain Federal financial participation in their ADP acquisitions. The OMB approval number is 0990–0058.

Catalog of Federal Domestic Assistance Program Numbers 13.645 Child Welfare Services—State Grants, 13.658, Foster Care, Maintenance, 13.659, Adoption Assistance; 13.679, Child Support Enforcement Program; 13.714, Medical Assistance Program; 13.808, Assistance Payments—Maintenance Assistance; 13.810, Assistance Payments—State and Local Training.

List of Subjects in 45 CFR Part 95

Claims, Computer technology, Grant programs—health, Grant programs—social programs, Social Security, Time.

Dated: January 3, 1984.

Margaret M. Heckler,

Secretary.

PART 95—[AMENDED]

45 CFR Part 95, Subpart F is amended as set forth below:

1. The Table of Contents is revised to read as follows:

Subpart F—Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation

General

Sec.

95.601 Scope and applicability.
95.605 Definitions.

Specific Conditions for FFP

95.611 Prior approval conditions.
95.613 Procurement standards.
95.615 Access to systems and records.
95.617 Software ownership rights.
95.619 Use of ADP systems.
95.621 ADP reviews.
95.623 Waiver of prior approval requirements.
95.625 Increased FFP for certain ADP systems.

Federal Financial Participation in Costs of ADP Acquisitions

95.631 Cost identification for purposes of FFP claims.
95.633 Nondiscrimination requirements.

Exemptions

95.641 Applicability of rules for charging equipment in Subpart G of this part.

Authority: Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302.

2. Section 95.601 is revised to read as follows:

General

§ 95.601 Scope and applicability.

This subpart prescribes the conditions under which the Department of Health and Human Services will approve Federal financial participation (FFP), at the applicable rates, for the costs of automatic data processing incurred under an approved State plan for titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD), or XIX of the Social Security Act.

(Approved by the Office of Management and Budget under Control Number 0990–0058)

3. Section 95.605 is revised to read as follows:

§ 95.605 Definitions.

As used in this part, the term:

"Acceptance documents" means written evidence of satisfactory completion of an approved phase of work or contract, and acceptance thereof by the State agency.

"Acquisition" means acquiring ADP equipment or services from commercial sources or from State or local government resources.

"Advance planning document" or "APD" means a written plan of action to acquire the proposed ADP services or equipment. The APD must contain a statement of needs and objectives; a statement of alternatives considered; a requirements analysis; a preliminary cost/benefits analysis; a personnel resource statement indicating availability of qualified and adequate staff, including a project director to accomplish the project objectives; a detailed description of the nature and scope of the activities to be undertaken and the methods to be used to accomplish the project; a proposed activity schedule for the project; a proposed budget; and a statement indicating the period of time the State expects to use the ADP service or equipment.

"Alternative Considerations" means methods of satisfying the stated needs and objectives (e.g., upgrade or transfer of an existing system), that the State considered in addition to the selected method.

"Approving component" means an organization within the Department that is authorized to approve requests for the acquisition of ADP equipment or ADP services: Social Security Administration (SSA) for cash assistance for titles I, IV–A, X, XIV, and XVI(AABD); Office of Human Development services (OHDS) for social services for titles IV–B (child welfare services) and IV–E (foster care and adoption assistance); Office of Child Support Enforcement (OCSE) for title IV–D; and Health Care Financing Administration (HCFA) for title XIX of the Social Security Act.

"Automatic data processing" or "ADP" means data processing performed by a system of electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention.

"Automatic data processing equipment" or "ADP equipment" or "Hardware" means automatic equipment that accepts and stores data, performs calculations and other processing steps, and produces information. This includes:

(a) Electronic digital computers;

(b) Peripheral or auxiliary equipment used in support of electronic computers;

(c) Data transmission or communications equipment; and

(d) Data input equipment.

"Automatic data processing services" or "ADP services" means:

(a) Services to operate ADP equipment, either by private sources, or by employees of the State agency, or by State or local organizations other than the State or agency; and/or

(b) Services provided by private sources or by employees of the State agency or by State and local organizations other than the State agency to perform such tasks as feasibility studies, system studies, system design efforts, development of system specifications, system analysis, programming and system implementation.

"Data processing" means the preparation of source media containing data or basic elements of information, and the use of such source media according to precise rules of procedures to accomplish such operations as classifying, sorting, calculating, summarizing, recording, and transmitting.

"Department" means the Department of Health and Human Services.

"Design" or "system design" means a combination of narrative and diagrams describing the structure of a new or more efficient automatic data processing system. This includes the use of hardware to the extent necessary for the design phase.

"Development" means the definition of system requirements, detailing of system and program specifications, programming and testing. This includes the use of hardware to the extent necessary for the development phase.

"Enhanced matching rate" means the higher than regular rate of FFP authorized by titles IV–A, IV–D, and XIX of the Social Security Act for acquisition or improvement of systems.

services and equipment that conform to specific requirements designed to improve administration of the Aid to Families with Dependent Children, Child Support Enforcement and Medicaid programs.

"Feasibility study" means a preliminary study to determine whether it is sufficiently probable that effective and efficient use of ADP equipment or systems can be made to warrant the substantial investment of staff, time, and money, and whether the plan is capable of being accomplished successfully.

"FFP" means Federal financial participation.

"Installation" means the intergrated testing of programs and subsystems, system conversion, and turnover to operational status. This includes the use of hardware to the extent necessary for the installation phase.

"Operation" means the automated processing of data used in the administration of State plans for titles I, IV-A, IV-B, IV-D, IV-E, X, XIV, XVI(AABD) or XIX of the Social Security Act. Operation includes the use of supplies, software, hardware, and personnel directly associated with the functioning of the mechanized system. See 45 CFR 205.35 and 307.35(b) for specific requirements for title IV-A and IV-D, and 42 CFR Part 433, Subpart C for specific requirements for title XIX.

"Regular matching rate" means the normal rate of FFP authorized by titles IV-A, IV-B, IV-D, IV-E, X, XIV, XVI(AABD) and XIX of the Social Security Act for State and local agency administration of programs authorized by those titles.

"Requirements Analysis" means determining and documenting the information needs and the functional and technical requirements the proposed computerized system must meet.

"Service agreement" means a document signed by the State or local agency and the State or local central data processing facility providing ADP services (provider) which:

(a) Identifies those ADP services the central data processing facility will provide;

(b) Includes, preferably as an amendable attachment, a schedule of charges for each identified ADP service, and a certification that these charges apply equally to all users;

(c) Includes a description of the method(s) of accounting for the services rendered under the agreement and computing services charges;

(d) Includes assurances that services provided will be timely and satisfactory;

(e) Includes assurances that information in the computer system as well as access, use, and disposal of ADP data will be safeguarded in accordance with provisions of 45 CFR 205.50 and 45 CFR 303.21;

(f) Requires the provider to obtain prior approval from the Department for ADP equipment and ADP services that are acquired primarily to support the titles covered by this subpart and requires the provider to comply with 45 CFR Part 74, Subpart P for procurements related to the service agreement. ADP equipment and services are considered to be primarily acquired to support the titles covered by this subpart when these titles may reasonably be expected to be billed more than 50% of the total charges made to all users of the ADP equipment and services during the time period covered by the service agreement. If, however, the titles covered by this regulation are to be directly charged for the cost of the purchase or lease of ADP equipment or services acquired for a central processing facility, the provisions of § 96.611(a) apply;

(g) Includes the beginning and ending dates of the period of time covered by the service agreement; and

(h) Includes a schedule of expected total charges to the titles covered by this regulation for the period of the service agreement.

"Software" means a set of computer programs, procedure, and associated documentation used to operate the hardware.

"State agency" means the State agency administering or supervising the administration of the State plan that is required by the Department for the Social Security Act programs.

"System specifications" means information about the new ADP system—such as workload descriptions, input data, information to be maintained and processed, data processing techniques, and output data—which is required to determine the ADP equipment and software necessary to implement the system design.

"System study" means the examination of existing information flow and operational procedures within an organization. The study essentially consists of three basic phases: Data gathering, investigation of the present system and new information requirements; analysis of the data gathered in the investigation; and synthesis, or refitting of the parts and relationships uncovered through the analysis into an efficient system.

4. Section 95.611 is amended by revising paragraphs (a) and (b) as follows:

Specific Conditions for FFP

§ 95.611 Prior approval conditions.

(a) *General Acquisition requirement.* A State shall obtain prior written approval from the Department when it plans to acquire ADP equipment or services with proposed FFP at the regular matching rate that it anticipates will have total acquisition costs of $200,000 or more in Federal and State funds over any twelve-month period, or $300,000 or more in Federal and State funds for the total acquisition. A State shall obtain prior written approval from the Department when it plans to acquire ADP equipment or services with proposed FFP at the enhanced matching rate authorized by 45 CFR 205.35, 45 CFR Part 307 or 42 CFR Part 433, Subpart C regardless of the acquisition cost. A State shall also obtain prior written approval from the Department when it plans to acquire noncompetitively from a non-governmental source ADP equipment or services that cost more than $25,000 in Federal and State funds. The State shall submit requests for prior systems approval, signed by the appropriate State official, to the Assistant Secretary for Management and Budget (ASMB), Department of Health and Human Services. Requests from States shall indicate clearly the Social Security Act titles under which funding is requested, the estimated cost for the total acquisition, and the estimated amount or percent that is requested for each title. The State shall send three copies of the request for each component to the Department that must approve the request. The Department will acknowledge receipt of the State request.

(b) *Specific prior approval requirements.* The State agency shall obtain written approval of the Department:

(1) For the advance planning document or any change of the advance planning document prior to entering into contractual agreements or making any other commitment for acquisition of ADP equipment or ADP services;

(2) For the service agreement (when data processing services are to be provided by a State central data processing facility or by another State or local agency), any extension of the period covered by the service agreement, or for changes to any of the other elements of a service agreement listed in § 95.605.

(3) When required, for the request for proposal (RFP), prior to its issuance when service or equipment proposals are being solicited from non-

governmental sources. The Department requires approval of the RFP if the procurement is complex, the grantee has a history of performance problems, or the State proposes to claim FFP at the enhanced matching rate;

(4) When required, for the contract, prior to signature of the contracting officer. The Department requires approval of the contract if the procurement is complex, the grantee has a history of performance problems, or the State proposes to claim FFP at the enhanced matching rate;

(5) When required for:

(i) The feasibility study;

(ii) The system study;

(iii) The system design;

(iv) The system specifications; and

(v) The acceptance document.

The Department will notify the State agency if such prior approval is required under § 95.611(b) (3), (4) or (5) for acquisitions for which the State proposes to claim FFP as the regular matching rate. The State shall consider prior approval required for the RFP, contract and system design documents when the State proposes to claim FFP at an enhanced matching rate.

* * * * *

§ 95.612 [Removed]

5. Part 95 is amended by removing § 95.612.

6. Section 95.613 is revised to read as follows:

§ 95.613 Procurement standards.

Procurements of ADP equipment and services are subject to the procurement standards prescribed by Subpart P of 45 CFR, Part 74 regardless of any conditions for prior approval. Those standards include a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated. Those standards, as well as the requirement for prior approval, apply to ADP services and equipment acquired by a State or local agency, and to ADP services and equipment acquired by a State or local central data processing facility primarily to support the Social Security Act programs covered by this subpart. Since it is an acquisition by one government agency from another, the service agreement between the State agency and the State central data processing facility is, in accordance with 45 CFR 74.160, exempt from the procurement standards.

7. Section 95.615 is amended by removing the word "records" from the section heading and inserting in its place the words "systems and records" to read as follows:

§ 95.615 Access to systems and records.

* * * * *

8. Section 95.617 is amended by revising paragraphs (a), (b) and (c) as follows:

§ 95.617 Software and ownership rights.

(a) *General.* The State or local government must include a clause in all procurement instruments that provides that the State or local government will have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation under this subpart.

(b) *Federal license.* The Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.

(c) *Proprietary software.* Proprietary software which is provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in paragraphs (a) and (b) of this section.

9. Section 95.619 is revised to read as follows:

§ 95.619 Use of ADP systems.

ADP systems designed, developed, or installed with Federal financial participation shall be used for a period of time specified in the advance planning document, unless the Department determines that a shorter period is justified.

10. A new paragraph (d) is added to § 95.621 to read as follows:

§ 95.621 ADP reviews.

* * * * *

(d) Acquisitions not subject to prior approval. A review conducted on an audit basis to assure that system and equipment acquisitions costing less than $200,000 were made in accordance with 45 CFR Part 74 and the conditions of this subpart, and to determine the efficiency, economy and effectiveness of the equipment or system.

11. Section 95.623 is revised to read as follows:

§ 95.623 Waiver of prior approval requirements.

ADP equipment and services acquired by a State agency without required prior approval of the Department may qualify for FFP provided the Department waives the prior approval requirement. The Department will waive the prior approval requirement provided that:

(a) The State submits a request for retroactive approval within six months following the acquisition that conforms to the conditions specified in 45 CFR 95.611,

(b) The State provides justification for failure to obtain prior approval,

(c) The Department determines that the ADP equipment or service is cost beneficial to the Department's programs, and would have received prior approval had a request for such approval been made by the State agency, and

(d) The Department agrees to the acquisition. 45 CFR 205.37 and 307.15 prohibit waiver of prior approval for ADP acquisitions funded by titles IV-A and IV-D at the enhanced matching rate.

12. A new § 95.625 is added to read as follows:

§ 95.625 Increased FFP for certain ADP systems.

(a) General. FFP is available at enhanced matching rates for individual or integrated systems that support State plans for titles IV-A, IV-D and/or XIX provided the systems meet specific regulatory provisions established by the individual programs.

(b) Specific regulatory references. The applicable regulations for the title IV-A program are contained in 45 CFR 205.35. The applicable regulations for the title IV-D program are contained in 45 CFR Part 307. The applicable regulations for the title XIX program are contained in 42 CFR 432, Subpart C and 42 CFR 433, Subpart C.

13. The center heading before §§ 95.631 and 95.633 is revised to read as follows:

Federal Financial Participation in Costs of ADP Acquisitions

14. Section 95.631 is revised to read as follows:

§ 95.631 Cost identification for purposes of FFP claims.

The conditions of this subpart apply notwithstanding the existence of an approved cost allocation plan. State agencies shall assign and claim the costs incurred under an approved APD in accordance with the following criteria:

(a) *Development costs.* The State agency shall identify the actual development costs incurred under an approved APD in its departmental accounting system, and assign these costs to the project cost center established in accordance with the approved cost allocation plan required by Subpart E of this part. The State must distribute these costs, as incurred, to all funding sources in accordance with the

procedure stated in the APD as approved by HHS.

(b) *Operational costs.* Costs incurred for the operation of an ADP system shall be identified and assigned to funding sources in accordance with the approved cost allocation plan required by Subpart E of this part.

(c) *Service agreement costs.* States that operate a central data processing facility shall use their approved central service cost allocation plan required by OMB Circular A–87 to identify and assign costs incurred under a service agreement with the State agency. The State agency will then distribute these costs to funding sources in accordance with paragraphs (a) and (b) of this section.

15. Section 95.641 is revised to read as follows:

§ 95.641 Applicability of rules for charging equipment in Subpart G of this part.

ADP equipment, as well as other equipment acquired under public assistance programs, is subject to Subpart G of this part. Among other things, Subpart G provides that a State may charge only depreciation or use allowances for equipment with a unit acquisition cost of over $25,000. For ADP equipment, however, HHS will consider requests for waivers of that restriction. If the acquisition of the equipment is part of an APD that is subject to the prior approval requirements of this Subpart F, the State may submit the request for a waiver as part of the APD.

16. Section 95.643 is removed.

§ 95.643 [Removed]

[FR Doc. 84–29342 Filed 11–16–84; 8:45 am]
BILLING CODE 4150–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 84–027]

Documentation of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the requirements pertaining to marking of vessels documented under the laws of the United States. Under the proposed regulations, the requirement to mark a vessel with a hailing port would be eliminated. In lieu of a hailing port marking, the owner would be required to mark the rear exterior of the vessel with the abbreviation "U.S." and the official number assigned by the Coast Guard. These proposed changes are based on comments received in response to an Advanve Notice of Proposed Rulemaking (ANPRM). The proposed new markings would provide a more positive basis for identifying a vessel seen on the water as a vessel documented under the laws of the United States.

DATES: Comments must be received on or before February 19, 1985.

ADDRESSES: Comments should be submitted to Commandant (G–CMC/24), (CGD 84–027), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered and will be available for inspection or copying at the Marine Safety Council (G–CMC/24), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, (202) 426–1477 between the hours of 7 a.m. and 4 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert R. Meeks (Staff Attorney), Office of Merchant Marine Safety, (202) 426–1492, or (202) 426–1493. Normal office hours are between 7 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Commander Robert R. Meeks (Staff Attorney), Office of Merchant Marine Safety; and Lieutenant Sandra R. Sylvester (Project Attorney), Office of the Chief Counsel.

Comments Invited

The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments should include the name and address of the person making them, and identify this notice (CGD 84–027). Persons desiring acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received before expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but the Coast Guard will further evaluate the need for public hearings based on the comments received in respones to the NPRM.

Background

An ANPRM published in the **Federal Register** on May 17, 1984 [49 FR 20872] pointed out that recent changes in the regulations pertaining to marking of vessels documented under the laws of the United States had resulted in complaints from other agencies and members of the public. The ANPRM requested comments on whether the Coast Guard should continue to have a regulation requiring the marking of a hailing port, and, if so, what limitations should apply to the owner's choice of a port to be marked.

Discussion of Comments and Action

The following summarizes the comments received and the action proposed by the Coast Guard. Of the 25 comments received, 13 said or strongly implied a hailing port marking should be required by regulation; 8 said or strongly implied the requirement should be eliminated or that certain types of vessels, such as yachts or river barges, should be exempt; the other comments did not take a position on the issue.

Those who want to continue the regulatory requirement for marking a hailing port gave several reasons. Some said the marking of a port on a vessel is a longstanding and colorful tradition of the sea and should continue for that reason if for no other. Others said the hailing port mark is useful for identifying the vessel or the vessel's owner and for locating the vessel's records. Still others stressed the value of the hailing port as an aid to law enforcement and in search and rescue efforts. The hailing port was also said to provide some indication of a vessel's nationality for international purposes.

Those who feel hailing port markings should be eliminated also gave several reasons. Some said marking a hailing port on a vessel is expensive and provides no benefit to the owner for the money spent. One commenter said marking a yacht can cost several hundred dollars. Other commenters pointed out that in addition to the initial marking expense, changes in hailing port markings necessitated by movement of corporate offices or transfers of vessels to other companies can mean additional expense due to remarking and delayed vessel operations. Several commenters said hailing port markings have little value as a means for identifying a vessel or locating its records.

Most commenters said if hailing port markings are required the owner should have broad discretion in selecting a place to be marked. Markings suggested by commenters included: any geographical place, "real or imagined"; any port through which the owner can be directly traced; any place meeting the criteria previously set out in section 47 of Title 46, United States Code; any place having "a meaningful relationship to the shipowner's operations"; the "actual home port [where] the boat is

realistically based"; any place within the geographical area of responsibility of his home port; any place recognized by the U.S. Postal Service as a bona fide mailing address; an identifiable location in the State displayed, including a yacht club or marina; the port where the vessel is berthed, or from which it mainly sails; the owner's place of birth; the letters U.S.A.; the State where the vessel owner resides; and the vessel's home port. A few commenters said the only port marking which should be permitted is the place where the vessel's records are kept. Some commenters said if changes in the requirements for marking a hailing port are made, the Coast Guard should permit existing vessels to retain their current markings.

In addition to responses to the questions included in the ANPRM, some commenters discussed other issues related to vessel marking. One commenter, who took no position on whether the regulatory requirement for hailing port markings should be continued, said port markings produce confusion for local taxing authorities and other local officials. The commenter said this confusion can place vessel owners in the position of having to litigate their liability for personal property tax when tax assessors improperly rely on the hailing port marking as a basis for asserting tax liability. Another commenter, who said display of a hailing port is virtually useless as an aid in identifying vessels or owners, suggested a more useful and logical approach would be to require marking the vessel's official number preceded by "No." on the outside of the vessel.

As the ANPRM noted, Congress repealed the statutes which required marking the name of a port on a documented vessel. Under the pertinent statute in effect now, 46 U.S.C. 12116(c), the owner of a documented vessel is required to "affix to the vessel and maintain in the manner prescribed by the Secretary the number assigned and any other identification markings the Secretary may require." A hailing port marking could be required under this statute as an identification marking. However, as several commenters pointed out, a hailing port marking has little practical value as a basis for vessel identification. Under the current system of documentation there is no limit on the number of vessels which may be marked with the same name and hailing port. This and other aspects of the system for selecting hailing port markings makes it difficult for one who sees a vessel marked with a certain hailing port to trace that vessel's owner or locate its records. None of the suggested alternative approaches to selecting a hailing port to be marked on a vessel would provide much improvement in relation to vessel identification. Therefore, the Coast Guard proposes to eliminate the requirement to mark a hailing port on a documented vessel.

Although the Coast Guard considers a hailing port mark of little value in vessel identification, as several commenters pointed out, vessel identification through external markings is important for law enforcement, search and rescue, and other purposes. For that reason, in lieu of the requirement to mark a hailing port, the Coast Guard proposes to require the owner of a documented vessel to mark the exterior of the vessel with the official number assigned by the Coast Guard. The official number is a unique identifier. It is assigned to each vessel at the time it is first documented and remains assigned to the vessel permanently. It provides a positive basis for identification of any documented vessel seen on the water. Using the official number, Coast Guard officials can locate the vessel's official documentation records and determine the vessel's owner of record.

The proposed requirement to mark the official number on the exterior of a documented vessel would be in addition to the existing regulation which requires the owner to mark the official number permanently on some clearly visible interior structural part of the hull. The proposed marking would be placed on the stern of the vessel. If the stern space is inadequate, the owner would be required to place the marking on some clearly visible exterior part of the hull on both sides of the vessel near the stern. In either case, the proposed regulation would require the marking to be made using block-type arabic numerals not less than four (4) inches in height.

In addition to the need for a mark to aid in identification, the Coast Guard believes there is a need for an exterior mark to show the nationality of a documented vessel. The Coast Guard proposes to address this need by requiring the owner to mark the letters U.S. in front of the official number. For example, the mark would appear as: U.S. 654321. This form of marking will aid law enforcement personnel in deciding whether a vessel is a vessel of the United States if it is not flying a flag. The letters U.S. would be required to be block letters not less than four (4) inches in height. The proposed exterior markings, consisting of U.S. and the official number, could be made by use of any means and materials which would result in durable markings.

In proposing these changes to the marking regulations, the Coast Guard proposes to permit vessels which are now properly documented and marked to retain the existing markings for a maximum of five (5) years from the date the proposed regulations are effective. Any change in home port or change in ownership prior to the five year limit would require the markings to be changed at that time to comply with the proposed regulations. Those who wish to continue to mark a hailing port for personal reasons, such as tradition or pride, would be permitted to do so. There would be no requirement to advise the Coast Guard if a hailing port marking is used.

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. Marking a particular vessel can cost only a few dollars or hundreds of dollars, depending on the materials used and who does the work, but there would be no significant change in the relative cost of marking the vessel under the proposal. The proposal would require marking a vessel with a group of letters and numbers, whereas current regulations require marking the name of a port. For new vessels there would be some savings for the initial owner and subsequent owners due to a reduced need to remark the vessel as the owner relocates or as ownership of the vessel changes. Economic impact on owners of existing documented vessels would be minimal, since application of the proposed changes as to them is deferred for up to five years.

Regulatory Flexibility Act

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

List of Subjects in 46 CFR Part 67

Vessels, Documentation.

Proposed Regulatory Change

PART 67—[AMENDED]

In consideration of the foregoing, the Coast Guard proposes to amend 46 CFR Part 67 as follows:

1. The authority citation for Part 67 is revised to read as follows:

Authority: 46 U.S.C. 12103, 12113, 12115, 12120, 12121, 65 Stat. 290 (31 U.S.C. 483a); 41 Stat. 1002, 80 Stat. 795 (46 App. U.S.C. 927); 41 Stat. 1006 (46 App. U.S.C. 983); 94 Stat. 978 (42 U.S.C. 9101).

§ 67.13-7 [Removed]

2. Section 67.13-7 is deleted.

3. Section 67.15-1 is revised to read as follows:

§ 67.15-1 Official number marking requirement.

(a) The official number of the vessel must be marked:

(1) On some clearly visible interior structural part of the hull; and

(2) On some clearly visible exterior part of the stern of the vessel. If the stern surface is too small to accommodate the required marking, it must be placed on some clearly visible exterior part of the hull on both sides of the vessel within five (5) feet of the stern.

(b) The marking required by paragraph (a)(1) of this section must be block-type arabic numerals not less than three (3) inches in height and may be made by any permanent method which cannot be obliterated or obscured.

(c) Each marking required by paragraph (a)(2) of this section must be preceded by the abbreviation "U.S." Block-type letters and block-type arabic numerals not less than four (4) inches in height must be used. Marking(s) may be made by use of any materials which would result in durable markings.

(d) Paragraph (a)(2) of this section is not applicable to a vessel properly documented under the laws of the United States on or before the effective date of this regulation until the home port of the vessel is changed, the ownership of the vessel is changed in whole or in part, or until five (5) years after the effective date of this regulation, whichever first occurs.

4. Section 67.15-3 is revised to read as follows:

§ 67.15-3 Name Marking requirements.

(a) *Pleasure vessels.* For vessels documented exclusively for pleasure, the name of the vessel must be marked in clearly legible letters not less than four (4) inches in height on some clearly visible part of the hull.

(b) *Vessels with square bow.* For vessels having a square bow, the name of the vessel may be marked in clearly legible letters not less than for (4) inches in height on some clearly visible exterior part of the bow, rather than as specified in paragraph (c) of this section, in order to avoid obliteration. The name must be marked in clearly legible letters not less than four (4) inches in height on some clearly visible exterior part of the stern.

(c) *Other vessels.* For vessels other than those covered in paragraphs (a) and (b) of this section, the name of the vessels must be marked in clearly legible letters not less than four (4) inches in height on some clearly visible exterior part of the port and starboard bow and the stern of the vessel.

(d) The markings required by paragraphs (a), (b), and (c), of this section may be made by use of any means and materials which result in durable markings.

5. Section 67.15-5 is amended by revising paragraph (b) to read as follows:

§ 67.15-5 Requirement for evidence of marking.

* * * * *

(b) When there is a change in the name of the vessel or in any other exterior marking required by this subpart.

* * * * *

Dated: November 14, 1984.

B. G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 84-30270 Filed 11-16-84; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-417; RM-4310; RM-4526]

TV Broadcast Station in Kingsport, TN et al.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein optionally proposes the assignment of UHF TV Channel 44 to Kingsport, Tennessee, at the request of Peggy Anne Rothchild, or Channel 44 to Harlan, Kentucky, at the request of Holston Valley Broadcasting Corporation. Additionally, Family TV, Inc. is requested to comment on the proposed change of offset for Channel 44 at Evansville, Indiana. The assignment of Channel 44 at Kingsport could provide that community with its second local television service and the assignment at Harlan, Kentucky, could provide that community with its first local television service.

DATES: Comments must be filed on or before December 31, 1984, and reply comments on or before January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Further Notice of Proposed Rule Making and Order to Show Cause

In the matter of amendment of §73.606(b), table of assignments, television broadcsst stations. (Kingsport, Tennessee, Harlan, Kentucky [1] and Evansville, Indiana [1]) MM Docket No. 83-417, RM-4310, RM-4526.

Adopted: October 18, 1984.

Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration its Notice of Proposed Rule Making, 48 FR 23865, published May 27, 1983, proposing the assignment of UHF Television Channel 44 to Kingsport, Tennessee, at the request of Peggy Ann Rothchild ("Rothchild"). Holston Valley Broadcasting Corporation ("HVBC"), licensee of TV Station WKPT (Channel 19), Kingsport Tennessee, filed a counterproposal requesting the assignment of Channel 44 to Harlan, Kentucky, and stating its intention to apply for the channel, if assigned.[2] The Harlan proposal requires a change in the offset of Channel 44 at Evansville, Indiana, licensed to Family TV, Inc. Rothchild filed comments reiterating her intention to apply for the channel at Kingsport if assigned. No reply comments were filed by either party. The staff has determined that Channel 44 is the ony channel available for assignment to either community. Therefore, before the Commission can make a comparative evaluation of both proposals, the willingness of the Evansville licensee to change offset must be explored.

2. Kinsport (population 32,027),[3] in Sullivan County (population 143,968), is located in eastern Tennessee, approximately 140 kilometers (88 miles) northeast of Knoxville, Tennessee. It is served by Station WKPT (Channel 19). Harlan (population 3,024), the seat of Harlan County (population 41,889), is located in eastern Kentucky,

[1] These communities have been added to the caption.

[2] Public Notice of the counterproposal was given on June 30, 1983, Report No. 1413.

[3] Population figures are taken from the 1980 U.S. Census.

approximately 75 kilometers (47 miles) northwest of Kingsport. Harlan has no local television service.

3. Channel 44 can be assigned to Kingsport in compliance with the Commission's mileage separation requirements if the transmitter is sited at least one mile northwest of the community. The assignment of Channel 44 at Harlan comports with the mileage requirements if the offset on Channel 44 at Evansville, Indiana, is changed from minus to zero. In a subsequent filing, HVBC has informed the Commission that it is willing to reimburse Family TV, Inc., licensee of Station WEVV–TV, for its reasonable and prudent costs associated with the change in frequency offset. However, we have not been informed by Family TV as to its willingness to change its offset. Therefore, to enable the Commission to make a final determination herein, we are issuing an Order to Show Cause to Family TV to determine its willingness to modify its facilities to reflect a zero offset.

4. Based on the above discussion, we are seeking comments on the proposed changes to the Television Table of Assignments, § 73.606(b) of the Rules, to read as follows, for the communities listed below:

City	Channel No.	
	Present	Proposed
Option I		
Kingsport, TN	19	19.44–.
Option II		
Kingsport, TN	19	19.
Harlan, KY		44–.
Evansville, ID	7, *9+, 14–, 25–, and 44–.	7, *9+, 14–, 25–, and 44.

5. It is ordered, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Family TV, Inc., licensee of Station WEVV–TV, Evansville, Indiana, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 44 in lieu of Channel 44– as proposed herein.

6. Pursuant to § 1.87 of the Commission's Rules, Family TV, Inc. may, not later than December 31, 1984, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, Family TV may not later than December 31, 1984, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. In this case, the Commission may call on Family TV to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an Order modifying the license as provided in the Order to Show Cause. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Family TV will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission if the above-mentioned channel modification is ultimately found to be in the public interest.

7. It is further ordered, That the Secretary shall send a copy of this Further Notice of Proposed Rule Making and Order to Show Cause by certified mail, return receipt requested, to Family TV, Inc., 1405 N. Main Street, Evansville, Indiana 47711.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before December 31, 1984, and reply comments on or before January 15, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, as follows:

Edward M. Johnson & Associates, Inc., One Regency Square, Suite 450, Knoxville, Tennessee 37915 (Consultant to Rothchild)

John B. Jacob, Esq., Dennis J. Kelly, Esq., Cordon and Jacob, 2000 L Street, NW, Suite 616, Washington, D.C. 20036 (Counsel to HVBC)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), and 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assingments. An *ex parte* contact is a message (spoke or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in this proceeding.

(Secs. 4, 303, 48 stat., as amended, 1966, 1982; U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial

comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-30286 Filed 11-16-84; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket No. HM-195]

Reclassification of Special Fireworks

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This Notice solicits comment on the merits of a petition for rulemaking filed with the MTB proposing to reclassify certain fireworks currently classed as Class B explosive to Class C explosive.

DATE: Comments must be received by February 14, 1985.

ADDRESS: Address comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation Washington, D.C., 20590. Comments should identify the docket and be submitted, if possible, in five copies. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C., 20590. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Irving R. Abis, Standards Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C., 20590, (202) 426-2075.

SUPPLEMENTARY INFORMATION: On October 26, 1984, the United States Display Fireworks Association (USDFA) filed a petition for rulemaking under the provisions of 49 CFR § 106.31. The petition is published verbatim in this notice. MTB's publication of the USDFA's petition as an Advance Notice of Proposed Rulemaking does not constitute a decision by MTB to undertake a rulemaking action on the substance of the petition. This Advance Notice is issued solely to obtain comments on the merits of the petition from interested parties as one aspect of its decision on whether to proceed with rulemaking.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Labeling, Packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

Petition for Rulemaking Proposed by the United States Display Fireworks Association

I. Introduction

A. Preamble

As compared to fireworks used by the general public and display projectiles used for military purposes, special (or display) fireworks are most commonly used on the Fourth of July and at public events and are handled by professional pyrotechnic managers or semi-professional personnel. This is an industry that is characterized by small, family owned businesses, often dating back seven to ten generations to Italy.

These professional artisans developed public display pyrotechnics in the United States based on age-old technologies, practices and methods. The tools and materials of this industry segment have changed little over the last two hundred years. Nonetheless, the industry has, in the main, complied with the recent trends toward more government regulation and have done so willingly. Yet a point has come where federal regulations governing transportation of special fireworks products threaten the livelihood of businesses and degrade rather than promote certain attendant safety factors. Such demands of cost and time beyond what can be reasonably expected in the public interest often seriously hinder the quality of service to users and customers and threaten to drive these small companies further into unprofitability as well as to discourage new generations and new entrants of people into the field. One result of this trend is the importation of more foreign made fireworks products. In addition, more domestic manufacturers are having difficulty taking delivery on foreign and domestic materials needed to manufacture safe display pyrotechnics which have now become synonymous with the birthday of our country.

We respectfully ask that the Secretary of Transportation provide regulatory relief for this industry and heed its safety recommendations.

B. Purpose of Petition

In accordance with the provisions in Part 106 of 49 C.F.R. the U.S. Display Fireworks Association proposes a rulemaking for the establishment of amendments to the present rules contained in Parts 172.101-173.100. The purpose of the proposed rulemaking is to seek relief from regulatory over-classification of the transportation of display fireworks and to enhance safety in transporting products on public roads by differentiating between special and display fireworks and reclassifying display articles under Class C regulations.

C. Reason for Petition

The companies comprising the display fireworks industry make up a unique segment of the pyrotechnics industry. These mostly family owned, small businesses use long established artisan oriented techniques for producing and using special fireworks.

Bacause (sic) of federal regulations these companies can no longer ship products by means of air freight or rail. Now, however, enforcement of

Department of Transportation regulations has effectively precluded economic shipment by common carrier trucks. Regulatory requirements caused by classification of display fireworks as Class B result in truck companies demanding a "mini-rate" charge which is economically prohibitive. Certain other regulations often make shipment, even by company owned vehicles, cost prohibitive because of required additional employees attendant in the trucks during stops where rural safe havens are not readily available. From a safety standpoint, required placards announcing "B-Explosive" flatly invite vehicle breakins and theft of fireworks which are then unsafely and improperly ignited (without a projection tube).

In summary, the reason for this petition is threefold: (1) make truck common carrier transportation economically available to the display fireworks industry; (2) make company vehicle transportation economic and time efficient; and (3) enhance safety by the elimination of placards entitled "B-Explosives".

D. Definitions

Display Fireworks: special fireworks that are not military in use and whose purpose is for typical, local display events which are prepared and activated by trained personnel

In this petition, special fireworks and display fireworks may be used interchangeably.

Company Operated Vehicle: a roadway vehicle owned or operated by the manufacturer or distributor of display fireworks who is not a contract transportation agent or a common carrier

Manufacturer: a domestic person or company who makes or modifies or sells or activates display fireworks articles

Distributor: a domestic person or company who sells or activates display fireworks

Foreign Display Fireworks: articles which are originally manufactured outside the United States and that are not modified or operationally enhanced by a domestic manufacturer

The Industry: the segment of the pyrotechnics and special fireworks industry in the United States that manufactures and distributes display fireworks

II Proposed Rulemaking

A. Amendment of Specific Sections

As experienced by manufacturers and distributors of display fireworks, Part 173.88(d) effectively constitutes an over-classification of display fireworks. In order to achieve relief from the requirement that a motor vehicle "must be attended at all times by its driver or a qualified representative of the motor carrier that operates it", it is recommended that special fireworks, as defined in Part 173.88(d), be redefined so as to separate display fireworks articles from military projectiles (for which no relief is sought) by reclassifying display fireworks under Class C of Part 173.100 of 49 C.F.R.

This change also requires amending Part 172.101 to add to a listing of "FIreworks, display" so that Column 3 reads "Class C explosive", Column 4 reads "Explosive C", Column 5(a) reads "none", Column 5(b) reads 173.100", Column 6(a) reads "Forbidden:, 6(b) reads "150" and Columns 7(a) and (b) read "1,2" with 7(c) reading "Passenger vessels in metal lockers only". Inclusion of display fireworks under Class C would apply to the transportation of display fireworks in vehicles operated by fireworks manufacturers and distributors, and by common carriers or contract carriage operators.

These amendments reclassify display fireworks as Class C but, as a result of Part 172.101, 6(a) prohibit the transport of such material by passenger carrying aircraft or railcar. This restriction is in industry recognition of the safety needs peculiar to those modes of transportation and to continue those overriding safety measures which should remain unmodified.

B. Assessment of Proposed Rulemaking

1. *Safety Considerations.* On February 16, 1984, the applicant provided a Statement of Safety Considerations For The Transportation of Class B, Special Fireworks (Appendix A) to, and at the request of, the Office of the Secretary. Other safety considerations are detailed as follows.

a. *Record:* The absence of any on-the-road accident involving explosion or ignition of special fireworks is clear demonstration that the industry is capable of exercising a high degree of safety in transporting its products. Obviously, this safety record demonstration is operational in nature and provides imperical evidence of safety over the period of time since DOT and other Federal agencies have been keeping data and records.

b. *Professional Managers and Technicians:* Because of the pyrotechnic nature of special fireworks, the personnel involved in transporting products in manufactuer and distributor operated vehicles are almost always trained, technical artisans. Rarely do industry members employ vehicle drivers only to haul products to customer sites. When common carriers are involved in shipping special fireworks, packages are adjusted in size and weight so that such products can be transported without the presence of professional managers. Therefore, safety is enhanced by such professional personnel who are normally involved in special fireworks handling.

c. *Safety Comparison:* In comparing the transportation safety record of display fireworks and petroleum products (which are not required to have vehicle attendance at all times), the relative operational safety of display fireworks is generally greater. For example, a load of gasoline can immediately ignite upon contact of spark or flame. This is not particularly true of display fireworks. This comparison demonstrates and suggests an over-classification of display fireworks as Class B.

d. *Placard Related Safety:* The special fireworks industry is unfortunately plagued by breakin and robbery of company owned vehicles because of both placarding reading "B-Explosive" and company names that include the word "fireworks". Many companies have not used the name "fireworks" because of this reason.

By reclassification of display fireworks as Class C, placards announcing explosives will be eliminated which will further enhance safety by stopping theft and the unprofessional use of stolen fireworks.

2. *Indirect Considerations.* There have been occurences [sic] where domestic, special fireworks manufacturers and distributors have found that federal transportation regulations have tended to restrict sale and delivery of products to customers in certain geographical areas. Therefore, there has been some tendency in the domestic industry in recent years not to market its products as widely and to the full array of domestic users it once did. This industry retreat is not unrelated to the problems and the often excessive costs of complying with Class B regulations which confront this particular industry.

At the same time, and not unrelated to adjustments in the marketplace, there has been a rise in the importation and use of foreign made display fireworks (sic) which typically are less safe than domestic products. For various reasons, unenhanced and unmodified foreign projectiles have tended to be sold directly (and without the benefit of modifications) to domestic users, many of whom once purchased from domestic sources.

Increasingly, there is a tendency for customers to buy more available, cheaper and unsafe foreign fireworks.

Foreign government subsidization of fireworks manufacturing and export and the fact that product liability is usually not enforceable and, finally, the use of less "lifting powder" all make foreign products cheaper to U.S. customers who often can not get timely and economical delivery of safe bona fide products from domestic manufacturers due to what becomes regulatory barriers. There is a demonstrable record of mishaps and unsafe operation of such foreign special fireworks, the lates of which was premature detonation of fireworks that occurred in the Washington metropolitan area on the Fourth of July, 1984. This information is offered because of the accompanying safety degradation that may be of significance to the Department.

3. *Regulatory Compliance.* It has been proven that it is difficult to comply with certain Class B regulations and still profitably and safely deliver special fireworks to users. For example, approximately two thirds of most transportation of display fireworks takes place in areas where no safe havens exist. Therefore, it often requires greater driving time and transportation logistics to safely transport products than if certain regulatory requirements for display fireworks did not exist. In some respects this increased "exposure time" degrades transportation safety.

4. **Regulatory Precedent.** The applicant believes that this petition is similar in nature to Docket HM-187, Amendment Numbers 172-92 and 173-175, a petition of the Sporting Arms and Ammunition Manufacturers Institute. DOT acted favorably on that petition for reasons such as successful transportation history and minimal hazard. We believe this rulemaking is a precedent which provides certain justification to grant the request under this petition.

5. *Operational Relief and Business Benefits.* The applicant has assessed the operational problems posed by the referenced regulations against what specific and minimal amendments are necessary to give relief from the encumbrances which are typically experienced from over-classification of display fireworks. Those amendments are specified in Section II, A of this petition. The following are real and operational relief and benefits which will result from amending regulations.

a. *Cost and Time:* An amendment under this petition will relieve the inflation of employee and operational time cost which have threatened the economic viability of the display fireworks industry and the probable success of its business future.

b. *Service to the Public:* The applicant states that its ability to safely serve the public would be significantly enhanced by the removal of display fireworks from Class B Hazardous Material Transportation Regulations thereby allowing both company and common carrier vehicles to deliver fireworks to the customer in less time and with less exposure to circumstances which pose safety hazards.

c. *Placards Regulations:* Removal of Class B placarding requirements through reclassification of display fireworks will enable the industry to more successfully avoid vehicle breakins and thus protect against illegal detonation of fireworks articles by thieves.

6. *Legislative History and Congressional intent.* The petitioner references the hearing record of S. 1933, The Federal Railroad Safety Act of 1969, as an example of the intent of Congress to provide relief as is recommended under this petition. Title III (Hazardous Materials Control) of the Act created a hazardous materials technical staff to oversee all transportation of dangerous materials. The Department of Transportation testified in these hearings on cost/benefit in which transportation of explosives is cited. The Department noted that "The regulations should minimize the hazard to the public, within the limits of economic feasibility." (Appendix B) [1]

7. *Supportive Data.* An industry survey of the Association's eighty members confirmed the restrictive impact of current Class B regulations on the transportation of display fireworks. The forty-five responses to the survey establish a substantial assessment pattern. Federal regulations have brought changes in transporting display fireworks that render members unable to satisfactorily serve customers. Two-thirds of the companies do a significant portion of business in rural areas where there are no readily available safe havens. Although two-thirds of the companies are over twenty years old, no one has reported or ever known of a highway accident resulting in fire or explosion of display fireworks in transport. Members unanimously believe manufacturers and distributors, as well as common carriers, can safely transport display fireworks without the application of the regulatory requirements occasioned by classification under Class B Explosives. These professionals have historically shown their understanding transportation safety and their ability to self regulate transportation of products in the industry.

III. Conclusion

The applicant respectfully requests a rulemaking and approval of this petition based on Congressional intent, regulatory purpose, enhancement of safety in the public interest and the need to maintain economic integrity of the display fireworks industry.

Appendix A

1. *History*—There has never been accidental explosion of Class B fireworks during transportation—according to an informal survey of professionals in the Class B industry.

2. *Shipping Containerization*—All Class B products are packed tightly in lined, waterproof cartons and banded for safety purposes.

3. *Manufacturer Operated Vehicles*—All trucks are locked and have metal-lined exteriors and woodlined interiors.

4. *Ignition Safety Properties*—Class B products will only ignite by application of direct flame to ignition devices. Ignition will not occur from high temperature or impact alone.

5. *Transportation Safety Comparison*—It is commonly held by industry personnel that Class B products, in transit, are less subject to explosion than gasoline or petroleum products in transit.

(49 U.S.C. 1804, 1806; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(4) of App. A to Part 106)

Issued in Washington, D.C., on November 13, 1984.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84-30318 filed 11-16-84; 8:45 am]

BILLING CODE 4910-60-M

[1] The petitioner cites the following document as Appendix B: Hearings on S. 1933, S.2915, and S. 3061 Before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, 91st Cong., 1st Session, ser. 91-32 at 55 (1969). It is available for review in the docket file.

National Highway Traffic Safety Administration

49 CFR Part 542

[Docket No. T84-01; Notice 1]

Federal Motor Vehicle Theft Prevention

AGENCY: Department of Transportation, National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of public meeting.

SUMMARY: This notice announces public meeting to obtain comment on the implementation of the recently enacted

Title IV of the Motor Vehicle Information and Cost Savings Act. Title VI seeks to reduce the theft of cars for parts by requiring the placing of identifying numbers or symbols on certain parts in high theft lines of cars. The meeting will focus on the actions which the agency must take in the next 6 months to implement that legislation. Those actions include proposing a vehicle theft prevention standard for high theft lines of new passenger cars and selecting the parts and lines subject to the standard. Among the issues to be considered are the following: The data to be used to calculate the median theft rate for all new passenger car lines and thereby determine the high theft lines; the parts on which identification is to be placed and the nature of that identification; the performance requirements for the techniques used to place the identification on the parts; and certification of compliance with the theft prevention standard. While the meeting is open to the public, attendance is limited to the space available.

DATE: Written suggestions for questions to be asked at the meeting should be received not later than December 5, 1984.

The meeting will be held December 6–7, 1984. The December 6 session will begin at 10:30 a.m.

Written comments on the subjects discussed at the meeting should be received not later than December 17, 1984.

ADDRESSES: The location of meeting will be in Room 2230 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C.

Written questions and comments should be sent to Docket Section, Room 5108, National Highway Traffic Safety Administration, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: William Boehly, Director, Office of Market Incentives, National Highway Traffic Safety Administration, Washington D.C. 20590, (202) 426–1740.

SUPPLEMENTARY INFORMATION:

The Motor Vehicle Theft Law Enforcement Act

On October 25, 1984, the President signed the Motor Vehicle Theft Law Enforcement Act of 1984, Pub. L. 98–547. That Act added a Title VI to the Motor Vehicle Information and Cost Savings Act which seeks to deter and reduce passenger car thefts. (Under the delegation of authority by the Secretary at 49 CFR 501.2(f), the responsibilities imposed by Title VI will be carried out by the National Highway Traffic Safety Administrator.) Congress found that certain cars are often stolen in order to be dismantled and then their parts are illegally resold to repair shops. Often, the value of those parts far exceeds the original purchase price of the vehicle. That fact, coupled with the difficulty of tracing stolen parts and hence successfully prosecuting the thieves, has made car theft into a major crime "industry."

To reduce these thefts, Title VI requires the issuance of a motor vehicle theft prevention standard requiring the inscribing or affixing of permanent identification on the major original equipment and replacement parts of frequently stolen passenger cars. The statute requires that the standard be stated in terms of performance; be practicable; apply relevant, objective criteria; and cost $15.00 or less per covered vehicle (or a lesser, reasonable amount for a covered replacement part). Placing identifying numbers on these parts (and symbols on any replacement parts) will make it possible to determine when the parts have been obtained from vehicles which may have been stolen. By combining the identification program with the provisions in the Vehicle Theft Act for criminal penalties for tampering with the I.D.'s as well as stricter Federal car theft penalties and more stringent import and export controls, Congress anticipates that the rate of motor vehicle theft will be reduced and, in turn, insurance premiums will go down.

The House Committee report on Title VI states that the Committee expected that NHTSA would select the vehicle identification number specified by Federal Motor Vehicle Safety Standard No. 115 and Part 565 of Title 49, Code of Federal Regulations, or a derivative thereof as the identifier to be placed on new parts and a logo or other symbol to be placed on replacement parts. The agency would not specify the particular means for placing these types of identification on parts. Instead, it would prescribe objective and practicable performance criteria to be met by means to be selected by the manufacturers. Those criteria must reflect the agency's consideration of factors such as the availability of technology for meeting the criteria and the cost of the technology. Once the agency has established appropriate criteria, the manufacturers will then select a particular means of identifying the parts from among the technologies capable of meeting the criteria.

The standard will apply to parts for car lines having or expected to have a theft rate above the median rate for all new passenger cars sold in the United States, and to their corresponding major replacement parts. It will also cover certain car lines that are not themselves subject to high rates of theft, but which have parts interchangeable with high theft lines.

Selecting the lines subject to the standard is a process necessitating that NHTSA take several steps, including:

1. Using best source available, obtain and publish vehicle theft data for the nation as a whole. These data are to be published in the **Federal Register** for review and comment, and then used to determine the nation's median theft rate in accordance with a formula set forth in Title VI.

2. By rulemaking, prescribe any information that automobile manufacturers will be required to make available to NHTSA to aid in selecting the major parts and high theft lines to be covered.

3. Based upon the information obtained in accordance with 1 and 2 above, determine which high theft lines and major parts are to be covered by the theft prevention standard.

Title VI provides that the standard may not apply to more than 14 of the passenger car lines distributed in the United States by any individual manufacturer prior to the effective date of the standard. Lines initially distributed after that date may be added to the standard in later years. It also specifies that the parts and lines to be subject to the standard may be selected by agreement between the Administrator and the manufacturer. If agreement cannot be reached, the selection will be made by the agency.

NHTSA must also determine which major parts are to be covered (i.e., which parts, up to a statutory maximum of 14 per car, will bear the identifying numbers or symbols envisioned by Title VI).

Manufacturers must certify compliance with the theft prevention standard. Section 606(c) requires that vehicles subject to the standard be accompanied by the certification when they are delivered for introduction into interstate commerce. Unlike the National Traffic and Motor Vehicle Safety Act under which Federal Motor Vehicle Safety Standards are issued, Title VI makes no provision for the temporary importation of noncomplying vehicles. The agency is authorized to issue rules prescribing the manner and form of the certification.

Public Meeting

To aid the agency in fulfilling its responsibilities under Title VI, NHTSA will hold an informal public meeting on December 6 and 7, 1984, at the time and place indicated at the beginning of this notice. The selection of these dates was

dictated by the tight schedule set forth in Title VI for the rulemaking necessary to set up the theft prevention program. Title VI provides that a proposed theft prevention standard must be issued within 3 months after the date of enactment ot Title VI, i.e., the deadline is January 24.

On the first day of the meeting, the topics will include discussion of the identification to be placed on parts, the performance criteria for the means used to place the identification on the parts, the parts to be marked, the date to be used in calculating the median theft rate, and the procedures for negotiating the selection of parts and high theft lines. On the second day, the topics will include the requirements for certification of compliance with the theft prevention standard, including the issue of the definition of "manufacturer." A fuller description of the topics for the meeting will be placed in the docket by the agency not later than November 26, 1984.

Interested persons are invited to attend the meeting. The meeting will be conducted in a very informal manner. It will differ from other rulemaking meetings conducted by NHTSA in that interested persons will not be asked to present a prepared statement. Instead, a member of the presiding panel of agency officials will make a statement on issues concerning each topic to be discussed. The panel will then ask for volunteers from the audience to answer questions concerning these topics. The responses will aid the agency in formulating its initial proposals for implementing the anti-theft program. Interested persons are invited to submit suggested questions in writing prior to the meeting. Those questions should be addressed to: Docket Section, Room 5108, National Highway Traffic Safety Administration. They should make reference to the Docket Number listed at the beginning of this Notice. A verbatim transcript of the public meeting will be prepared and placed in the docket as soon as possible after the meeting.

Several opportunities will be given interested persons to submit written comments in connection with the rulemaking necessary to establish the theft prevention program. Interested persons may submit written views and data concerning the subjects to be discussed at the meeting, whether or not they attend the meeting. Those submissions should be sent to the same address as the suggested questions. In view of the tight schedule which the agency must meet, such submissions must be received not later than December 17, 1984. Submissions received after that date will be considered together with the comments received during the second opportunity for submitting comments, i.e., on the proposals to be issued early next year.

The agency recommends that interested persons consult the docket established for this notice. Materials relevant to the theft prevention program are being placed in the docket as they become available. Those materials include memorandums summarizing the subjects discussed in agency contacts with individual interested parties.

Issued: November 13, 1984.

Diane K. Steed,

Administrator.

[FR Doc. 84-30192 Filed 11-16-84; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 49, No. 224
Monday, November 19, 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

Farmers Home Administration

Natural Resource Management Guide; Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Famers Home Administration (FmHA) State Office located in Lincoln, Nebraska, is announcing a rescheduled public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting formerly November 9, 1984, now on November 30, 1984, 1:00 p.m. to 3:00 p.m.

Comments must be received no later than December 30, 1984.

ADDRESSES: Meeting location at Room 148, Federal Building, Lincoln, Nebraska 68608.

Written comments and further information will be addressed to: State Director, FmHA, Room 308, Federal Building, Lincoln, Nebraska 68505 (404–471–5551).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Nebraska State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Nebraska. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 13, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-30281 Filed 11-16-84; 8:45 am]

BILLING CODE 3410-07-M

Natural Resource Management Guide; Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Jackson, Mississippi, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on December 7, 1984, 10:00 a.m. to 12:00 p.m.

Comments must be received no later than January 6, 1985.

ADDRESSES: Meeting location at Federal Building, Room 707, Jackson, Mississippi 39269.

Written comments and further information will be addressed to: State Director, FmHA, Suite 831, Federal Building, Jackson, Mississippi 39269 (601–969–4316).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Mississippi State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Mississippi. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 13, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-30277 Filed 11-16-84; 8:45 am]

BILLING CODE 3410-07-M

Natural Resource Management Guide Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Amherst, Massachusetts and servicing Rhode Island, is announcing an public information meeting to discuss its draft Natural Resource Management Guide.

DATE: Meeting on December 11, 1984, 10:00 a.m. 12:00 p.m.

Comments must be received no later than January 10, 1985.

ADDRESSES: Meeting location at Harmony Fire Station, Putnam Pike, Harmony, Rhode Island.

Written comments and further information will be addressed to: State Director, FmHA, 451 West Street, Amherst, Massachusetts 01002 (413–253–3471).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA has prepared a draft Natural Resource Management Guide for the State of Rhode Island. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Rhode Island. The

purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contract FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangement to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, as 30-day period for the submission of written comments will follow the meeting.

Dated: November 13, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-30278 Filed 11-16-84; 8:45 am]

BILLING CODE 3410-07-M

Natural Resource Management Guide Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Nashville, Tennessee, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on December 11, 1984, 2:00 p.m. to 4:00 p.m.

ADDRESS: Meeting location at FmHA Conference Room, Room 538, Federal Building, Nashville, Tennessee.

Comments must be received no later than January 10, 1985.

Written comments and further information will be addressed to: State Director, FmHA, Room 538, Federal Building, Nashville, Tennessee 37203 (615-251-7341).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Tennessee State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Tennessee. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 13, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-30280 Filed 11-16-84; 8:45 am]

BILLING CODE 3410-07-M

Natural Resource Management Guide Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Montpelier, Vermont is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on December 13, 1984, 2:00 p.m. to 4:00 p.m.

Comments must be received no later than January 12, 1985.

ADDRESSES: Meeting location at Holiday Inn, Sykes Avenue, White River Junction, Vermont.

Written comments and further information will be addressed to: State Director, FmHA, 141 Main Street, P.O. Box 588, Montpelier, Vermont 05602 (802-223-2371).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Vermont State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Vermont. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 13, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-30279 Filed 11-16-84; 8:45 am]

BILLING CODE 3410-07-M

CIVIL AERONAUTICS BOARD

[Order 84-11-8]

Fitness Determination of Daniel S. Baldwin, Inc., d/b/a Wrangell Air Service

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination Order 84-11-8, Order to Show Cause.

SUMMARY: The Board is proposing to find that Daniel S. Baldwin, Inc., d/b/a Wrangell Air Service is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Franklin J. McDermott, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-5920.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-11-8 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue NW., Washington, DC 20428. Persons outside the metropolitan area may send a postcard request for Order 84-11-8 to that address.

Dated: November 2, 1984

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-30317 Filed 11-16-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 42321]

Hawaii One Corp. Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-titled matter is assigned to be held on November 20, 1984, at 10:00 a.m. (local time), in Room 1012, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned.

In order to facilitate the conduct of the conference; parties and prospective parties shall, no later than November 19, 1984, submit four copies to the Judge and one copy to each party and prospective party at the office of their counsel in Washington of (1) proposed stipulations; (2) responses to pending requests for information and evidence; (3) proposed requests for additional information and evidence; (4) statements of position; and (5) proposed procedural dates.

Dated at Washington, D.C., November 13, 1984.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 84-30313 Filed 11-16-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41306]

Unicorn Air, Ltd., Fitness Investigation; Prehearing Conference and Request for Supplemental Evidence

Notice is hereby given that a prehearing conference in the above-captioned proceeding will be held on December 5, 1984, at 9:30 a.m. (local time) in Room 1027, 1825 Connecticut Avenue NW., Washington, D.C., before Chief Administrative Law Judge Elias C. Rodriguez.

The purpose of the prehearing conference is to review Unicorn Air's updated exhibits and supplementary data and to establish future procedural dates. The supplementary evidence requested by the Bureau of International Aviation submitted under cover of its letter of October 30, 1984, is to be submitted by the applicant by November 20, 1984. In addition, the information requested in the attachment to this notice will be served on or before November 26, 1984 (actual date of delivery, not mailing date).

Dated at Washington, D.C., November 13, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

Request for Supplemental Evidence

Item 1. The introduction to Unicorn's Updated Exhibits states, at 2, that "Unicorn Air has now decided *to acquire* DC-8-62 aircraft re-engined with noise-compliant General Electric/SNECMA CFM-56 high-bypass ratio turbo fan engines (DC-8-72 when re-engined)" (emphasis added).

Exhibit 101 at 8 states that "[t]he six aircraft required for the Company's proposed service will be *purchased* or leased during the start-up phase of the Company" (emphasis added).

Provide the following information in connection with the above statements:

1. The source of the six aircraft and, if purchased, the estimated purchase price, including spare parts.

2. Unicorn's total estimated start-up capital requirement in the event aircraft are purchased and where that start-up capital will come from.

Item 2. Exhibit 101 at 9 states that "the terms of a firm [aircraft purchase and reconfiguration] contract have been negotiated with E Systems, Greenville, Texas Division."

Provide a copy of the contract negotiated with the E Systems company. If a copy is unavailable, explain why and summarize the contract terms which have been negotiated.

Item 3. Exhibit 104 at 12 states that "100% of all classes of Unicorn's stock is owned by United States citizens. . . ." Exhibit 105 at 22 shows "10,000 shares authorized."

Provide:

1. The number of shares issued and outstanding by class of stock.

2. The respective owners of the outstanding shares.

Item 4. Exhibit 105 at 22 states that "[t]he note due from ATT, Inc. is discussed in, and appended to, Exhibit 107 hereof."

Provide a copy of the ATT note, which was not attached to Exhibit 107.

Item 5. With respect to Exhibit 105 at 22, it is noted that preoperating expenses are customarily shown as assets in the balance sheet of a development stage enterprise. No preoperating expenses are shown as assets on Unicorn's balance sheet at Exhibit 105 at 22.

Explain how much preoperating expenses have been incurred by Unicorn to date and where they have been recorded in Unicorn's accounting system.

Item 6. Exhibit 401 at 69, Unicorn's pro forma balance sheets, show a long term debt (LTD) of $70.5 million for the first normal year of operation, and LTD's of $40.2 million and $17.8 million for prior periods.

Since it appears that Unicorn expects to have obtained loans for all, or substantially all, of these amounts prior to any demonstrated profitable operations, indicate where the loans will come from and why the lenders will be willing to lend the money to Unicorn in these circumstances.

[FR Doc. 84-30314 Filed 11-16-84; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended November 2, 1984

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Oct. 29, 1984	42591	Trans International Airlines, Inc., c/o Burwell, Hansen, Manley & Peters, 1706 New Hampshire Avenue N.W., Washington, D.C. 20009. Application of Trans International Airlines, Inc., pursuant to section 401(d)(3) of the Act and Subpart Q of the Board's Regulations applies for an amendment of its certificate of public convenience and necessity for interstate and overseas charter air transportation. Answers may be filed by November 26, 1984.
Oct. 29, 1984	42592	Trans International Airlines, Inc., c/o Burwell, Hansen, Manley & Peters, 1706 New Hampshire Avenue NW., Washington, D.C. 20009. Application of Trans International Airline, Inc., pursuant to section 401(d)(3) of the Act and Subpart Q of the Board's Regulations applies for an amendment of its certificate of public convenience and necessity for foreign charter air transportation. Answers may be filed by November 26, 1984.
Oct. 29, 1984	42325	TPI International Airways, Inc., c/o Harry A. Bowen, Esq. Bowen & Atkin, 2020 K Street NW., Suite 350, Washington, D.C. 20006. Corrected Application of TPI International Airways, Inc. pursuant to Order 84-9-68. Answers may be filed by November 26, 1984.
Oct. 30, 1984	42597	Skystar International, Inc., c/o George T. Volsky, Esq. 1333 H Street NW., Suite 600, Washington, D.C. 20005. Application of Skystar International Inc. pursuant to section 401 of the Act and Subpart Q of the Board's Regulations applies for a certificate of public convenience and necessity authorizing it to engage in interstate and overseas charter air transportation of persons, property and mail between any point or points in the United States or its possessions or territories.

Date filed	Docket No.	Description
Nov. 1, 1984.....	42570	Answers may be filed by November 27, 1984. Bahamasair Holdings Limited, c/o George U. Carneal, Hogan & Hartson, 815 Connecticut Avenue NW. Washington, D.C. 20006. Amendment to the Application of Bahamasair Holdings Limited submitting supplemental information in support of its application for renewal and amendment of a foreign air carrier permit. Answers may be filed by November 29, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-30315 Filed 11-16-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-11-38]

Order to Show Cause; Tradewinds Airways Ltd.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: ORDER 84-11-38.

SUMMARY: The Board proposes to act on the following permit application:

Applicant: Tradewinds Airways Limited.

Application Date: May 12, 1983, as supplemented.

Docket: 41484.

Authority: The Board proposes to reissue Tradewinds' cargo charter authority and add scheduled authority under the bilateral Agreement to serve U.S. coterminal points Atlanta, Boston, Chicago, Detroit, Los Angeles, Miami, New York and San Francisco, with authority to serve Boston, Chicago, Detroit, Los Angeles, and New York, via the intermediate point Toronto, Canada.

Objections: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, NO LATER THAN December 3, 1984, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Federal Aviation Administration, the Department of Transportation, the Department of State, and the Ambassador of Great Britain and Northern Ireland in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

Addresses for objections:

Docket 41484, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428

Applicant: Tradewinds Airways Limited, c/o Messrs. Beckman, Farmer, and Kirstein, Beckman & Farmer, 1001 Connecticut Avenue NW., Suite 235, Washington, D.C. 20036.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Ave., NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

For further information, contact Allen Brown, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5134.

Dated: November 9, 1984

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-30316 Filed 11-16-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-469-038; C-469-061]

Unwrought Zinc From Spain and Ferroalloys From Spain; Amendment to Final Results of Administrative Reviews of Countervailing Duty Orders

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Amendment to Final Results of Administrative Reviews of Countervailing Duty Orders.

NOTICE: On February 21, 1984, the Department of Commerce ("the Department") published the final results of its administrative review of the countervailing duty order on ferroalloys from Spain (49 FR 6397). On August 14, 1984, we published the final results of the administrative review of the countervailing duty order on unwrought zinc from Spain (49 FR 32436).

We instructed the Customs Service to assess countervailing duties at the appropriate rates on any shipments exported on or after January 1, 1982, and entered, or withdrawn from warehouse, for consumption on or before April 22, 1982, with regard to ferroalloys from Spain, and on or before April 21, 1982, with regard to unwrought zinc from Spain.

Section 104(b) of the Trade Agreements Act of 1979 ("the TAA") requires the Department to suspend liquidation of entries, or withdrawals from warehouse, for consumption on or after the date of receipt of the International Trade Commission's ("the ITC") notification to the Department that a request for an injury determination has been made. Although the ITC received the requests for investigation in both ferroalloys and unwrought zinc from Spain on April 23, 1982, it did not notify the Department until May 3, 1982 with regard to unwrought zinc from Spain, and until July 26, 1982 with regard to ferroalloys from Spain. We are publishing this amended notice in order to lift the suspension of liquidation on all entries, or withdrawals from warehouse, for consumption of ferroalloys and unwrought zinc from Spain between the date that the ITC received the requests for injury determination and the date that it notified the Department of its receipt of the requests.

Therefore, the Department will instruct the Customs Service to assess countervailing duties at the appropriate rates on any shipments of Spanish unwrought zinc entered, or withdrawn from warehouse, for consumption on or after April 22, 1982, and on or before May 2, 1982, and on any shipments of Spanish ferroalloys entered, or withdrawn from warehouse, for consumption on or after April 23, 1982, and on or before July 25, 1982.

EFFECTIVE DATE: November 9, 1984.

FOR FURTHER INFORMATION CONTACT: Alan A. Long or Bernard Carreau, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-2786.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930

(19 U.S.C. 1675(a)(1)), section 104(b) of the TAA (19 U.S.C. 1671 note), and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: November 9, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-30255 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-DS-M

Management-Labor Textile Adivsory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on December 6, 1984; 1:00 p.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, D.C. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise Department officials, the TTPG, U.S. representatives to GATT, and U.S. negotiators on bilateral textile and apparel agreements on problems and conditions in the domestic industry and to furnish information on world trade in these products.

General Session: 1:00–1:45 p.m. Review of import trends, international activities, report on conditions in the domestic market, and other business.

Executive Session: 1:45–3:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part 166 (1982)) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 4104, U.S. Department of Commerce, (202 377–3031).

For futher information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: November 7, 1984.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 84-30254 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

Continuation of Research Grants Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcing continuation of Research Grants Programs.

SUMMARY: The purpose of this notice is to inform potential applicants that the Center for Fire Research, National Bureau of Standards, is continuing an approximately $1.85 million per year program of research grants in selected areas of research related to the Center's in-house research program. The program is limited to unsolicited proposals and is highly competitive. Initial notice of this research grants program was published in the **Federal Register** on February 20, 1981 (48 FR 13250).

FOR FURTHER INFORMATION CONTACT: Dr. Robert S. Levine, Chief, Office of Fire Research Services, Center for fire Research, National Bureau of Standards, Gaithsburg, MD 20899, (301) 921–3845.

SUPPLEMENTARY INFORMATION: As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NBS Center for Fire Research conducts directly and through grants and contracts, a basic and applied fire research program. Approximately $1.85 million per year are available for grants and contracts under this program. These grants and contracts are awarded on the basis of unsolicited proposals that are in accord with the objectives and programs of the Center for Fire Research.

These are:

(a) *Exploratory Fire Research*—Ignition and combustion of solids, action of fire retardants, soot formation, plume entrainment, and polymer gasification and char formation chemistry.

(b) *Fire Toxicology*—Measurement of the acute toxicity of fire gases, development of test methods and safety criteria, research into the additive or synergistic acute effects of multiple gaseous toxicants, and developments of behavior models for incapacitation.

(c) *Furnishings Flammability*—Development of laboratory size tests and measurements that are of use in predicting the performance of upholstered furniture and other furnishings in all full scale fire. Mathematical modeling of these processes.

(d) *Fire Performance and Validation*—Obtaining and analyzing experimental data from full scale fire tests for input to model development. Evaluation of the validity of mathematical models and correlations revelant to the tests.

(e) *Smoke Hazard Calculation*—Development and evaluation of mathematical smoke and toxic species transport models. Methods to calculate hazard development vs. time. Methods to calculate ventilation requirements for safety under conditions created by unwanted fire.

(f) *Fire Growth and Extinction*—Research into the physics and chemistry of fire processes such as burning rate, flame spread, suppression, and extinction, and the development of an understanding of the relationship between these processes as they contribute to fire growth, suppression, and smoke transport in buildings.

(g) *Compartment Fire Models*—The creation, augmentation, and validation of computer models of fire growth in compartments, and selected algorithms that can be used in the models.

(h) *Fire Safety Performance*—Integration of the results of the above programs to create new methods to design for fire safety, and calculational tools for such designs. Some research is carried out, as necessary, into the behavior of persons at risk in fire and ways to calculate how rapidly such persons can evacuate the structure or otherwise find refuge.

Proposal Review Process

Unsolicited proposals that are received in the Center for Fire Research are assigned to the relevant group leader of the eight programs listed above for review, including external peer review, and recommendation on funding. Both the technical value of the proposal and the relationship of the work proposed to the needs of the group leader's program are taken into consideration in the group leader's recommendation to the Center Director. If a proposal is funded, a member of the Center's professional staff who performs related research will be appointed "Scientific Officer" to monitor the progress and facilitate the application of the work.

Grant proposals should be addressed to Grants Office, Office of Acquisition and Assistance, Room B–141, Building 301, National Bureau of Standards, Gaithersburg, MD 20899, with an information copy to Dr. Levine.

In order to avoid unnecessary effort, it is suggested that before preparing a proposal, you write or call Dr. Levine, at the address shown above, to ascertain whether there is possible interest in your idea, and whom to contact for further discussion is such interest does exist.

Dated: November 13, 1984.

Ernest Ambler,

Director.

[FR Doc. 84-30202 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The Mid-Atlantic Fishery Management Council will meet December 5–6, 1984, at the Ramada Inn, Industrial Highway, Essington, PA (telephone: 215–521–9600), to discuss the Surf Clam and Ocean Quahog Fishery Management Plan (FMP), Striped Bass FMP, Swordfish FMP, joint venture applications and policy, as well as other fishery management and administrative matters.

The public meeting may be lengthened or shortened depending upon progress on the agency. The Council may go into closed session to discuss employment and/or national security matters. A detailed agenda will be made available to the public around November 23, 1984. For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: November 9, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-30244 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The South Atlantic Fishery Management Council will convene a public meeting in Duck Key, FL, November 26–29, 1984, to discuss the swordfish, mackerel, stripe bass, flounder, certain law enforcement activities, the FY 1985 budget, and other management business. A detailed agenda will be available around November 16. For further information, contact David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, S.C. 29407; telephone: (803) 571–4366.

Dated: November 9, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-30245 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-22-M

Coastal Zone Management; Federal Consistency Appeal by Exxon Co., U.S.A. From Objection of the California Coastal Commission (Santa Ynez Unit Development and Production Plan)

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearing.

SUMMARY: Effective September 21, 1984, the Secretary of Commerce (Secretary) resumed consideration of the appeal by Exxon Company, U.S.A. (Exxon) pursuant to subparagraphs (A) and (B) of section 307(c) (3) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c) (3) (A) and (B) from the objection by the California Coastal Commission to Option A of Exxon's oil and gas Development and Production Plan for the Santa Ynez Unit, Santa Barbara Channel, California. Notice of the Secretary's resumption of the appeal was published in the **Federal Register** of October 12, 1984 (49 FR 40072).

Notice is hereby given that a public hearing on Exxon's appeal will be held at 1:30 p.m., Tuesday, December 11, 1984, at the Lobero Theatre, 33 East Canon Perdido, Santa Barbara, California. This public hearing is authorized by 15 CFR 930.129 and will be conducted by the National Oceanic and Atmospheric Administration for the purpose of receiving testimony from interested persons and organizations on whether Exxon's oil and gas activities as proposed under Option A of its Santa Ynez Unit Development and Production Plan filed with the U.S. Department of the Interior, Minerals Management Service, meet the regulatory criteria set forth at 15 CFR 930.121 and 930.122 to be considered by the Secretary in deciding Exxon's appeal.

Exxon appealed to the Secretary on the grounds that Exxon's proposed oil and gas activities are "consistent with the objectives of [the CZMA]" and "necessary in the interest of national security." 16 U.S.C. 1456(c) (3) (A) and (B). The Secretary may sustain Exxon's appeal on either of these two grounds. To sustain the appeal on the first ground, the regulatory criteria set forth at 15 CFR 930.121 must be met: (a) The activity furthers one or more of the competing national objectives or purposes contained in sections 302 and 303 of the CZMA; (b) when performed separately or when its cumulative effects are considered, the activity will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest; (c) the activity will not violate any requirements of the Clean Air Act, as amended, or the Clean Water Act, as amended; and (d) there is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the state management program. To meet the second ground, the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed.

After providing an opportunity for Exxon, the California Coastal Commission, and the County of Santa Barbara to present a brief summary of their positions, testimony at the public hearing will be limited to 5 minutes per individual or organization. Written comments will also be accepted at the hearing. Those speakers submitting lengthy written comments are encouraged to summarize their remarks in order not to exceed the allotted time.

Information relating to Exxon's appeal is available at the following locations:

1. California Coastal Commission, 631 Howard Street, 4th Floor, San Francisco, CA 94105.

2. Office of the Assistant General Counsel for Ocean Services, Room 270, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235.

3. Minerals Management Service, Pacific OCS Region, Public Information Room, 1340 W. 6th Street, Los Angeles, CA 90017.

4. Santa Barbara Public Library, 40 E. Anapamu, Santa Barbara, CA 93101.

FOR FURTHER INFORMATION CONTACT: David P. Drake, Attorney Advisor, Office of the Assistant General Counsel for Ocean Services, at the above address, (202) 254–7512.

SUPPLEMENTARY INFORMATION: For further information regarding Exxon's appeal see the notices published in the **Federal Register**, October 12, 1984 (49 FR 40072); March 6, 1984 (49 FR 8274); August 31, 1983 (48 FR 49483); and August 5, 1983 (49 FR 35692).

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: November 8, 1984.

Robert J. McManus,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 84-30207 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-08-M

Caribbean Fishery Management Council; Amended Meeting Notice

The agenda (published November 6, 1984, 49 FR 44319), for the public meeting on December 5–6, 1984, of the Caribbean Fishery Management Council has been changed. In addition to previously-stated agenda items a public hearing, on December 6, 1984, will be convened subsequent to the Council's meeting, at 2 p.m., to consider the latest changes to the Swordfish Fishery Management Plan. All other information remains unchanged. For further information, contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918; telephone: 809–753–6910.

Dated: November 14, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-30296 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Halibut Subcommittee will convene a public meeting, November 14, 1984, at 7 a.m. in Council's offices at 411 W. Fourth Avenue, Anchorage, AK. The Subcommittee will be briefed on the Council staff's progress in preparing material on halibut management options for presentation to the full Council at the Council's December 5–7, 1984 meeting in Anchorage. For further information, contact the North Pacific Fishery Management Council, 411 W. Fourth Avenue, Suite 2D, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: November 14, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-30297 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes in Officials Authorized To Issue Export Visas for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 14, 1984.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 8, 1979, as amended, between the Governments of the United States and the Dominican Republic, the Government of the Dominican Republic has notified the United States Government that Jose Miguel Ceron Pena is replacing Arturo Peguero Almanzar as an official authorized to issue export visas for textiles and textile products covered by the agreement. The purpose of this notice is to advise the public of this change. The following is a complete list of officials currently authorized to issue visas:

Susana Cabrera.
Luis Ma. Kalaff.
Alvaro Messina.
Jose Miguel Ceron Pena.
Angel Vasquez Perdomo.
Ernesto Trejo.

Effective Date: December 1, 1984.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30200 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-DR-M

Officials Authorized To Issue Export Visas for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

November 14, 1984.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka, the Government of Sri Lanka has notified the United States Government that: Mr. P.M.A.J. Silva has been named to sign export visas issued by the Greater Colombo Economic Commission, repacing Mr. C.F. Ratnasingham, who will no longer issue these documents. The purpose of this notice is to advise the public of this change.

Effective Date: December 1, 1984.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30199 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting an Import Restraint Limit for Certain Man-Made Fiber Textiles and Textile Products From Taiwan

November 13, 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 November 19, 1984. For further information contact Eve Anderson, International Trade Specialist (202) 377–4212.

Background

The bilateral agreement of November 18, 1982, concerning cotton, wool, and man-made fiber textile products from Taiwan provides, among other things, for percentage increases in certain categories during an agreement year for swing and shift, provided corresponding reductions in equivalent square yards are made in other specific limits or sublimits during the same agreement year. Pursuant to terms of the bilateral agreement, the import restraint limit established for Category 638 exported during the twelve-month period which began on January 1, 1984, is being increased. The limit for Category 319 is being reduced to account for swing applied to Category 638. In addition, 41 dozen are being subtracted for application to another category as shift subtracted, according to the terms of the agreement.

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).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

November 13, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 13, 1983, the Chairman, Committee for the

Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of goods exported during the twelve-month period beginning on January 1, 1984 and extending through December 31, 1984 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in Taiwan, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Effective on November 19, 1984, the directive of December 13, 1983 is hereby further amended to include an adjusted restraint limit of 1,879,953 dozen for man-made fiber textile products in Category 638.[2]

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,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30253 Filed 11-14-84; 3:23 pm]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Navy

Proposed U.S. Navy Surface Action Group Homeport Facility, Stapleton-Fort Wadsworth Complex, Stapleton, Staten Island, NY; Public Hearing and Availability of the Draft Environmental Impact Statement (EIS)

Notice: The U.S. Navy pursuant to the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations (43 CFR Part 1500), has prepared and filed with the U.S. Environmental Protection Agency, a draft Environmental Impact Statement (DEIS) for the proposed Surface Action Group homeport facility. The DEIS ha been distributed to various New York, Massachusetts, and Rhode Island state and local agencies, interest groups, media, and public libraries. Copies of the DEIS may also be viewed during normal business hours (8:00 a.m.–4:30 p.m.) at the Naval Station New York (207 Flushing Avenue, Brooklyn, New York).

A public hearing to inform the public of the study's findings and to solicit comments on the Navy's proposed homeport facility will be held at the following location:

College of Staten Island—Sunnyside Campus 715 Ocean Terrace, Staten Island, New York, Building: Auditorium Bldg, #3

Dates and Times: Tuesday, December 4, 1984, 6:30 p.m. to approximately 12:30 a.m.; Wednesday, Dedcember 5, 1984, 10:00 a.m. to 6:00 p.m.

The hearing will be co-chaired by the U.S. Navy and the U.S. Army Corps of Engineers in accordance with the National Environmental Policy Act, Council of Environmental Quality regulations and applicable U.S. Navy and U.S. Army Corps of Engineers (COE) regulations.

The U.S. navy will apply for COE construction permits fillowing the decision by the Secretary of the Navy on the proposed action. The hearing will also allow the COE to obtain the data of concern to the public interest which will provide a basis for their decision-making process if it is required. All interested parties are invited and urged to be present or represented at this meeting. This includes representatives of Federal and non-Federal agencies; commercial, business, industrial, transportation, and utilities agencies; civic, ecological, and environmental groups, fish and wildlife organizations; interested and concerned citizens and other interests. All parties will be afforded full opportunity to express their views, but in order to allow all an opportunity to speak, statements will be limited to 10 minutes. If longer statements are to be presented, they should be delivered in writing either at the hearing or mailed to the office listed below and summarized at the public hearing: Commanding Officer, Northern Division, Naval Facilities Engineering Command, Code 202E, Building 77L, Philadelphia, PA 19112.

Oral statements will be heard and transcribed by a stenographer, but for accuracy of record all statements should be submitted in writing. All statements, both oral and written, will become part of the official record on this study.

The public hearing will be reported verbatim. Copies of the transcript of the proceedings may be purchased from the Navy. The cost of a copy will correspond directly to the number of pages enclosed within the transcript. In addition, copies will be made available for public inspection at Naval Station, New York (207 Flushing Avenue, Brooklyn) and the COE Library (26 Federal Plaza, New York City).

Final decision on the proposed plans will be made only after full consideration is given to the views of responsible agencies, groups and citizens.

Written statements will be accepted until December 10, 1984.

Questions concerning this public notice may be directed to Mr. Robert Ostermueller at 215–897–6257.

Dated: November 19, 1984.

Dennis Gonzalez,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 84-30196 Filed 11-16-84; 8:45 am]

BILLING CODE 3810-AE-M

Board of Advisors to the Superintendent, Naval Postgraduate School; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California, will meet on December 6–7, 1984, at Herrmann Hall at the School. On both days the first session will commence at 8:15 a.m. and terminate at 12:00 noon and the second session will commence at 1:15 p.m. and terminate at 5:00 p.m. All sessions are open to the public.

The purpose of the meeting is to elicit the advice of the board on the Navy's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

For further information concerning this meeting contact: Commander J. Michael Masica, USN (Code 007), Naval Postgraduate School, Monterey, California 93943, Telephone: (408) 646–2514.

Dated: November 13, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 84-30194 Filed 11-16-84; 8:45 am]

BILLING CODE 3810-AE-M

[1] The agreement of November 18, 1982 concerning cotton, wool and man-made fiber textile products from Taiwan provides that (1) specific limits or sublimits may be exceeded by certain designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more specific limits or sublimits during the same agreement year; (2) certain specific limits or sublimits may be increased for carryforward; (3) special shift may be applied to certain categories, provided an equal amount in square yards equivlent is deducted from designated categories; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[2] The limit has not been adjusted to account for any imports exported after December 31, 1983.

DEPARTMENT OF ENERGY

Bonneville Power Administration

Intent To Develop a Methodology To Implement Section 7(b)(3) of the Pacific Northwest Electric Power Planning and Conservation Act

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent and request for recommendations. *BPA File No*: 7(b)(3)–1. (BPA requests that all comments and documents which become part of the Official Record compiled in developing the 7(b)(3) methodology and rate adjustment contain the file number designation 7(b)(3)–1).

SUMMARY: BPA intends to develop a methodology to implement section 7(b)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act), 16 U.S.C. 839e(b)(3). Section 7(b)(3) of the Pacific Northwest Power Act provides that preference customer rates may not include costs or benefits resulting from a net revenue surplus or deficiency for the period July 1, 1981, through June 30, 1985, caused by a difference between forecasted and actual direct-service industrial (DSI) loads and an over- or underrecovery of the net exchange costs. The methodology will resolve the manner in which the amount specified in section 7(b)(3) will be quantified, allocated, and recovered.

At this time, BPA announces its intent to prepare this methodology and is seeking from interested persons suggestions, advice, and recommendations which can be used to develop the section 7(b)(3) methodology. BPA expects to have a proposed methodology prepared in January 1985. BPA will then publish a notice announcing the proposal.

Responsible Official: Shirley R. Melton, Director, Division of Rates, is the official responsible for the development of the 7(b)(3) methodology.

DATES: Suggestions and recommendations concerning the development of the proposed section 7(b)(3) methodology will be accepted through November 30, 1984, by the Public Involvement Manager at the address below. Due to legal limitations (ex parte restrictions), BPA will not accept oral recommendations except in meetings for which formal notice has been given. Oral communications should be for the purpose of requesting either status reports or procedural information.

A subsequent notice will announce BPA's proposed schedule for formal hearings set by the Hearing Officer as specified in section 7(i) of the Pacific Northwest Power Act. These hearings will give interested persons an opportunity to present both oral and written comments on the proposal.

ADDRESSES: Written comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Johnson, Public Involvement Office, at the above address, telephone 503–230–3478. BPA maintains toll-free lines for the use of persons within the region. Oregon callers outside of Portland may use 800–452–8429; callers in Washington, Idaho, Montana, Wyoming, Utah, Nevada, and California may use 800–547–6048. Additional information is available from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla, Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

The Pacific Northwest Power Act directed PBA to provide the benefits of low-cost Federal power to residential and small farm consumers served by all the region's utilities. The process for providing low-cost power to these consumers is a subsidy program referred to as the residential exchange. The Pacific Northwest Power Act requires the subsidy to be passed directly to the residential and small farm consumers of participating utilities by means of lower retail rates for these consumers.

The Pacific Northwest Power Act defines the procedure to be followed in implementing the residential exchange. Under the residential exchange, a regional utility can offer to sell to BPA the amount of high-cost power that would be required to serve its residential and small farm consumers. BPA purchases that amount of power. BPA then offers, in exchange, to sell an equivalent amount of low-cost Federal power to that utility to serve its residential and small farm consumers. The residential exchange does not result in power transfer either to or from BPA.

Since BPA is directed to "buy high" and "sell low", the residential exchange produces a net cost for BPA that must be recovered. The Pacific Northwest Power Act provides for all of BPA's customer classes to contribute to the residential exchange subsidy through revenue from BPA power sales received from the customer classes. However, until July 1, 1985, BPA's class of direct-service industrial (DSI) customers has the primary responsibility for the recovery of the net cost of the residential exchange.

The revenue received from the DSIs is dependent upon the cumulative loads of the DSI customers, since the revenue equals the DSI loads multiplied by the rates charged to the DSIs for power purchases. Thus, a variation in the DSI loads will cause a corresponding variation in the revenue received from the DSIs. Since the net cost of the residential exchange program is recovered primarily from the revenue received from the DSIs prior to July 1, 1985, the actual loads of the DSIs during that time period have a significant effect upon the actual recovery of the net cost. While not the only factor affecting the recovery of the net cost, the DSI loads represent a major component of the net cost recovery calculations.

However, projections of DSI loads are not always accurate because the level of loads varies with numerous economic factors that are difficult to predict. Consequently, the actual DSI loads could either have exceeded or fallen short of projections. Likewise, the actual revenue received from the DSIs could either have exceeded or fallen short of projections. If the DSI loads exceeded projections, then an overrecovery of revenue necessary to meet the net cost obligation could have occurred. Conversely, if DSI loads fell short of projections, an underrecovery of

revenue necessary to meet the net cost obligation could have occurred.

The real possibility of an over- or underrecovery is acknowledged in the Pacific Northwest Power Act and addressed by section 7(b)(3). This section directs BPA to examine the time period for which the DSIs are primarily responsible for the net cost of the residential exchange and determine if an over- or underrecovery actually did occur as a result of unanticipated variations in actual DSI loads. If either an over- or underrecovery resulted in a net revenue surplus or deficiency, BPA is directed to correct for any revenue surplus due to an overrecovery, or for any revenue deficiency due to an underrecovery. First, this section directs BPA to exclude and subsequent costs (due to an underrecovery) or benefits (due to an overrecovery) from rates charged to BPA's preference customers.

The relevant portion in section 7(b)(3) specifies the following:

> Rates charged public body, cooperative, or Federal agency customers pursuant to this subsection shall not include any costs or benefits of a net revenue surplus or deficiency occuring for the period ending June 30, 1985, to the extent such surplus or deficiency is cause by—
>
> (A) A difference between actual power deliveries and power deliveries projected for the purpose of establishing rates to direct service industrial customers under subsection (c)(1) of this subsection; and
>
> (B) An overrecovery or underrecovery of the net costs incurred by the Administrator under section 5(c) as a result of such difference.

This language from Section 7(b)(3) describes the exclusion for preference customers from benefits/costs of a net revenue surplus/deficiency associated with the net cost of the residential exchange caused by variations in the DSI loads from the loads forecasted in BPA's 1981, 1982, and 1983 rate cases. This excluded benefit or cost is referred to as the 7(b)(3) amount.

Section 7(b)(3) then describes the method for repaying/recovering the surplus/deficiency:

> Any such revenue surplus or deficiency incurred shall be recovered from, or repaid to, customers over a reasonble period of time after July 1, 1985, through a supplemental rate charge or credit applied proportionately for all other power sold by the Administrator at rates established under other subsections of this section prior to July 1, 1985.

BPA has identified two separate steps that must be accomplished in order to fulfill the requirements of section 7(b)(3). First, the calculation of a net revenue surplus or deficiency caused by an over- or underrecovery of the net cost of the residential exchange must be made. Second, the 7(b)(3) amount must be allocated and recovered as described in section 7(b)(3). BPA proposes to develop and implement a methodology (the 7(b)(3) methodology) to accomplish these two steps.

II. Process

A two-stage process will be used to develop and implement the 7(b)(3) methodology. In the first stage, a methodology to calculate and recover the 7(b)(3) amount will be developed and adopted. The second stage will be the calculation and allocation of the 7(b)(3) amount using actual data.

The schedule for the process is as follows:

Stage 1—Develop Methodology

Publish Initial Proposal on 7(b)(3) Methodology (including available data), January 1985
7(i) Hearing on 7(b)(3) Methodology, Spring 1985
Final Proposal on 7(b)(3) Methodology, Summer 1985

Stage 2—Determine Rate Adjustments

Publish Initial Proposal on Implementation of 7(b)(3) Methodology (Tentative Data), Fall 1985
7(i) Hearing on Implementation of 7(b)(3) Methodology, Fall 1985
Final Proposal on Implementation of 7(b)(3) Methodology (Final Data), Spring 1986
Methodology Implemented, July–October 1986

The initial proposal for the 7(b)(3) methodology, to be published in January 1985, will include the following: (1) A method to calculate the 7(b)(3) amount; (2) a method for recovering/allocating the 7(b)(3) amount; (3) all actual and forecasted data available at that time; and (4) a detailed schedule for the remainder of the process.

III. Major Issues

The following major issues were identified in previous customer meetings and are expected to be addressed in the hearings. The first set of major issues deals with calculation of the 7(b)(3) amount and are outlined below.

Net Revenue Surplus or Deficiency. This calculation is the first step in determining if there is a 7(b)(3) amount, and two general alternatives for making the determination have been identified. The first alternative would define the net revenue surplus or deficiency as the net income for the period. The second alternative would define the net revenue surplus or deficiency as the difference between the actual and forecasted financial performance for the period.

Net Exchange Costs. A definition of "net exchange costs" must be established and a determination of how much of the net exchange costs assigned to the DSIs were actually recovered must be calculated by BPA.

Mitigation. When load underruns occur, BPA can either reduce costs or make additional sales, thereby reducing the impact of the lost sales. A determination must be made as to the appropriateness of subtracting resource cost reductions or revenues from alternative sales that took place during DSI load underruns from the calculated underrecovery of net exchange costs assigned to the DSIs.

The second set of major issues to be dealt with in the initial proposal are those that relate to the allocation and recovery of the 7(b)(3) amount, and are outlined as follows.

Allocation to Rate Classes. Once the 7(b)(3) amount is determined, an allocation must be made to the rate classes to recover that amount. The methodology will indicate which classes are allocated the 7(b)(3) amount and under what circumstances, if any, the preference customers will receive a corresponding credit.

Intraclass Allocation. The 7(b)(3) amount must eventually be recovered from individual customers. The appropriateness of allocating the 7(b)(3) amount directly to individual DSIs causing the surplus or deficiency will be considered when choosing a method for intraclass allocation.

Recovery Mechanism. The recovery of the 7(b)(3) amount can be tied to consumption prior to July 1, 1985, or included as a surcharge on post-1985 rates. The method to recover the 7(b)(3) amount must also take into consideration the period of time within which the 7(b)(3) amount will be recovered/allocated.

Issued in Portland, Oregon, on October 31, 1984.

James J. Jura,

Acting Administrator.

[FR Doc. 84-30236 Filed 11-16-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Case Nos. 50154-6010-01-82; 50154-6010-02-82]

Notice and Issuance of Final Prohibition Order; Powerplant and Industrial Fuel Use Act of 1978; Baltimore Gas and Electric Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice and issuance of prohibition order to Baltimore Gas and Electric Company.

SUMMARY: In accordance with former section 301(b) and section 702(a) of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or "the Act"), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of its issuance of a final prohibition order to the Baltimore Gas and Electric Company's (BG&E) Brandon Shores Generating Units 1 and 2 (hereafter referred to as Brandon Shores 1 and 2), located in Anne Arundel County, Maryland. The order prohibits Brandon Shores 1 and 2 from burning natural gas or petroleum as their primary energy source, in accordance with the effective date of the prohibition set forth in the **EFFECTIVE DATES** section, below.

The prohibition order procedures for powerplants electing continued coverage under former section 301 of FUA[1] are found at 10 CFR 501.31, 501.33, 501.51 and 504.6. Additional information on the proceeding, together with the final prohibition order to Brandon Shores 1 and 2 appear under **SUPPLEMENTARY INFORMATION** below.

EFFECTIVE DATES: The final prohibition order and the prohibition contained therein shall take effect on January 18, 1985, except that the use of natural gas or petroleum as a primary energy source in Brandon Shores 1 and 2 shall not be prohibited:

1. During any period that BG&E, due to circumstances beyond its reasonable control, is unable to burn coal in the unit(s), or is unable to burn coal in the unit(s) in compliance with all applicable federal, State and local laws, rules, regulations, ordinances and orders;

2. During any period that BG&E, due to circumstances beyond its reasonable control, is unable to purchase or secure delivery of a supply of coal suitable for operation of the unit(s) in compliance with all applicable federal, State and local laws, rules, regulations, ordinances and orders; and

3. During any other periods as provided or permitted by FUA or applicable ERA rules, regulations or orders.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Coal and Electricity Division, Forrestal Building, Room GA–033, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–8161

Steven E. Ferguson Esq., Department of Energy, Office of the General Counsel, Forrestal Building, Room 6A–141, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6739.

The public file containing a copy of this notice and all other documents and supporting materials related to the proceeding is available for inspection upon request Monday through Friday from 8:00 a.m. to 4:00 p.m., at the Department of Energy, Freedom of Information Reading Room,. Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252–6020.

SUPPLEMENTARY INFORMATION: (1) *Procedures.* ERA issued the proposed prohibition order to BG&E's Brandon Shores 1 and 2 on October 9, 1979 (44 FR 59264, October 15, 1979), commencing a proceeding designed to prohibit the use of petroleum or natural gas as the primary energy source in the units if the required findings of the then-effective section 301(b) of FUA (hereafter referred to as "former section 301(b)"), discussed below, could be made.

In accordance with 10 CFR 501.51(b), the issuance of the proposed prohibition order to Brandon Shores 1 and 2 would have commenced an initial three-month public comment period, during which interested parties could (1) challenge ERA's initial finding that Brandon Shores 1 and 2 have or previously had the technical capability to use coal as their primary energy source and (2) comment upon the proposed statutory findings which former section 302(b) requires ERA to make prior to the issuance of any final prohibition order.

However, as noted in the section entitled Comments and Public Hearing Procedures of the proposed prohibition order, pursuant to § 501.51(b)(6), subsequent to the date of this order, ERA received a request from BG&E to reduce the initial comment period from three months to a period of 45 days. ERA granted this request. Separate notice of this decision was published on the same day as the proposed prohibition order (44 FR 59264, October 15, 1979). Additionally, the interested parties were required to furnish ERA with any evidence bearing upon the other statutory findings which former section 301(b) of FUA requires ERA to make prior to the issuance of a final prohibition order to Brandon Shores 1 and 2. BG&E was required by the then-effective 10 CFR 502.51(b)(3),[2] during this period, to identify any exemptions for which it believed Brandon Shores 1 and 2 might qualify, but was not required to submit evidence supporting the claim of entitlement to any exemption at that time. The initial public comment period of the Brandon Shores 1 and 2 proposed prohibition order expired on November 29, 1979. No comments contrary to ERA's initial finding were received. However, BG&E did not submit evidence relating to other statutory finds that ERA has to make under former section 301(b) and identified a potential exemption qualification that might be asserted against the application of the final prohibition order to Brandon Shores 1 and 2. The potential exemption qualification was noted and identified in the Notice of Intention to Proceed cited below.

On the basis of the evidence available to it following the expiration of the initial comment period, EPA determined to continue with the order proceeding concerning Brandon Shores 1 and 2 and accordingly, issued its Notice of Intention to Proceed with the proceeding on September 5, 1980 (45 FR 59941, September 11, 1980). This action commenced a three-month public comment period, which expired on December 12, 1980.

On September 27, 1984, ERA issued a Notice of Availability of Tentative Staff Analysis (TSA) (49 FR 39208), October 4, 1984), in accordance with 10 CFR 501.51. The TSA concluded that the findings of technical and financial feasibility required by former section 301(b) of FUA could be made with respect to Brandon Shores 1 and 2 and recommended that a final prohibition order issued to the units. The staff conclusions were based upon information provided by BG&E and other information available to ERA, all of which is included in the administrative record of the proceeding. In accordance with 10 CFR 501.51(b)(8), the Notice of Availability established a 14-day comment period during which a public hearing could also be requested. No comments on the TSA were received during the period provided, and no public hearing was requested.

NEPA Compliance. In accordance with the provisions of the National Environmental Policy Act of 1969

[1] In accordance with procedures issued by ERA on October 1, 1981, to implement the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, August 13, 1981), BG&E, on November 9, 1981, elected to have Brandon Shores 1 and 2 remain subject to former section 301(b) of FUA.

[2] The requirement that a proposed order recipient identify any exemptions for which the powerplant might qualify during the initial three-month comment period was deleted from 10 CFR 501.51(b)(3), effective May 21, 1982 (47 FR 17073, April 21, 1982).

(NEPA), DOE has performed an environmental review of the proposed action and published a Draft Environmental Impact Statement (DEIS) (DOE/EIS–0105–D) in December 1983 and a Final Environmental Impact Statement (FEIS) in July 1984 (DOE/EIS–0150–F). The Brandon Shores Record of Decision (ROD) dated October 22, 1984, prepared under DOE's NEPA guidelines (45 FR 20694, March 28, 1980) concluded that the proposed conversion to coal is the preferred alternative of the EIS and stated that DOE will finalize and issue prohibition orders for Brandon Shores 1 and 2.

Prohibition Order

After review and consideration of the whole record in this proceeding, and finding its proposed actions to be supported by reliable, probative, and substantial evidence, ERA issues the following prohibition to:

Baltimore Gas and Electric Company, Brandon Shores Generating Units 1 and 2, Anne Arundel County, Maryland

Case Nos.
50154–6010–01–82
50154–6010–02–82

Pursuant to former section 301(b) of FUA and 10 CFR § 504.6, ERA hereby prohibits the above-named powerplant from buring petroleum or natural gas as a primary energy source.

As provided in former section 301(b)(1) and (2) of FUA and 10 CFR 504.6 (c), (d), (e), and (f), this prohibition order is based upon the following findings:

Finding of Technical Feasibility

As required by former section 301(b)(1) and (2) of FUA, ERA finds that (1) Brandon Shores 1 and 2 have the technical capability to use coal or another alternate fuel as a primary energy source, and (2) that it is technically feasible for Brandon Shores 1 and 2 to use coal or another alternate fuel as their primary energy source without substantial physical modification of the unit and without substantial reduction in the rated capacity of the units.

This finding is based upon information contained in the public record and cited in the TSA (49 FR 39208, October 4, 1984), which indicates that Brandon Shores 1 and 2 were designed and constructed to burn coal as their primary energy source, and that Unit 1 is currently being so operated. The Analysis Branch of the Office of Fuels Programs confirmed this fact in a memorandum entitled Prohibition Order Analysis of Baltimore Gas and Electric's Brandon Shores Generating Station dated July 6, 1984.

Brandon Shores 1 and 2 are identical 628 MW generating units whose main boilers are Carolina RBE–64 type single arrangement, dry bottom models manufactured by Babcock and Wilcox. Both units were to have been oil fired, but provisions were made in the original design for them to be converted to coal, although no coal firing equipment was initially installed. An analysis of the technical capabilities of the units by Pacific Northwest Laboratory showed that the use of compliance coal (coal with a maximum of 1.2. lb. $SO_2/10_6$ Btu or less by weight, which by definition would meet the Maryland State Implementation Plan (SIP) for sulfur dioxide emissions) together with the installation of certain coal-handling, ash-handling and auxiliary facilities and the installation of appropriate particulate emission control devices, would enable the units to burn coal. The report further stated that there is no significant derating when converting to compliance coal. The net rated output of each unit would probably be 620 MW when burning compliance coal, 8 MW being allotted to auxiliary power for the operation of coal pulverizers and additional fans. Neither the additional equipment nor the potential anticipated derating is "substantial" within the meaning of 10 CFR 504.6(c)(e), in absence of evidence to the contrary.

Finding of Financial Feasibility

As required by former section 301(b)(3) of FUA, ERA finds that it is financially feasible for Brandon Shores 1 and 2 to use coal as their primary energy source. This finding is based upon (1) ERA staff calculations of record, using the general cost calculation formula in 10 CFR 504.12, the results of which indicate that the use of coal as the primary energy source for Brandon Shores 1 and 2 will not substantially exceed the cost of using imported petroleum. These findings were reconfirmed in a memorandum dated July 6, 1984, from the Analysis Branch. Brandon Shores Unit 1 has been completed and is prepared to begin burning coal in compliance with the Clean Air Act. Unit 2 is projected to be completed by 1988. In accordance with former 10 CFR 504.6(f)(1),[3] the ERA staff therefore presumed that the use of coal as the primary energy source for the units is financially feasible.

Terms and Conditions

The Order and its prohibition to Brandon Shores 1 and 2, stated above, shall take effect on January 18, 1985, except that the use of natural gas or petroleum as a primary energy source in Brandon Shores 1 and 2 shall not be prohibited:

1. During any period that BG&E, due to circumstances beyond its reasonable control, is unable to burn coal in the unit(s), or is unable to burn coal in the unit(s) in compliance with all applicable federal, State and local laws, rules, regulations, ordinances and orders;

2. During any period that BG&E, due to circumstances beyond its reasonable control, is unable to purchase or secure delivery of a supply of coal suitable for operation of the unit(s) in compliance with all applicable federal, State and local laws, rules, regulations ordinances or orders; and

3. During any other periods as provided or permitted by FUA or applicable ERA rules, regulations or orders.

Pursuant to 10 CFR 501.69, any person aggrieved by this Order may petition for judicical review thereof at any time before the 60th day following publication in the **Federal Register**.

Issued in Washington, D.C., on November 2, 1984.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84–30237 Filed 11–16–84; 8:45 am]

BILLING CODE 6450–01–M

[3] Former 10 CFR 504.6(f)(1), which continues to be applicable to electing powerplants (SEE: 47 FR 22365, May 24, 1982), is found at 45 FR 53682, 53698.

[ERA Docket No. 84–16–NG]

Natural Gas Imports; Application To Amend Import Authorizations To Sell Unused Authorized Volumes on a Spot or Short-Term Basis; Northwest Alaskan Pipeline Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to amend current and pending natural gas import authorizations to sell unclaimed authorized volumes on a spot or short-term basis.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 16, 1984, of an application by Northwest Alaskan Pipeline Company (Northwest Alaskan) for a "blanket" authorization to allow sales on a spot or short-term basis of any authorized volumes of imported natural gas not purchased by its long-term contract purchasers. All such sales would be made on an interruptible or best-efforts basis and would not preempt Northwest Alaskan's firm requirements. The

specific terms and conditions of each sale, including the price, volumen, and duration, would be determined by negotiation between Northwest Alaskan, Northwest Alaskan's Canadian supplier, Pan-Alberta Gas Ltd. (Pan-Alberta), and the ultimate purchaser. It is the intent of Northwest Alaskan that spot sales arrangements utilize the existing Alaska Natural Gas Transportation System (ANGTS) to the maximum extent possible, thereby reducing costs for Northwest Alaskan's long-term contract customers.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act, section 9 of the Alaskan Natural Gas Transportation Act, and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to interven or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on December 19, 1984.

FOR FURTHER INFORMATION CONTACT:

Chuck Boehl, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–6050.

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–6667.

SUPPLEMENTARY INFORMATION:

Northwest Alaskan purchases Canadian natural gas from Pan-Alberta pursuant to two contracts dated March 9, 1978, as amended. Under the terms of the first contract (Western Contract), Northwest Alaskan can request that Pan-Alberta make available up to 240,000 Mcf of natural gas on an annual average basis. Imported at a point near Kingsgate, British Columbia, this gas is resold to Pacific Interstate Transmission Company and transported over prebuilt portions of the Western Leg of the ANGTS and through other pipelines for eventual sale in southern California.

Under its second contract with Pan-Alberta (Eastern Contract), Northwest Alaskan can purchase up to 800,000 Mcf of natural gas on an annual average daily basis. These volumes are imported at a point near Monchy, Saskatchewan, and are resold to three purchasers, Northern Natural Gas Company, a Division of InterNorth, Inc., Panhandle Eastern Pipe Line Company, and United Gas Pipeline Company. Respective volumes for the three firms are 200,000 Mcf per day, 150,000 Mcf per day, and 450,000 Mcf per day. The gas is transported over the Eastern Leg of the ANGTS.

On October 16, 1984, Northwest Alaskan filed with the ERA three applications to amend its current import authorizations. Two of these applications were requests for amendments of the authorization to conform to amended Western and Eastern Contracts and for the import authorizations to be extended until October 31, 2001, and October 31, 2002, respectively. These applications also requested removal of certain conditions imposed on current authorization in light of contract amendments which the applicant asserts make the import arrangements more market responsive. Notices of these applications for amended authorizations were issued on October 23, 1984 (49 FR 43091 and 49 FR 43094, October 26, 1984).

This notice concerns the third application in which Northwest Alaskan asks for blanket approval from ERA to make spot or short-term direct sales of Canadian gas in the United States under its existing import authorizations referred to above, to the extent that its long term purchasers do not take their full contract amounts. Northwest Alaskan (in coordination with Pan-Alberta) proposed first to negotiate with its pipeline customers and their end-users to recapture and maintain gas sales that would be lost to alternative fuels in their markets. Additionally, Northwest Alaskan would work with Pan-Alberta to make spot sales to end-users not associated with its present customers' markets and which do not displace other Canadian gas sales. All such sales would be made on an interruptible or best-efforts basis and would not preempt Northwest Alaskan's firm commitments.

The specific terms and conditions of each sale, including the price, volume, and duration, would be determined by negotiation between Northwest Alaskan, Pan-Alberta, and the ultimate purchaser. It is Northwest Alaskan's stated intention that spot-sale arrangements would utilize the existing ANGTS prebuilt facilities to the maximum extent possible. Northwest Alaskan also would seek to obtain incentive transportation rates for both U.S. and Canadian ANGTS transportation facilities, if necessary, to make the spot sales viable. Under the blanket authority, Northwest Alaskan requests it be allowed to negotiate individual spot sales contracts within the limits of its import authorizations without prior authorization from the ERA for each such sale. Northwest Alaskan contends this would allow it to respond quickly to conditions in the U.S. gas market and recapture and maintain gas markets against competing alternative fuels. Northwest Alaskan proposes to submit an informational report on these sales to ERA every six months.

Northwest Alaskan maintains granting of this authorization is in the public interest for the following reasons. First, spot sales of Canadian gas utilizing the ANGTS prebuilt facilities would lower the unit costs of transporting Canadian gas to U.S. markets through the ANGTS. Such transportation cost reductions would benefit Northwest Alaskan's U.S. contract purchasers as well as any other U.S. purchasers who receive this gas. Second, spot sales of Canadian gas would provide an economical, interruptible supply of gas which might enable Northwest Alaskan's contract purchasers to recapture customers that have left their systems in recent years and to maintain customers that might otherwise leave their systems for alternative fuels. Thus, Northwest Alaskan says, the facilities of the U.S. contract purchasers would be more fully utilized to the benefit of customers of these pipeline systems. Recapturing and maintaining gas loads, it continues, would benefit U.S. consumers by ensuring access to a long-term, secure supply of Canadian natural gas for U.S. gas markets, which would be available long after the current, short-term surplus has dissipated.

Northwest Alaskan's application is one of several received by this agency concerning purchases of imported gas for spot and short-term market opportunities. The authorization sought would provide Northwest Alaskan a "blanket" or generic import approval to negotiate and transact individual spot and short-term arrangements without further regulatory action. In certain respects this application is similar to an application the ERA received from Cabot Energy Supply Corporation on August 31, 1984, in response to which comments have been requested (49 FR 44011, November 1, 1984). Such sales generally respond to unique market demands and opportunities, and to be effective normally require prompt action. Although its application does not identify specific resale customers, price, or delivery and end use points, Northwest Alaskan indicates any transaction under the requested blanket authorization will take place only if it is market competitive and thus made in a

manner fully consistent with the policy and regulatory guidelines applied by this agency in approving gas imports.

Because spot and short-term trading represents a new and growing activity within the U.S. gas market, the public comments on Northwest Alaskan's application will be especially useful in determining our regulatory approach to these arrangements. This type of application is subject to the policy considerations that now govern the review of traditional gas import arrangements, as set forth by the Secretary of Energy last February (49 FR 6687, February 22, 1984). This policy, with its strong emphasis on competitive prices and contract flexibility, has the objective of freeing commercial parties from undue government interference in contract terms and emphasizes the importance of buyer-seller negotiated arrangements.

Public comment on this application is encouraged by this notice. Intervention requirements will be liberally applied and the views expressed by interested parties will be given careful and thorough consideration in evaluating Northwest Alaskan's application. Parties providing comments or opposing this application should address any legal, procedural, or policy issues raised by this application, including, for example, its consistency with the considerations set forth in the Secretary's policy guidelines, with emphasis on its competitiveness.

Other Information

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received by persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–033–B, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., December 19, 1984.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the EPA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northwest Alaskan's application is available for inspection and copying in the Natural Gas Division Docket Room, Room GA–033–B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on November 2, 1984.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84–30235 Filed 11–16–84; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $244,000 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Eddy Refining Company and Key Oil Company, a refiner and a reseller, respectively, of refined petroleum products located in Houston, Texas.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF–0206.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Eddy Refining Company and Key Oil Company, which settled possible violations of DOE price controls in the firms' sales of refined petroleum products to its customers during the period October 1, 1973 through January 28, 1981.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Eddy and Key pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Eddy and Key products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for

public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: November 7, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 7, 1984.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Eddy Refining Company, Key Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF–0206.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the DOE Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the DOE regulations. See 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as part of a settlement agreement or pursuant to a remedial order. The Subpart V process may be used in situations where the DOE cannot readily ascertain the persons who were injured or the amounts that such persons are eligible to receives as a result of enforcement proceedings. *See Office of Enforcement,* 9 DOE ¶82,553 at 85,284 (1982).

I. Background

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Eddy Refining Company (EDDY) and Key Oil Company (Key). Eddy is a refiner and Key is a reseller-retailer of refined petroleum products as those terms were defined in 10 CFR § 212.31. Eddy and Key are located in Houston, Texas, and Key operates a number of retail service stations in the Texas Gulf Coast area. The firms were subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Parts 205, 210, 211, 212 and 213 until January 28, 1981, when all refined petroleum products still regulated by the DOE were exempted from price and allocation controls. Exec. Order No. 12287, 46 FR 9909 (January 30, 1981). As a part of its enforcement responsibilities, ERA audited Eddy's and Key's sales of refined petroleum products from December 1, 1973 through June 30, 1976 (the audit period). The audit revealed possible regulatory violations, the amount of which depended upon whether Eddy and Key were determined to be a single firm, as ERA maintained, or two independent companies, as was the position of the firms. In order to settle all claims and disputes between the firms and the DOE regarding Eddy's and Key's compliance with the federal petroleum price and allocation regulations administered and enforced by the DOE during the period of October 1, 1973 through January 28, 1981, the firms entered into a consent order on July 19, 1983 in which Eddy and Key agreed to remit $244,000 to the DOE. (*1*) The consent order provides that this sum be paid in 30 successive monthly installments of approximately $8,133 each, beginning on October 1, 1983. The funds are being deposited into an interest-bearing escrow account for ultimate distribution to the parties who may have been injured by the alleged overcharges. This Proposed Decision concerns the distribution of the funds that have been or will be deposited into the escrow account plus accrued interest. The funds on deposit in the Eddy/Key escrow account, including interest, amounted to $92,417.47 as of August 31, 1984.

II. Proposed Refund Procedures

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Eddy/Key consent order fund. The Subpart V regulations authorize the OHA, upon request by the appropriate enforcement official, to fashion special procedures to distribute funds received as a result of settlement of an enforcement proceeding. 10 CFR 205.281, 205.282. The Subpart V process may be used in situation where DOE is unable readily to identify persons who were injured or to ascertain the amounts that such persons are eligible to receive as a result of enforcement proceedings. 10 CFR 205.280; *see also In re The Charter Co.,* 47 FR 16396 (April 16, 1982) (proposed decision); *Office of Enforcement,* 9 DOE ¶82,553 at 85,284 (1982). The ERA indicated in its petition that those circumstances exist in this case; therefore, we will grant ERA's petition and assume jurisdiction over the distribution of the Eddy/Key consent order funds.

As we have stated in previous decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V. proceedings. *See generally Office of Enforcement,* 8 DOE ¶82,597 (1981) (hereinafter cited as *Vickers*). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. The first stage will attempt to provide refunds to identifiable purchasers of refined petroleum products who may have been injured by Eddy's and Key's pricing practices during the period October 1, 1973 through January 28, 1981. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary if any funds remain. *See generally Office of Special Counsel,* 10 DOE ¶85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

A. Refunds to Injured Purchasers

We propose that the Eddy/Key consent order funds be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Eddy's and Key's alleged pricing violations. The information available to us at this time regarding the firms' operations does not provide the names and addresses of the firms' customers. Our experience with Subpart V proceedings indicates that the likely claimants in this proceeding, when more fully indentified, will fall into two categories: (1) Resellers (including retailers) of Eddy of Key refined petroleum products, and (2) firms, individuals, or organizations that were consumers (end-users) of refined petroleum products obtained from the two firms. The products purchased by these claimants were purchased either directly from Eddy or Key or from other firms in a chain of distribution leading back to the two firms.

In order to receive a refund, each claimant will be required to submit a schedule of monthly purchases of convered products from Eddy and Key for the period October 1, 1973 through January 28, 1981. If the products were not purchased directly from Eddy or Key, the claimant will be required to include a statement setting forth his or her reasons for believing the product originated with one of the two firms. *See, e.g.,* standard Oil Co. (Indiana)/Union Camp Corp., 11 DOE ¶85,007 (1983). In addition, a reseller or retailer or refined petroleum products that files a claim generally will be required to establish that if absorbed the alleged overcharges and was thereby injured. To make this showing, each reseller or

retailer will be required to show that it maintained "banks" or unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it will have to demonstrate that, at the time it purchased covered products from Eddy or Key, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges.

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Eddy and Key during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an indivdual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the pro rata amount determined by the volumetric presumption. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./ Siouxland propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Eddy/Key consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it also allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Eddy or Key and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85, 069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, and the early months of the consent order period are quite distant, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable. (2) *See Texas Oil & Gas Corp.; Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited therein.

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Eddy and Key petroleum products need only document their purchased volumes from Eddy or Key to make a sufficient showing that they were injured by the alleged overcharges.

If a reseller or retailer made only spot purchases from Eddy or Key, however, we propose that it should not receive a refund because it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Eddy or Key refined petroleum products. *See Amoco* at 88,200.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of the products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.000635 per gallon ($244,000 received from Eddy and Key divided by 384,445,000 gallons of refined petroleum products sold by the firms during the audit period). (3)

Successful claimants will receive refund based on their eligible purchase volumes multiplied by the volumetric refund amount, plus a proportionate share of the interest accrued on the consent order fund since it was remitted to the DOE. As of October 31, 1984, accrued interest will increase the per gallon refund amount by $.000010 for a total per gallon amount of $.000645. Consequently, a successful claimant who purchased, for example, 100,000 gallons of refined petroleum products from Eddy or Key during each of the months of the consent order period will receive a refund of $5,676 (100,000 gallons times 88 months times .000645).

Since Eddy and Key are paying the consent order amount in monthly installments, the entire amount will not be on deposit in the escrow account until April 1986. Thus it is possible that we will be in a position to grant refunds in excess of the current balance of the escrow account. To avoid this situation, we propose to delay processing of all applications for refund in this proceeding until the close of the application period. If at that time, the balance of the escrow account is insufficient to cover the amount of approved refunds, we will disburse refunds, on a pro rata basis, at such a percentage of the approved refund amounts that the account will not be overdrawn. The unpaid portion of an applicant's refund amount will be disbursed at such a time when sufficient funds are on deposit in the escrow account to cover all remaining unpaid refund amounts.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225.

Detailed procedures for filing applications applications will be provided in a final Decision and Order. Applications for refunds should not be filed until issuance of the final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register**, we will provide notice to such associations as the National Oil Jobbers Council and the Texas Oil Marketing Association, which may be helpful in advising potential claimants of ths proceeding. We will also circulate an announcement summarizing the refund procedures to the local media for metropolitan Houston, the area in which Key operated retail outlets, in an effort to reach consumers who may be eligible for refunds. We solicit comments regarding any additional methods for advising potential claimants of this proceeding.

B. Distribution fo the Remainder of the Consent Order Funds

In the event that money remains in the Eddy/Key escrow account after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We will therefore reserve this issue for determination at a later date.

It is therefore ordered that:

The $244,000 refund amount currently being remitted by Eddy and Key in monthly installments pursuant to the consent order executed on July 19, 1983 will be distributed in accordance with the foregoing Decision.

Notes

(1) During the period from August 1 through December 31, 1977, Eddy made voluntary refunds to its customers in the amount of $432,733. The two firms have agreed to pay the additional $244,000 "in full settlement of all remaining DOE challenges to prices paid by purchasers of refined petroleum products from Eddy and/or Key" during the period October 1, 1973 through January 28, 1981. Consent Order at 7.

(2) Resellers who claim a refund in excess of $5,000, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for up to the $5,000 threshold amount without being required to submit evidence of injury. *See Vickers* at 85,396; *see also Ada* at 88,122.

(3) Eddy sold 384,445,000 gallons of refined petroleum products during the consent order period. According to Eddy, Key and the DOE audit of the two firms, Key purchased all or substantially all of its covered products from Eddy during the period. Consequently the combined total sales volume of the two firms is approximately equal to Eddy's sales volume, and we have determined that we will use the Eddy figure in our calculations of the volumetric refund amount.

[FR Doc. 84-30208 Filed 11-16-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $39,900 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving J.S. Beebe and J.S. Beebe, Jr., producers of crude oil located in Union County, Arkansas.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0505.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by J.S. Beebe and J.S. Beebe, Jr. which settled all disputes between DOE and Messrs. Beebe concerning possible violations of DOE price regulations with respect to the firm's sales of crude oil during the period September 1, 1973 through April 30, 1977.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by J.S. Beebe and J.S. Beebe, Jr. pursuant to the consent order. The DOE has tentatively established procedures

under which purchasers of Beebe crude oil during the audit period may file claims for refunds from the consent order fund. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours or 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: November 2, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

November 2, 1984.

Name of Firm: J.S. Beebe and J.S. Beebe, Jr.

Date of Filing: June 29, 1984.

Case Number: HEF-0505.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement a specially-designed process to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered into with J.S. Beebe and J.S. Beebe, Jr. (hereinafter referred to as Beebe). Pursuant to this consent order, Beebe refunded $39,901.19 in settlement of allegations that it had violated the DOE pricing regulations. Those funds, which have already been paid to the DOE, are being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution.

I. Regulatory Background

The consent order involved in this proceeding resulted from an audit conducted by the DOE and its predecessor agencies. As a result of this audit and investigation, the DOE alleged that during the Consent Order period, September 1, 1973 through April 30, 1977, Beebe sold crude oil at prices in excess of those established in the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212.

Those regulations generally required crude oil producers to determine the first sale price of crude oil on the basis of the level of production from a property during a specified base period, *i.e.*, the base production control level (BPCL). *See* 6 CFR 150.354; 10 CFR 212.72-.74. The term "property" was defined as the right to produce crude oil which arises from a lease or fee interest. 6 CFR 150.354(b)(2); 10 CFR 212.72. Crude oil production that did not exceed the BPCL for a particular property was generally subject to the lower tier ("old" oil) ceiling price rule. 6 CFR 150.354; 10 CFR 212.73. Crude oil production that exceeded the BPCL ("new" oil) could generally be sold without regard to the ceiling price rule prior to February 1, 1976, and at the upper tier ceiling price level after that date. 6 CFR 150.354(c)(2); 10 CFR 212.74(a). Prior to February 1, 1976, in months in which new oil could be sold from a property, additional volumes of crude oil could be sold as "released" oil at prices in excess of the applicable lower tier ceiling price level. 6 CFR 150.354(c)(3); 10 CFR 212.74(b). Additionally, crude oil produced from a "stripper well property" could generally be sold at market price levels. Producers and resellers of crude oil were generally required to certify in writing to each purchaser in the distribution chain the respective volumes of the various categories of price-controlled domestic crude oil included in each purchase. 10 CFR 212.131(a)(4), (b)(1). Refiners were required to report these certifications to the DOE and its predecessors whfen they processed the crude oil to enable the agency to administer the Entitlements Program, 10 CFR 211.67.

The Entitlements Program, 10 CFR 211.67, was part of the comprehensive program administered by the DOE for the mandatory pricing and allocation of crude oil, residual fuel oil and refined petroleum products. As discussed above, the federal regulations governing the price of crude oil created a price disparity between, on the one hand, foreign crude and uncontrolled domestic crude oil, and old and upper-tier (price-controlled) oil on the other hand. These price controls had an unequal effect on refiners and their downstream customers because some refiners had greater access to the cheap old oil than others. Firms which had little or no access to price-controlled oil were forced to purchase uncontrolled domestic or similarly expensive foreign crude oil. As a result, many small, independent firms, with little or no access to price-controlled domestic reserves, experienced crude oil acquisition costs so high relative to the industry as a whole that those costs threatened their viability. To remedy these imbalances, the DOE established the Entitlements Program. 39 FR 31650 (1974); 39 FR 39740 (1974). Under the Entitlements Program, refiners with proportionally greater access to cheap price-controlled oil made cash payments, in the form of the purchase of entitlements, to refiners with less access to price-controlled oil. The program was designed to restore the competitive viability of the refining industry by generally equalizing among all domestic refiners the benefits associated with access to the lower-priced domestic crude oil.

II. Factual Background

Beebe is the operator of six crude oil producing properties in Union County, Arkansas. According to the Petition for Implementation of Special Refund Procedures filed by the ERA, Beebe overcharged two firms to which it made first sales of crude oil. Those firms were identified as Cross Development Co. and Lion Oil Co. The types of alleged violations involved in this proceeding fall into two categories. The first alleged violation involves incorrect certifications. The firm was alleged to have overcharged purchasers by an amount per barrel which represents the difference between the "new" or "stripper well"prices and the maximum price permitted for "old" oil. The second type of violation involved concerns Beebe's alleged sales of "old" oil at levels in excees of the applicable ceiling price. Beebe allegedly determined May 15, 1973 posted prices for crude oil incorrectly and thus sold crude oil at a price higher than that permitted by the regrulations. On September 7, 1983, Beebe and the ERA entered into a Consent Order in which the Government agreed to terminate the pending investigation and administrative proceedings and Beebe agreed to pay a stipulated sum of money to the DOE.

III. Jurisdiction

The procedural regulations of the Department of Energy set forth general guidelines by which the Office of

Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V.(*1*) Those regulations provide that the Subpart V process may be used in situations where the Department of Energy is unable to identify readily persons who were or may have been injured by alleged or adjudicated violations or to readily ascertain the amount of their alleged injuries. 10 CFR 205.280. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶82,508 (1981); *Office of Enforcement, 8 DOE ¶82,597 (1981) (hereinafter cited as Vickers)*. After reviewing the record developed in this proceeding, we have concluded that, although the identity of the first purchasers of Beebe's crude oil is known, it may be difficult to identify other potentially injured parties and to determine to what extent a refund applicant may have been injured by Beebe's pricing or certification practices. Under these circumstances, Subpart V provides a useful mechanism for devising a procedure to effect restitution. The Office of Hearings and Appeals therefore will accept jurisdiction over the funds which Beebe paid to the DOE in settlement of the enforcement proceedings underlying the Petition for Implementation of Special Refund Proceedings.

IV. Proposed Refund Procedures

We have previously established refund procedures for consent orders involving the same type of crude oil-related violations as those which are the subject of the present proceedings. In *Office of Enforcement: In the Matter of Alfred B. Alkek*, 9 DOE ¶82,521 (1982), 47 FR 2196 (January 14, 1982) hereinafter cited as *Alkek*) and *Office of Enforcement: In the Matter of Adams Resources and Energy, Inc.*, 9 DOE ¶82,553 (1982), 47 FR 16381 (April 16, 1982) (hereinafter cited as *Adams*), which involved consent orders and remedial orders with 58 firms, we established a two-stage refund procedure for consent order and remedial order funds received as a result of alleged crude oil regulatory violations. (*2*) Because the types of alleged violations that underlie the present proceeding are substantially the same as those that were the subject of the *Alkek* and *Adams* proceedings, we have determined that it is appropriate to formulate a two-stage refund proceeding modeled after those proceedings. We therefore propose to establish first-stage refund procedures in which we will accept first-stage refund applications to be adjudicated in the same manner and using the same principles as those refund applications that were filed pursuant to the *Alkek* and *Adams* determinations. Because of the difficulty inherent in establishing the level of injury to parties in the present case, there may be a portion of the refund moneys remaining after all successful first-stage claimants h ave been paid. As in previous cases, we shall hold in abeyance our determination as to appropriate second-stage procedures for these cases until we know how much money will remain after first-stage claims are paid. *See Office of Enforcement*, 9 DOE ¶82,508 (1982). Our preliminary views concerning possible second-stage resolutions are contained in *In Re Stripper Well Exemption Litigation*. Case No. HEF–0025, 48 FR 57608 (1983).

It is Therefore Ordered That:

The refund amount provided in conjunction with the consent order entered into between the Economic Regulatory Administration (ERA) and J.S. Beebe and J.S Beebe, Jr. on September 7, 1983 shall be distributed in the manner set forth in the foregoing Decision.

Notes

(*1*) At one time crude oil and refined petroleum products were subject to a comprehensive price regulation scheme which could be utilized to facilitate the channeling of refunds to overcharged parties including ultimate consumers. However, since the President has exempted crude oil and all refined petroleum products from the DOE regulatory program, *see* Exec. Order No. 12287, 46 FR 9909 (1981), price rollbacks are no longer an effective means of refunding money to purchasers who were overcharged in the past.

(*2*) We subsequently added to the Alkek/Adams "pool" the portion of the Amoco consent order funds that was allocated for crude oil claims. *See* Office of Special Counsel, 10 DOE ¶ 85,048 at 88,203. We have also discussed the potential distribution of crude oil overcharge funds in In re Stripper Well Exemption Litigation, Case No. HEF–0025, 48 FR 57608 (1983).

[FR Doc. 84–30234 Filed 11–16–84; 8:45 am]
BILLING CODE 6450–01–M

Objection to Proposed Remedial Orders Filed; Period of October 8 Through October 19, 1984

During the period of October 8 through October 19, 1984, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: November 6, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Eason Oil Company Oklahoma City, Oklahoma HRO–0254, Crude Oil

On October 17, 1984, Eason Oil Company (Eason), 2601 NW., Expressway, Oklahoma City, Oklahoma 73112, filed a Notice of Objection to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued to the firm on September 14, 1984. In the PRO, the ERA found that during the period September 1, 1973 through December 31, 1979, Eason committed violations of the pricing regulations set forth in 10 CFR Part 212, Subpart E, in sales of gasoline, kerosene, gas oil, natural gas liquids and natural gas liquids products.

According to the PRO, the pricing violations resulted in $4,130,365 of overcharges.

Isthmus Trading Corporation and Richard Gonzales, Houston, Texas HRO–0252, Crude Oil

On October 16, 1984, Isthmus Trading Company, Suite 280, 10700 Northwest Freeway, Houston, Texas 77092, filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas District Office of Enforcement issued to the firm on September 14, 1984. In the PRO, the Office of Enforcement found that during the period from April 1980 through December 1980, the firm charged prices for crude oil in excess of those permitted under 10 CFR 212.186, 210.62(c) and 205.202. In particular, the PRO alleges that the recipients engaged in the practice of "layering".

According to the PRO, the pricing violations resulted in $4,127,925.19 of overcharges.

J.R. Adams Oil Company Guymon, Oklahoma HRO–0253, Crude Oil

On October 17, 1984, J.R. Adams Oil Company, P.O. Box 487, Guymon, Oklahoma 74447, filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas District Office of Enforcement issued to the firm on September 14, 1984. In the PRO, the Office of Enforcement found that during

the period March 4, 1974 through July 30, 1974, J.R. Adams Oil Company resold refined petroleum products at prices in excess of those permitted under 10 CFR Part 212.

According to the PRO, the J.R. Adams Oil Company violation resulted in $539,551 of overcharges.

[FR Doc. 84-30233 Filed 11-16-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of October 15 through October 19, 1984

During the week of October 15 through October 19, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Lynberg & Nelsen, 10/18/74, HFA-0248

Lynberg & Nelsen filed an Appeal from a determination issued by the Office of General Counsel of the Department of Energy (DOE) that provided Lynberg with the public copy, *i.e.*, a copy with confidential and properietary information deleted, of a Proposed Remedial Order (PRO). In considering the Appeal, the DOE discussed general procedures for processing requests for copies of PROs. The DOE determined that an adequate response to such a request is to refer the requester to copies of PROs in the Public Reading Room. In making such a referral the authorizing official should indicate that if a requester desires the release of deleted material, he should file a request under the Freedom of Information Act (FOIA). Accordingly, the Appeal was dismissed. The DOE determined, however, that the Appeal was to be treated as an FOIA request for the information deleted from the PRO, and transferred to an appropriate FOIA authorizing official for a determination on the request.

Request for Exception

THREE L INC., 10/16/84, HEE-0093

Three L Inc. filed an Application for Exception seeking relief from the requirement that it prepare and file Form EIA-782B with the DOE Energy Information Administration. In considering the request, the DOE found that there was merit to the firm's contentions that it was burdened by the filing requirement. After balancing this burden against the public interest in gathering reliable energy data, the determination was made that a limited form of exception relief was appropriate. Accordingly, exception relief was granted to simplify the reporting requirements and thereby reduce any burden to Three L. While reducing the difficulty of completing Form EIA-782B, this type of relief insures that the DOE will continue to receive data from a representative sample of energy firms.

Refund Applications

Standard Oil Company (Indiana)/Joseph Sam Mistretta, 10/16/84, RF21-11147

The DOE issued a decision and Order concerning an Application for Refund filed by Joseph Sam Mistretta, a retailer of Amoco motor gasoline. Mistretta elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering this application, the DOE concluded that the applicant should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refund granted in this proceeding totals $665.

Willis Distributing Co., Inc./Ettwein's Mobil, 10/18/84, RF41-0008

The DOE issued a Decision and Order concerning an Application for Refund filed by Ettewein's Mobil, a retailer of Willis motor gasoline. The firm elected to apply for a refund based upon the presumption of injury for small claims outlined in *Willis Distributing Co., Inc.* 12 DOE ¶ 85,062 (1984). Based on the statement and information submitted by Ettwein's Mobil, the DOE concluded that the applicant should receive a refund of $1,630 based upon the total volume of its Willis motor gasoline purchases.

Dismissals

The following submissions were dismissed:

Company Name and Case No.

Evangeline Refining Company—HEF-0207

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: November 6, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-30232 Filed 11-16-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL- 2719-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW., Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Water Programs

• *Title:* Survey Report on Great Lakes Beach Closings (EPA#0994).

Abstract: Anually public health officials in the 86 counties bordering the Great Lakes identify frequency of closing of their public bathing beaches. This and related information enables EPA to determine the effects of municipal water treatment practices and storm sewer overflows on these beaches and to do reseach, program planning and program evaluation.

Respondents: Public health officials in 86 counties bordering the Great Lakes.

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation & Information Management Division, 401 M Street, SW., Washington, D.C. 20460

and

Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503

Dated: November 13, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84-30116 Filed 11-16-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42063; TSN-FRL 2688-6]

Ethylene Bis(Oxyethylene) Diacetate; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice is EPA's response to the Interagency Testing Committee's (ITC) designation of ethylene bis(oxyethylene) diacetate (triethylene glycol diacetate, or TGD; CAS # 111-21-7) for priority consideration for health effects testing. The ITC did not recommend chemical fate or environmental effects testing for TGD. EPA is not initiating rulemaking at this time under section 4(a) of the Toxic Substances Control Act (TSCA) to require health effects testing of TGD. The Agency finds that available data are sufficient to reasonably determine or predict the effects on human health of TGD under its current conditions of manufacture and use. Because adequate information is available, further testing for health effects is not warranted for TGD at this time.

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

SUPPLEMENTARY INFORMATION: EPA is not initiating rulemaking at this time under section 4(a) of TSCA to require health effects testing of TGD as designated by the ITC in its Thirteenth Report.

I. Background

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established the ITC to recommend to EPA a list of chemicals to receive priority consideration for testing under section 4(a) of TSCA.

The ITC designated TGD for priority consideration in its Thirteenth Report, published in the **Federal Register** of December 14, 1983 (48 FR 55674). The designation was alkloxyethylene acetates, specificalaly TGD and 2-(2-butoxyethoxy)ethyl acetate. This notice constitutes EPA's response to the ITC's designation of TGD. The Agency is responding to the 2-(2-butoxyethoxy)ethyl acetate designation in a separate notice.

The ITC recommended that TGD be tested for subchronic toxicity, toxicokinetics, and reproductive effects. The rationale for recommending these tests was based on probable hydrolysis to a glycol ether (triethylene glycol) and concern about possible reproductive effects such as the lower molecular weigth glycol ether demonstrate.

Under section 4(a)(1) of TSCA, the Administrator shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding in which both exposure and toxicity information are considered to make the finding that the chemical may present an unreasonable risk. For the section 4(a)(1)(B)(i) finding, EPA considers only production, exposure, and release information to determine whether there is substantial production, and significant or substantial exposure or substantial release. Thus, while EPA can require testing for an effect under section 4(a)(1)(A) only if there is a suspicion of a hazard, under section 4(a)(1)(B) EPA can require testing whether or not there are data suggesting adverse effects if the relevant production and exposure or release criteria are met.

For the findings under both section 4(a)(1)(A)(ii) and section 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the third finding, that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information. EPA's process for determining when these findings can be made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed in 45 FR 48528, and the section 4(a)(1)(B) finding is discussed in 46 FR 30300.

In evaluating the ITC's testing recommendations concerning TGD, EPA considered all available relevant information including the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); and published and unpublished data available to the Agency, including information submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716).

II. Review of Available Data

A. Release and Exposure

Two companies currently manufacture TGD; they are Eastman Kodak Company, Eastman Chemicals Division in Kingsport, TN (Refs. 1 and 2), and Celanese Fibers Operations in Charlotte, NC (Ref. 3). Combined production by these two firms is between 1 and 10 million pounds annually (Ref. 2). CTC Organics, Inc., of Atlanta, GA, imports TGD from Japan (Refs. 4 and 5), apparently for resale in small lots.

TGD is produced in a closed system. Eastman Kodak states that approximately 50 workers are exposed to TGD for 75 hours per year (Ref. 2) during manufacturing operations; Celanese states that three persons per year are exposed. Because closed systems are employed and TGD is nonvolatile, EPA expects that these occupational exposures will be minimal.

The only known commercial use of TGD is as a plasticizer in the production of cigarette filter tips. This processing application is automated and expected to result in very little human exposure (Ref. 6).

Smokers will be exposed to TGD as it elutes from cigarette filters. EPA estimates that approximately 75 micrograms TGD will be eluted in mainstream smoke from a filter cigarette (Ref. 7). For a 60-kg person, who smokes 3 packs of filter cigarettes per day, these releases will result in inhalation exposures between 0.05 to 0.1 mg/kg/day.

Based upon information on production and use of TGD, releases to the environment are expected to be small. The ITC stated that it expected TGD to rapidly degrade in the environment. Based upon its own analysis, the Agency agrees with the ITC (Ref. 8).

B. Health Effects

No information on the biochemistry or *in vitro* effects of TGD could be located in the published literature, and none was submitted in response to the section 8(d) information gathering rule.

1. *Pharmacokinetics.* No studies specifically conducted on the pharmacokinetics of TGD are available. A metabolism study in rats submitted by Eastman Kodak (Refs. 9 and 10) indicates that TGD is rapidly absorbed from the gut, de-esterified, and excreted in the urine as triethylene glycol and metabolites of triethylene glycol.

2. *Acute toxicity.* The acute toxicity of TGD is low in rodents by all routes of administration. the intraperitoneal median lethal dose (LD_{50}) for the rat is 1,560 milligrams per kilogram (mg/kg) (Refs. 11 and 15). Reported values for the oral LD_{50}'s for the rat in three studies ranged from 14,300 to 25,100 mg/kg (Refs. 9, 11, 12, and 13). Oral LD_{50}'s for the mouse and rabbit are reported to be greater than 3,200 mg/kg (Refs. 1 and 14). A 6-hour inhalation LC_{50} in rats for an aerosol of TGD is reported to be greater than 6,100 mg/m^3 (Ref. 6). Dermal LD_{50}'s of TGD in rabbits and guinea pigs are 8,800 and 22,000 mg/kg (Refs. 11, 13, 14 and 15). TGD is reported to produce slight irritation to the skin and eye in the rabbit (Refs. 14 and 15). TGD is reported not to cause skin sensitization (Ref. 14).

3. *Subchronic toxicity.* EPA has received three subchronic studies on TGD in rats (Ref. 9). The first is a 90-day study which reported no observed effects in rats fed a diet containing 1,000 or 10,000 ppm TGD (approximately 60 or 600 mg/kg/day). The study included analyses of blood and urine samples taken on days 47 and 89 of the study and gross necropsy and histopathology immediately following cessation of dosing (day 90). The second is a 21-day gavage study where the animals were given doses of 7,000 mg/kg/day, 5 days per week, for a total of 14 doses. This dosage produced hydropic degeneration of the liver. No other effects were observed. The third is an inhalation study where rats were exposed to air saturated with TGD vapor (17 ppm or 163 mg/m^3) for 6 hours a day, 5 days a week, for a total of 22 exposures. No effects were observed in the study. The Agency believes that these studies are sufficient to demonstrate that TGD has a subchronic no-observed-effect-level of 600 mg/kg/day or more.

4. *Reproductive effects.* No studies characterizing the teratogenic or reproductive effects of TGD were submitted or found in the literature. However, the subchronic toxicity studies discussed above did not report any indication of adverse effects in gross and histopathological examinations of the reproductive organs (Ref. 9). Further, the primary metabolite of TGD, triethylene glycol, unlike lower molecular weight glycol ethers, was negative in a screen for reproductive toxicity effects (Ref. 16).

III. Decision Not To Initiate Rulemaking

EPA has decided not to initiate rulemaking at this time to require health effects testing of TGD under section 4(a) of TSCA. EPA believes that although substantial numbers of persons are exposed to small quantities of TGD through smoking filter cigarettes (see Unit II. A, above), existing data are sufficient to reasonably predict the effects of this exposure.

The Agency concludes that available data are sufficient to address the health effects testing concerns of the ITC for TGD when viewed in the light of the low levels of exposure to the substance. Toxicological studies on TGD submitted by Eastman Kodak are sufficient to conclude that present exposures to TGD will not result in subchronic toxicity. Although studies specifically designed to evaluate the reproductive effects of TGD are not available, EPA believes that it currently has sufficient information available to predict that present exposures to TGD will not result in adverse reproductive effects of TGD. First, TGD was not reported to have caused adverse effects in the reproductive organs in an available subchronic study. Second, while TGD does metabolize to triethylene glycol, available data indicate that triethylene glycol does not appear to cause reproductive effects (see Unit II.B.4, above). EPA's review of available information concerning TGD has revealed no basis for requiring testing for other health effects or for environmental fate or environmental effects.

IV. Public Record

EPA has established a public record for this decision not to test under section 4 of TSCA (docket number OPTS–42063). The record includes the following information:

A. Supporting Documentation

(1) **Federal Register** Notice containing the designation of TGD to the priority list and all comments on TGD received in response to that notice (48 FR 55674; December 14, 1983).

(2) Communications (public). (a) Letters. (b) Contact reports of telephone conversations. (c) Meeting summaries.

(3) Published and unpublished data.

B. References

(1) Eastman Kodak Company. (July 13). Eastman Chemicals Division, Kingsport, TN 37662. Triethylene glycol diacetate; ethylenebis (oxyethylene) diacetate. . . . Letter from G.Y. Brokaw to M. Greif, TSCA Interagency Testing Committee, Washington, D.C. 1982.

(2) Eastman Kodak Company. (Jan. 6). Eastman Chemicals Division, Kingsport, TN 37662. Letter from D.W. Kreh to TSCA Public Information Office, U.S. Environmental Protection Agency, Washington, D.C. 20460. 1984.

(3) Celanese. (Oct. 7). Celanese Fibers Operations, P.O. Box 32414, Charlotte, NC 28232. Ethylene bis (oxyethylene) diacetate. Letter from J.C. Pullen to L. Borghi, Dynamac Corporation, 11140 Rockville Pike, Rockville, MD 20852. 1983.

(4) Dynamac Corporation. (Feb. 6). 11140 Rockville Pike, Rockville, MD 20852. Memorandum to file from W. Bauer summarizing telephone conversations with J. Marriner, CTC Organics, Atlanta, GA, and R. Perez, Universal Preservachem, New York, NY. 1984.

(5) Dynamac Corporation. (Feb. 16). 11140 Rockville Pike. Rockville, MD 20852. Letter confirming telephone conversation from W. Bauer to J. Marriner, CTC Organics, Inc., PO. Box 6932, Atlanta, GA 30315. 1984.

(6) Celanese. (Aug.). Celanese Fibers Marketing Company. Product bulletin: Fiberset™ tow plasticizers. WSP 5.60 (a section of the manual "World Smoking Products"). Box 32414, Charlotte, NC 28232. 1978.

(7) Dynamac Corporation. (July). 11140 Rockville, MD 20852. Memorandum to file on consumer exposure to TGD in cigarette smoke. 1984.

(8) USEPA. (November, 20) U.S. Environmental Protection Agency. ENPART analysis of DGBA, TGD, oleylamine. Interagency Memorandum From R. Kinnenson to Test Rules Development Branch, Office of Toxic Substances. U.S. Environmental Protection Agency, Washington, D.C. 20460. 1984.

(9) Eastman Kodak Company. (Jan. 26). Eastman Chemicals Division, Kingsport, TN 37662. Letter from Robert L. Raleigh, MD, to Lynn Bradley, U.S. Environmental Protection Agency, Washington, D.C. 20460. 1984.

(10) McKennis, H., Turner, R.A., Turnbull, L.B., Bowman, E.R. "The excretion and metabolism of triethylene glycol," Toxicol Appl. Pharmacol. 4:411–431. 1962.

(11) "Patty's Industrial Hygiene and Toxicology," 3rd rev. ed. Vol. 2C. Clayton G.D., Clayton F.E., eds. New York: Wiley-Interscience, pp. 4007–4009, 4012–4014, 4028–4029. 1982.

(12) Smyth, H.F., Carpenter, C.P., Weil, C.S., Pozzani, U.C., Striegel, J.A., Nycum, J.S. "Range-finding toxicity data: list VII," Am. Ind. Hyg. Assoc. J. 30:470–476. 1969.

(13) Union Carbide Corporation. (Mar. 27). Technical data sheet: Toxicology studies. Triethylene glycol diacetate. Industrial Medicine and Toxicology Department, New York, NY 10017. 1969.

(14) Eastman Kodak Company. (Apr. 29) Material safety data sheet: Estrobond® G plasticizer. MSDS–10, 124A–4. Eastman Chemical Products, Inc., Kingsport, TN 37662. 1983.

(15) Union Carbide Corporation. Section 8(d) submission (Mar. 19, 1984) Jackson B. Browning to USEPA, docket OPTS–84009.

(16) Schuler, R.L., Hardin, B.D., Niemeier, R.W. et al. Results of testing fifteen glycol ethers in a short-term in vivo reproductive toxicity assay. Preprint. Paper presented at NIOSH Symposium on Toxic Effects. Cincinnati, OH: National Institute for Occupational Safety and Health. 1983.

This record includes basic information considered by the Agency in developing this notice, and is available from 8 a.m. to 4 p.m. Monday through Friday except legal holidays, in the OPTS Reading Room, Rm. E–107, 401 M St., SW., Washington, D.C. 20460. The Agency will supplement the record periodically with additional relevant information received.

(Sec. 4, Pub. L. 94–469, 90 Stat. 2006; (15 U.S.C. 2603))

Dated: November 8, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84–30228 Filed 11–16–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–42060; FRL 2690–4]

1,2,3,4,7,7-Hexachloronorbornadiene; Response to the Interagency Testing Committee

AGENCY: Environment Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is EPA's response to the Interagency Testing Committee's recommendation that EPA consider requiring health effects testing of 1,2,3,4,7,7-hexachloronorbornadiene under section 4(a) of the Toxic Substances Control Act (TSCA). EPA is not at this time initiating rulemaking under section 4(a) to require health effects testing of 1,2,3,4,7,7-hexachloronorbornadiene. EPA believes that the present limited manufacture and controlled disposal of this chemical is not expected to cause substantial or significant human exposure or present an unreasonable risk of injury to human health or the environment. However, EPA is planning to initiate rulemaking under sections 8(a) and/or 5(a) (2) of TSCA to monitor any significant changes in these conditions.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–543, 401 M St., SW., Washington, D.C. 20460; Toll Free: (800–424–9065); In Washington, D.C.: (554–1404), Outside the USA: (Operator 202–554–1404).

SUPPLEMENTARY INFORMATION: EPA is not at this time initiating rulemaking under section 4(a) of TSCA for 1,2,3,4,7,7-hexachloronorbornadiene because of limited production and low potential for human exposure.

I. Background

Section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*) authorizes EPA to promulgate regulations which require manufacturers and processors to test chemical substances and mixtures. The data developed as a result of such testing will be used by EPA to evaluate the risks that these chemicals may present to health and the environment. Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for the promulgation of test rules under section 4(a) of the Act. The ITC may designate up to 50 of its recommendations at any one time for priority consideration by EPA. EPA is required to respond within 12 months of the date of a priority designation, either by initiating rulemaking under section 4(a) or publishing in the **Federal Register** reasons for not doing so.

1,2,3,4,7,7-Hexachloronorbornadiene (HEX–BCH) (CAS No. 3389–71–7) was designated for priority testing consideration in the Thirteenth Report of the ITC, submitted to the EPA Administrator on November 8, 1983 and published in the **Federal Register** on December 14, 1983 [48 FR 55674] (Ref. 1). The ITC recommended that HEX–BCH be tested for subchronic health effects including neurotoxicity, and for biochemical effects including enzyme-inducing capabilities. The ITC did not recommend HEX–BCH for environmental effects testing.

The ITC based its health effects testing recommendation for HEX–BCH on the concern that possible human exposure may result from releases of HEX–BCH to the environment through waste discharges from the manufacturing plant. The chemical has been found in the waters and sediment of the Mississippi River and its tributaries, and in edible portions of fish caught in the Mississippi. In addition, HEX–BCH waste was disposed of in surface landfills for many years and traces of the chemical have been identified in private well water in the vicinity of the surface landfills.

II. Assessment of Exposure

HEX–BCH has been produced in the U.S. solely by the Velsicol Chemical Corporation at one plant location in Memphis, Tennessee. The only use for HEX–BCH is as an intermediate in the manufacture of the pesticide endrin. The ITC report stated that endrin production was 2 million to 4 million pounds in 1981 (Ref. 1). Based on this production volume of endrin, the ITC estimated that the annual production of HEX–BCH in 1981 was 1.5 million to 3 million pounds.

In 1978, endrin was classified as a restricted use pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Ref. 2). The restrictions on its use and application are very limiting and have caused a sharp reduction in its use in the U.S. (Ref. 3). According to Velsicol, there is no longer any production of endrin in the U.S. (Ref. 4). Therefore, because the use of endrin has decreased, the large scale production of HEX–BCH is no longer necessary (Refs. 3 and 5). Velsicol notified the ITC, during the preparation of the Thirteenth Report, that HEX–BCH is no longer manufactured by Velsicol. In a letter dated October 3, 1983, to the ITC, Velsicol stated that HEX–BCH has not been produced since May, 1982 and that they currently have no plans to produce it in the future (Ref. 6). In addition, the Agency is not aware of any importation of HEX–BCH into the U.S.

However, due to a market demand for endrin in Mexico, Velsicol decided to resume production of HEX–BCH at its plant in Memphis (Ref. 7). The HEX–BCH is converted to isodrin at the Memphis plant and then shipped to Mexico for conversion to endrin. Isodrin is the immediate precursor to endrin.

The Mexican-produced endrin is then sent to the U.S. for use in U.S. markets. Velsicol notified EPA that this production run of HEX–BCH began in mid-March, 1984 and was completed at the end of May, 1984. The amount of HEX–BCH produced was less than 300,000 pounds (Ref. 8).

Subsequently, Velsicol, in a letter of August 14, 1984, voluntarily cancelled their U.S. pesticide registrations for technical endrin and for two of their three endrin formulations (Ref. 9). The remaining formulation will be cancelled no later than August 1, 1985 because of prior commitments Velsicol has made to customers. Because, at present, the only use for HEX–BCH is as an intermediate in the production of endrin, it is clear that the possibility of any future manufacture of HEX–BCH is small.

In addition, Velsicol states that HEX–BCH is produced in a closed system and that the conversion to isodrin also takes place in that system without isolation of the HEX–BCH intermediate (Ref. 7). Velsicol has advised EPA that there are seven employees, working in various HEX–BCH processes, who are potentially exposed to HEX–BCH. Three of these workers are involved with production of HEX–BCH, three are involved in the next reaction step to isodrin and one worker is involved in waste disposal. Velsicol estimates that exposure is minimal and that the only potential worker exposure is during sampling and waste disposal. The company estimates that exposure during sampling is no more than 15 minutes per 8-hour day. Total exposure from all sources is estimated to be 15 to 20 minutes per 8-hour day for each worker (Ref. 4, exhibit VI).

The aqueous and solid wastes from the process are managed under treatment and disposal systems which are closely controlled and monitored by the manufacturing company, the State, and Federal authorities.

The aqueous wastes from the process are pretreated at the Velsicol facility and then sent to the Memphis North Wastewater Treatment Plant for further treatment (Ref. 10). The operation and subsequent discharges from the Memphis North treatment facility are controlled under the National Pollution Discharge Elimination System (NPDES) program (Ref. 11). Tennessee's NPDES program was approved by EPA in 1977 (Ref. 12). In addition, the city of Memphis issued a permit to Velsicol allowing up to 30 pounds per day of HEX–BCH to be discharged to the Memphis North facility for treatment (Ref. 13). The discharges during the recent limited production have averaged 2 to 3 pounds per day (Refs. 7, 8, and 13). Further, both Velsicol's pretreatment and the treatment of the HEX–BCH wastes by the Memphis facility result in a significant reduction of HEX–BCH levels in the effluent going into the Mississippi River (Ref. 10). The levels of HEX–BCH in the effluent entering the Mississippi River, for the period of mid-March, 1984 to the end of April, 1984, ranged from 5.8 ppb to <1 ppb. The average effluent concentration of HEX–BCH, for the 25 days for which analyses are available, is 3.02 ppb. The Agency believes, given the large dilution factor of the Mississippi just south of Memphis, and the low amount of HEX–BCH entering the river, that this concentration of HEX–BCH will not present an unreasonable risk to health or the environment (Ref. 13).

The solid wastes containing HEX–BCH are either buried in an approved secure landfill for hazardous wastes or are incinerated. Approximately 70 percent of the solid wastes go to the landfill (Ref. 4, exhibit V).

However, while the present production and disposal practices appear to be sufficient to prevent unreasonable risk to human health, disposal practices associated with past HEX–BCH production have not been adequate to prevent contamination of private surface wells or fish species which are found in rivers in the area of the disposal site.

Prior to 1977, HEX–BCH wastes were deposited at the Hardeman County, Tennessee toxic waste dumpsite. This waste disposal site is situated on a 243 acre tract of land owned by Velsicol, 27 acres of which were utilized for actual waste disposal (Ref. 10, exhibit V). During the period in which this site was used, 1964–1973, an estimated 300,000 to 500,000 barrels of liquid and solid waste were dumped. These barrels, some of which contained HEX–BCH wastes, were buried in shallow trenches dug into the ridges at the dumpsite (Ref. 14).

In 1966, the Federal Water Pollution Control Administration requested that the U.S. Geological Survey (U.S.G.S.) investigate the disposal operation at the Hardeman site. The study was to determine potential for contamination of the hydrologic environment (Ref. 10, exhibit V). The conclusion from this 1966 study was that there was no possibility for any existing water table wells to produce contaminated water in the dumpsite area (Ref. 10, exhibit V).

However, in 1977, 4 years after the closure of the dumpsite, the Tennessee Division of Water Quality Control and the U.S.G.S. began a second study to reexamine the disposal site. The conclusion from the earlier study was disputed. The 1977 report found that chemical analysis of ground water from the aquifer indicated the presence of organic contaminants from the disposal site (Ref. 10, exhibit V).

In 1978, as the second report was being completed, residents in the vicinity of the disposal site reported strange odors and tastes from their private well water. As a result, the State of Tennessee and EPA collected samples from selected residential wells. As many as 13 organic contaminants, including HEX–BCH, were detected in the local wells (Ref. 4, exhibit III).

Following the detection of the contaminants, an environmental assessment program was initiated by Velsicol in cooperation with the Tennessee Department of Public Health and Region IV of EPA. The investigations in the assessment program included extensive water sampling, aquatic and terrestrial biological effects, surface water monitoring, runoff and sediment transport, air quality monitoring and hydrogeologic studies. As a result of the environmental assessment program and other data generated by Tennessee and EPA, it was determined that the primary routes for contamination from the Hardeman site were via the ground water and surface runoff (Refs. 4, exhibit III and 10, exhibit V).

After the environmental assessment, which lasted for 2 years, was completed, several remedial methods of controlling the contaminants from the site were evaluated. It was decided that the remedy which was the most efficient and which would directly control the two major identified pathways of contamination from the site, was to install a low permeability cap over the waste disposal site (Ref. 10, exhibit V). The State of Tennessee accepted Velsicol's proposal in July, 1980 (Ref. 15).

The capping took place July, August, and September, 1980. The cap was constructed of low permeability clay which covered the dumpsite to a depth ranging from 1 to 3 feet. The cap was then covered with a 6 inch layer of topsoil in order to facilitate development of a vegetative cover (Ref. 10, exhibit V). The cap serves as a shield to prevent infiltration by precipitation, volatization to air, surface runoff and contact by wildlife. In addition, the 243 acre Velsicol property is fenced and posted to keep people out.

As a part of the environmental evaluation and the subsequent capping procedure, Velsicol agreed to a 3-year monitoring program which included the testing of various environmental factors every quarter year from July, 1980 to

July, 1983. The monitoring was contracted by Velsicol to a private environmental engineering company.

The initial 3-year monitoring program is completed. Tests show that the clay cap has reduced the infiltration of water by more than 99 percent. This surpasses the design, which called for at least a 97.6 reduction (Ref. 10, exhibit II). The tests showed that contamination is not migrating beyond a previously defined ground water plume in the vicinity of the disposal site. In addition, the residents in the area are no longer dependent on ground water from the dumpsite area. A water line was built in 1979 which connected the residents to the water supply of the city of Toone, Tennessee (Ref. 10, exhibit II).

The conclusions from the 3-year monitoring period, and from pre-cap and cap installation monitoring, show a marked reduction in the concentration levels of the organic contaminants, including HEX–BCH, in the ground water and in stream sediment and surface water. In many cases there is an absence of contamination (Ref. 4, exhibits II and III). The capping has proven to be an effective remedial measure in controlling the contamination from the Hardeman waste disposal site. In an environmental evaluation and assessment report, dated May, 1984, a continuation of monitoring is recommended (Ref. 4, exhibit II).

In September, 1983, the Velsicol Hardeman County waste disposal site was included on the National Priorities List (NPL) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 *et. seq.*) (Ref. 16). The NPL serves, primarily as an informational tool for use by EPA in identifying disposal sites that appear to present a significant risk to public health or the environment. Each site was scored and then ranked and placed into one of 9 groups, according to its priority. The Hardeman site is ranked in group 4, indicating that it is not a top priority site for immediate remedial action. The current response status of the site, according to the NPL, is that conditions are currently being addressed through EPA-sanctioned voluntary actions by parties responsible for wastes at the site (Ref. 17). In addition, the NPL states that when the monitoring period ends, Velsicol, the State, and EPA will review the effectiveness of the cap. Any additional measures to control the site will be discussed at that time, including the possible need for decontaminating area ground water (Ref. 18).

III. Decision Not To Test

EPA has decided that testing of HEX–BCH under section 4(a)(1)(A) or 4(a)(1)(B) of TSCA is not warranted at this time because production and the potential for human exposure are extremely limited. Therefore, the likelihood of unreasonable risk to humans is small.

From May, 1982 until March, 1984, Velsicol did not manufacture HEX–BCH. Then, after an interval of nearly 2 years, Velsicol began producing a limited quantity of the chemical at one manufacturing site. This HEX–BCH was produced solely for use as an intermediate of isodrin, which in turn, is solely for export and used solely in the production of endrin. The production run lasted for less than 3 months, was limited to under 300,000 pounds, and resulted in minimal occupational exposure. Subsequent to this production run, Velsicol voluntarily cancelled their pesticide registration for technical endrin, which means that it is possible that they will never produce HEX–BCH again. The manufacturing wastes, both aqueous and solid, are handled under adequate waste management facilities. Furthermore, the presence of HEX–BCH in private well water, reported in 1978, is attributed to the poor waste disposal practices followed during the 9 years, in which the Hardeman dumpsite was used to dispose of HEX–BCH. In addition, the presence of HEX–BCH reported in fish in a 1978 study is also a result of contamination from the Hardeman site (Ref. 19).

Since 1978, when the 2-year environmental assessment was begun, through the remedial action of capping the site, followed by 3 years of extensive monitoring, studies show that contamination from the Hardeman site has been effectively controlled. Finally, review of the control measures and any future remedial actions are to be handled under the authority of CERCLA.

In light of the current limited production, the adequate waste disposal practices, and the on-going evaluation and investigation at the Hardeman waste disposal site, EPA has determined that it can reasonably be predicted that under present conditions HEX–BCH will not present an unreasonable risk of injury to human health. EPA has, therefore, decided not to proceed with section 4 rulemaking at this time. However, should the current situation change such that EPA has cause to be concerned about substantial production and/or increased exposure, then EPA reserves the right to propose a test rule or take other action to obtain health and/or environmental effects test data on HEX—BCH. In addition, EPA is planning to initiate rulemaking pursuant to sections 8(a) and/or 5(a)(2) to TSCA to monitor for such changes by requiring the notification of the Agency prior to any future manufacture, importation or processing of HEX–BCH in the U.S.

In addition, EPA's Office of Solid Waste is evaluating the available health and monitoring data on HEX–BCH to determine whether additional action should be taken under the Solid Waste Disposal Act, as amended by the Resource Consevation and Recovery Act of 1976 (RCRA), as amended (42 U.S.C. 6901 *et seq.*) (Ref. 20). This review and evaluation by the Agency will determine whether HEX–BCH should be listed as a generic or specific hazardous waste under RCRA. Any additional rulemakings for HEX–BCH will appear separately from this Notice.

IV. References

(1) USEPA. Thirteenth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals. **Federal Register**, December 14, 1983 (48 FR 55674).

(2) USEPA. Pesticide Uses by Regulations: Pesticide Use Restrictions-Final Rule. **Federal Register**, February 9, 1978 (43 FR 5788).

(3) ITC. Memorandum. 1,2,3,4,7,7-Hexachloronorbornadiene (HEX–BCH). Martin Greif, Executive Secretary, ITC, to File. September 27, 1983.

(4) Velsicol. Hexachloronorbornadiene—Additional Information. Letter from Alfred A. Levin, Velsicol Chemical Corporation, to Richard Troast, Office of Toxic Substances, EPA, and exhibits I–IV (exhibits IV and V Confidential Business Information) (CBI). June 25, 1984.

(5) USEPA. Memoranda. 1,2,3,4,7,7-Hexachloronorbornadiene. L. Borghi to TSCA Interagency Testing Committee, Attention: Dr. E. Weisburger. August 16, 1983 and August 24, 1983 (clarification).

(6) Velsicol. Letter from Alfred A. Levin, Velsicol Chemical Corporation, to Dr. Martin Greif, Office of Toxic Substances, EPA, 1,2,3,4,7,7-Hexachloronorbornadiene. October 3, 1983.

(7) Velsicol. Letter from Alfred A. Levin, Velsicol Chemical Corporation, to Richard Troast, Office of Toxic Substances, EPA, May 14, 1984.

(8) Velsicol. Letter from Alfred A. Levin, Velsicol Chemical Corporation to Richard Troast, EPA. Hexachloronorbornadiene. May 31, 1984.

(9) Velsicol. Letter from M. Olav Messerschmidt, Velsicol Chemical Corporation to Douglas Campt, EPA. Voluntary Cancellation. August 14, 1984.

(10) Velsicol. 1,2,3,4,7,7-Hexachloronorbornadiene, Response to the Thirteenth Interagency Testing Committee. Letter from Alfred A. Levin and exhibits I–XI (exhibits I, II, and IV CBI). February 6, 1984.

(11) USEPA. Computer Printout from EPA Region IV, P.C.S. Quick Look Report on

NPDES/RCRA Waste Treatment Facilities in Tennessee. July 3, 1984.

(12) USEPA. Letter from Douglas M. Costle, EPA Administrator, to the Honorable Ray Blanton, Governor of Tennessee. December 28, 1977.

(13) Memphis. Letter from John M. Leonard, Administrator, Environmental Engineering, Division of Public Works, City of Memphis, to Linda Tuxen, Office of Toxic Substances, EPA. HEX–BCH discharge from Velsicol Chemical Company to the City of Memphis Wastewater Treatment Plant. July 24, 1984.

(14) Clark, C.S., Bjornson, H.S., Holland, J.W., et al. "Evaluation of the Health Risks Associated with the Treatment and Disposal of Municipal Wastewater and Sludge". EPA 600/1–80–030, PB 81–175945, USEPA Cincinnatic, Ohio. pp. 36–43. 1981.

(15) Tennessee. Letter from Dr. Eugene W. Fowinkle, Commissioner of Public Health, State of Tennessee, to John M. Rademacher, Vice-President of Environmental, Health and Regulatory Affairs, Velsicol Chemical Corporation. Hardeman County Disposal Site. July 10, 1980.

(16) USEPA. Final and Proposed Amendments to National Oil and Hazardous Substances Contingency Plan; National Priorities List. **Federal Register**, September 8, 1983 (48 FR 40658).

(17) USEPA. Hazardous Waste Sites; National Priorities List, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency. August, 1983.

(18) USEPA. Hazardous Waste Site; Descriptions; National Priorities List—Final Rule, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency. August, 1983.

(19) Yurawecz, M.P., Roach, J.A.G. "Gas-Liquid Chromatographic Determination of Chlorinated Norbornene Derivatives in Fish." Journal of the Association of Official Analytical Chemists, 61(1): 26–31, 1978.

(20) USEPA. Memorandum. Hexachloronorbornadiene. David Friedman, Manager, Methods Program, Office of Solid Waste, to Jeff Davidson, Test Rules Development Branch. March 16, 1984.

V. Public Record

The EPA has established a public record of this testing decision (docket number OPTS–42060). This record includes:

(1) **Federal Register** Notice designating 1,2,3,4,7,7-hexachloronorbornadiene to the priority list and comments received in response thereto.

(2) Contractor reports.

(3) Communications consisting of letters, contact reports of telephone conversations, and meeting summaries.

(4) Confidential Business Information submissions by Velsicol Chemical Corporation. While part of the public record, these submissions are not available for public review.

The record, containing the basic information considered by the Agency in developing its decision, is available for inspection in the OPTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. E–107, 401 M St., SW., Washington, D.C. 20460. The Agency will supplement this record periodically with additional relevant information received.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2601))

Dated: November 8, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84–30223 Filed 11–16–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51545; BH–FRL 2720–2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-three PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 85–107, 85–108 and 85–109, January 30, 1985

PMN 85–110 and 85–111, February 2, 1985

PMN 85–112, 85–113, 85–114, 85–115, 85–116, 85–117, 85–118, 85–119, 85–120, 85–121, 85–122, 85–123, 85–124 and 85–125, February 3, 1985

PMN 85–126, 85–127, 85–128 and 85–129, February 4, 1985.

Written comments by:

PMN 85–107, 85–108 and 85–109, December 31, 1984

PMN 85–110 and 85–111, January 3, 1985

PMN 85–112, 85–113, 85–114, 85–115, 85–116, 85–117, 85–118, 85–119, 85–120, 85–121, 85–122, 85–123, 85–124 and 85–125, January 4, 1985

PMN 85–126, 85–127, 85–128 and 85–129, January 5, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–51545]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M St., SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202–382–3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

PMN 85–107

Manufacturer. The Upjohn Company.

Chemical. (G) Polyurethane resin.

Use/Production. (G) Industrial thermoplastics. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal and inhalation, a total of 3 workers, up to 6 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. Less than 20 kg released to land. Disposal by sanitary landfill via licensed commercial carting service.

PMN 85–108

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: A total of 6 workers.

Environmental Release/Disposal. Release to land.

PMN 85–109

Manufacturer. Canusa Coating Systems Limited.

Chemical. (G) Arylthiodialkanoylhydrazide.

Use/Production. (S) Industrial antioxdant for use in extruded or molded plastics. Prod. range: 3,000–6,000 kg/yr.

Toxicity Data. Acute oral: 5 g/kg; Irritation: Skin—Not an irritant.

Exposure. Manufacture: Inhalation, a total of 1 worker, up to 8 hr/da, up to 110 da/yr.

Environmental Release/Disposal. 0.3 kg released to air.

PMN 85–110

Manufacturer. Confidential.

Chemical. (G) Polysulfide polymer.

Use/Production. (G) Rubber additive. Prod. range: Confidential.

Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85–111

Manufacturer. Confidential.
Chemical. (G) Polymer of disubstituted polysiloxane, substituted phenol and substituted alkanoyl halide.
Use/Production. (G) Contained use in commercial articles. Prod. range: 6–30 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and processing: Dermal, a total of 4 workers, up to 0.5 hr/da, up to 10 da/yr.
Environmental Release/Disposal. No release. Disposal by less than 0.1 to less than 1 kg/batch incinerated.

PMN 85–112

Manufacturer. H. B. Fuller Company.
Chemical. (G) Alkanediol—maleic anhydride copolymer.
Use/Production. (G) Coating adhesive. Prod. range: 125,000–350,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacturer: Dermal, a total of 40 workers, up to 2 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 30 kg/batch released to water and land. Disposal by publicly owned treatment works (POTW) and licensed landfill.

PMN 85–113

Manufacturer. General Electric Company.
Chemical. (G) Terephthalic acid, polymer with (poly oxyalkylene) bis(N-aryl trimellitimide) and butanediol.
Use/Production. (S) Industrial consumer and sporting goods, automotive and fasteners. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 130 workers, up to 10 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. Less than 10 kg/batch released to land. Disposal by landfill.

PMN 85–114

Manufacturer. Confidential.
Chemical. (G) Blocked aromatic isocyanate prepolymer.
Use/Production. (S) Industrial crosslinker for tough, impact-resistant polyurethane coatings for metal substrates. Prod. range: 150,000–300,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 12 workers, up to 6 hrs/da, up to 5 da/yr.
Environmental Release/Disposal. 0.5 to 10.0 kg/batch released to water. Disposal by biological treatment system and navigable waterway after biotreatment.

PMN 85–115

Importer. Confidential.
Chemical. (G) Aromatic polyisocyanate adduct.
Use/Import. (S) Industrial and commercial component of moisture-curing one-pack polyurethane coatings. Import range: 18,144–90,400 kg/yr.
Toxicity Data. No data submitted.
Exposure. Import, processing and use: A total of 20 workers.
Environmental Release/Disposal. No release.

PMN 85–116

Importer. Naarden International.
Chemical. (S) 7,9 dimethylspiro (5.5) undecan-3-one.
Use/Import. (S) Consumer fragrance ingredient. Import range: Confidential.
Toxicity Data. Acute oral: (Males and females) > 5.0 ml/kg; Irritation: Skin—Severe, Eye—Irritant; Ames Test: Non-mutagenic; Skin sensitization: Weak/Non-sensitizer.
Exposure. Processing: Dermal, a total of 5 workers, up to 6 hrs/da, up to 6 da/yr.
Environmental Release/Disposal. 50 parts per million (ppm) maximum released to air.

PMN 85–117

Manufacturer. Confidential.
Chemical. (G) Hydroxy resin.
Use/Production. (S) Base-precursor for resin used in paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

PMN 85–118

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (S) Oligomer used in paint. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Severe.
Exposure. Confidential.
Environmental Release/Disposal. No release.

PMN 85–119

Manufacturer. Confidential.
Chemical. (G) Hydroxy resin.
Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

PMN 85–120

Manufacturer. Confidential.
Chemical. (G) Hydroxy acrylic resin.
Use/Production. (S) Hydroxy acrylic resin to be converted into paint products. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

PMN 85–121

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (S) Acrylic copolymer used in paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

PMN 85–122

Manufacturer. Phillips Chemical Company.
Chemical. (G) Copolymer of vinyl amides and organic acid salt.
Use/Production. (S) Industrial and commercial polymer flooding for enhanced oil recovery under high temperature (255–300°F) and high salinity conditions. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacturer: Dermal.
Environmental Release/Disposal. No release. Disposal by incineration.

PMN 85–123

Manufacturer. Phillips Chemical Company.
Chemical. (G) Copolymer of vinyl amides and organic acid salt.
Use/Production. (S) Industrial and commercial polymer flooding for enhanced oil recovery under high temperature (225–300 °F) and drilling mud viscosifier additive for high temperature and salinity conditions. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacturer: Dermal.
Environmental Release/Disposal. No release. Disposal by incineration.

PMN 85–124

Manufacturer. Phillips Chemical Company.
Chemical. (G) Copolymer of vinyl amides and organic acid salts.
Use/Production. (S) Industrial and commercial cross-linkable polymer for channel blocking in enhanced oil recovery. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal.
Environmental Release/Disposal. No release. Disposal by incineration.

PMN 85–125

Manufacturer. Phillips Chemical Company.
Chemical. (G) Copolymer of vinyl amides and organic acid salts.
Use/Production. (S) Industrial and commercial cross-linkable polymer for channel blocking in enhanced oil recovery. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: Dermal.
Environmental Release/Disposal. No release. Disposal by incineration.

PMN 85–126

Manufacturer. Ashland Chemical Company.
Chemical. (G) Unsaturated polyester.
Use/Production. (G) Cured thermoset crosslinked plastic. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, up to 1 worker/shift, 5 min/sample.
Environmental Release/Disposal. Essentially none.

PMN 85–127

Manufacturer. Confidential.
Chemical. (G) Butanamide, N-substituted alkyl.
Use/Production. (S) Site-limited intermediate. Prod. range: 1,500–1,800 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 1 hr/da, up to 17 da/yr.
Environmental Release/Disposal. No data submitted.

PMN 85–128

Manufacturer. Confidential.
Chemical. (G) Butanamide, N-substituted alkyl.
Use/Production. (S) Site-limited intermediate. Prod. range: 1,500–1,800 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 1 hr/da, up to 17 da/yr.
Environmental Release/Disposal. No data submitted.

PMN 85–129

Importer. American Hoechst Corporation.
Chemical. (G) Styrene, acrylate polymer.
Use/Import. (S) Commercial and consumer binder for water base paints. Import range: 2,250–7,500 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: Dermal, a total of 4–6 workers, up to 75 manhours/yr.
Environmental Release/Disposal. No data submitted.

Dated: November 13, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–30227 Filed 11–16–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

New FM Stations; Applications for Consolidated Hearing; Anita L. Levine, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Anita L. Levine, Greenfield, CA.	BPH–831021AC	84–1020
B. New American Broadcasters Limited Partnership, Greenfield, CA.	BPH–840217AD	84–1021
C. Lisa Hamzey and Peter Baird, d.d.a. Somoco Radio Company, Ltd., Greenfield, CA.	BPH–840217AH	84–1022
D. South Monterey County Broadcasting Company, Greenfield, CA.	BPH–840217AI	84–1023
E. Rio Salinas Broadcasting Co., Greenfield, CA.	BPH–840217AJ	84–1024
F. Susan B. Bushell, Greenfield, CA.	BPH–840217AR	84–1025
G. Ralin Broadcasting Corporation, Greenfield, CA.	BPH–840217AS	84–1026

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), G
2. Air Hazard, B, C, D, E, F, G.
3. Comparative, A, B, C, D, E, F, G.
4. Ultimate, A, B, C, D, E, F, G.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay.

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue(s)

1. If a final environmental impact statement is issued with respect to G (Ralin) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 84–30266 Filed 11–16–84; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 9, 1984.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submissions are available from Doris Peacock, Agency Clearance Officer, (202) 632–7513. Persons wishing to comment on these information collections should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–4814.

OMB Number: 3060–0178

Title: § 73.1560, Operating Power Tolerance
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 1,108 Respondents; 1,108 Hours

OMB Number: 3060–0181

Title: § 73.1615, Operation during Modification of Facilities
Action: Extension
Respondents: Businesses (including small businesses)

Estimated Annual Burden: 200 Respondents; 165 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-30261 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1487]

Application for Review of Actions In Rule Making Proceedings

November 9, 1984.

The following Application for review of Mass Media Bureau's action in returning Kodiak's petition for rule making is published pursuant to CFR 1.429(e). Oppositions to this application for review must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Kodiak, Alaska)

Filed By: Michael H. Bader & James E. Dunstan, Attorneys for Kodiak Broadcasting Company, Inc., on 8-13-84.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-30263 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

A Closed Circuit Test of the Emergency Broadcast System During the Week of December 3, 1984

November 13, 1984.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of December 3, 1984. Only ABC, CBS, MBS, NBC, NPR, AP Radio and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit Test. The ABC, CBS, NBC and PBS television networks are not participating in the Test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 30 to 45 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

This is a closed circuit test and will not be broadcast over the air.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-30264 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

Radio Advisory Committee; Meeting

December 5, 1984.

The next meeting of the Advisory Committee on Radio Broadcasting has been scheduled for 1:30 p.m., Wednesday, December 5, 1984, in Room 330, 1200 19th Street NW., Washington, D.C.

The Committee will consider:

—Revision of the United States—Mexican AM Radio Broadcasting Agreement;

—Preparations for the 1986 ITU Regional Administrative Radio Conference on Expansion of the AM Band; and

—Other business.

The meetings of the Committee are public and are open for participants by all interested persons. The meeting scheduled for December 5, 1984 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information please contact the Committee Chairman, Louis C. Stephens, or Jonathan David, at FCC Headquarters: (202) 632-7792.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-30262 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-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 § 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.: 202-009522-050.

Title: Med-Gulf Conference.

Parties:

Atlanttrafik Express Service
Achille Lauro
C.I.A. Venezolana de Navegacion
Compania Trasatlantica Espanola S.A.
Constellation Lines, S.A.
Costa Line
d'Amico Line S.N.p.A
Egyptian Navigation Co., Ltd.
Farrell Lines, Inc.
Flota Mercante Grancolombiana S.A
"Italia" Societa' Per Azioni di Navigazione
Jugolinija
Jugooceanija
Lykes Bros Steamship Co., Ltd.
Nedlloyd Lines
Nordana Line/Danneborg Lines AS
Sea-Land Service, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would terminate the agreement ninety days after the Mediterranean/U.S.A. Conference Agreement becomes effective.

Agreement No.: 202-009615-042.

Title: Iberian/U.S. North Atlantic Westbound Freight Conference.

Parties:

Atlanttrafik Express Service
Compania Trasatlantic Espanola, S.A.
Costa Line
Egyptian Navigation Co.
Farrell Lines, Inc.
Hapag Lloyd, A.G.
"Italia" S.p.A.N.
Nedlloyd Lines, Inc.
Sea-Land Service, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would terminate the agreement ninety days after the Mediterranean/U.S.A. Conference Agreement becomes effective.

Agreement No.: 224-010675.

Title: San Pedro Terminal Agreement.

Parties:

American President Lines, Ltd. (APL)
Eagle Marine Services, Ltd. (Eagle)
Westwood Shipping Lines (Westwood)

Synopsis: agreement No. 224-010675 provides that APL and its wholly owned subsidiary Eagle Marine Lines, Ltd., will provide terminal and stevedoring services for Westwood's vessels at Berths 121-126, San Pedro, California. The agreement will have a term of 5-years after its effective date. The parties have requested a shortened review period for the agreement.

Dated: November 14, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-30295 Filed 11-16-84; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed; Change of Name

The Federal Maritime Commission has received notice that the assets and

business of Trader Navigation Co., Ltd., d/b/a Atlanttrafik Express Service, have been sold to new owners. As a result of this sale, effective September 19, 1984, the corporate name has been changed to Atlanttrafik Express Service, Ltd., d/b/a. Atlanttrafik Express Service and/or AES.

Notice is given that this name change applies in regard to the participation of Trader Navigation Co., Ltd. in the following agreements:

Agreement No.	Description
2846	WINAC
6200	U.S. Atlantic & Gulf/Australia New Zealand Conference.
9522A, 9522B, 9522C, 9522D, 9522E	Med-Gulf Conference.
9615	Iberian/U.S. North Atlantic Westbound Freight Conference.
10268	Australia-Eastern U.S.A. Shipping Conference.
10270	Worldwide Equipment Interchange & Lease Agreement.

This name change also applies to the participation of Trader Navigation Co., Ltd., in the following connecting carrier agreements filed with the Commission pursuant to General Order 23:

Agreement No.	Connecting carrier
81482	Barber-Blue Sea Line.
81946	Tropical Shipping & Construction Co., Ltd.
82173	KNSM-Kroonburgh BV.
82198	Compagnie Marocaine de Navigation.

Dated: November 14, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-30251 Filed 11-16-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Community Ban Corporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later that December 7, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Community Bancorporation, Inc.*, Greenville, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank, Greenville, South Carolina.

2. *Highlands Bankshares, Inc.*, Petersburg, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to The Grant County Bank, Petersburg, West Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Banco Del Pacifico*, Guayas, Ecuador; to become a bank holding company by acquiring 50.02 percent of the voting shares of Pacific National Bank, Miami, Florida.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Cowden Bancorp, Inc.*, Springfield, Illinois; to acquire 100 percent of the voting shares of Oakwood Bancorp, Inc. Springfield, Illinois, thereby indirectly acquiring the State Bank of Oakwood, Oakwood, Illinois.

2. *Charter 17 Bancorp, Inc.*, Richmond, Indiana; to acquire 24.9 percent of the voting shares of Midwest National Corporation, Indianapolis, Indiana, thereby indirectly acquiring Midwest National Bank, Indianapolis, Indiana.

3. *First Fontanelle Bancorporation*, Fontanelle, Iowa; to become a bank holding company by acquiring 97.5 percent of the voting shares of First National Bank, Fontanelle, Iowa.

Board of Governors of the Federal Reserve System, November 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30204 Filed 11-16-84; 8:45 am]

BILLING CODE 6210-01-M

Home National Corporation, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulations Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Reugulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested pesons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dsipute, summarizing the evidence that commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Home National Corporation*, Milford, Massachusetts; to engage *de novo* through its subsidiary , H.N.B. Service Corporation, Milford, Massachusetts, in servicing mortgage

loans for their account and for the account of others including all activities incidental thereto and specifically including the following activities: Processing of loan applications for approval by the mortgagee; preparation of documents relating to the mortgage loans including the mortgage note, disclosure statements, and RESPA statements; billing and collection of payments and disbursement of ecrows for taxes and insurance; collection of delinquent accounts; and preparation of periodic reports to the mortgages. These activities would be performed in the State of Massachusetts.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Farmers Bancshares, Inc.*, Malone, Florida; to engage *de novo* through its subsidiary, Farmers Insurance Agency, Inc., Malone, Florida, in selling auto, homeowners/rentors, life and health/medical insurance in a community having a population of less than 5,000.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *American Fletcher Corporation*, Indianapolis, Indiana; to engage *de novo* through its subsidiary, American Fletcher Mortgage Company, Inc., Lexington, Kentucky, in making first mortgage loans on 1–4 family residences for sale to other investors. These activities would be conducted from an office in Lexington, Kentucky, serving Fayette, Bourbon, Jessamine, Woodford, Madison, Scott, and Clark Counties, Kentucky.

Board of Governors of the Federal Reserve System, November 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30205 Filed 11-16-84; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Application To Engage de Novo in Nonbanking Activities

The Company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consumation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible edverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than December 10, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to engage *de novo* through the following national bank subsidiaries in providing consumer banking services, including lending services, deposit taking services, trust and advisory services: Security Pacific Naitonal Bank of Arizona, Phoenix, Arizona; Security Pacific National Bank of Colorado, Denver, Colorado; Security Pacific National Bank of Connecticut, East Hartford, Connecticut; Security Pacific National Bank of Florida, Orlando, Florida; Security Pacific National Bank of Georgia, Atlanta, Georgia; Security Pacific National Bank of Hawaii, Honolulu, Hawaii; Security Pacific National Bank of Illinois, Schaumberg, Illinois; Security Pacific National Bank of Massachusetts, Natick, Massachusetts; Security Pacific National Bank of Minnesota, Burnsville, Minnesota; Security Pacific National Bank of Nevada, Las Vegas, Nevada; Security Pacific National Bank of New Mexico, Albuquerque, New Mexico; Security Pacific National Bank of New York, White Plains, New York; Security Pacific National Bank of North Carolina, Charlotte, North Carolina; Security Pacific National Bank of Oregon, Portland, Oregon; Security Pacific National Bank of Pennsylvania, King of Prussia, Pennsylvania; Security Pacific National Bank of Texas (Dallas), Dallas, Texas; Security Pacific National Bank of Texas (Houston), Houston, Texas; Security Pacific National Bank of Utah, Salt Lake City, Utah; Security Pacific National Bank of Virginia, McLean, Virginia; Security Pacific National Bank of Washington, Bellevue, Washington.

Board of Governors of the Federal Reserve System, November 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30206 Filed 11-16-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 12]

Changes to Federal Travel Regulations

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Notice of changes to Federal Travel Regulations (FTR).

SUMMARY: GSA has issued GSA Bulletin FPMR A–40, Supplement 12, transmitting a changed page to amend FPMR 101–7, Federal Travel Regulation (FTR), Chapter 2, Part 6, to increase the maximum dollar amount for reimbursement of allowable real estate sale and purchase expenses incident to change of official station.

EFFECTIVE DATE: The revised provisions in Part 6 of Chapter 2 of the FTR are effective for employees whose effective date of transfer is on or after October 1, 1984. For purposes of these regulations, the effective date of transfer is the date on which the employee reports for duty at the new official station.

FOR FURTHER INFORMATION CONTACT: Raymond Price, Travel and Transportation Regulations Division, (703) 557–1256.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the pruposes of Executive Order

12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Section 118 of Pub. L. 98–151 (97 Stat. 977), November 14, 1983, which amended the statutory authority for the employee relocation allowances contained in subchapter II of chapter 57, title 5, United States Code, introduced into the law for the first time dollar limitations for reimbursement of expenses for the sale and/or purchase of a residence incident to an employee's transfer to a new official station.

The amended 5 U.S.C. 5724a(a)(4) also provides for an annual update in the maximum dollar amount applicable to reimbursement of expenses incurred by an employee for sale and purchase of a residence. The law requires that the dollar amounts be increased effective October 1 of each year based on the percent change, if any, in the Consumer Price Index for All Urban Consumers, United States City Average, Housing Component for December of the preceding year over that published for December of the second preceding year.

Explanation of changes. Paragraphs 2–6.2g(1) and (2) are amended to reflect a 3.5 percent increase in the dollar maximums for reimbursement of allowable expenses incurred for the sale of the residence at the old official station from $15,000 to $15,525, and for the purchase of a new residence at the new official station from $7,500 to $7,763. Agencies should make a pen and ink change to annotate the Real Estate Expenses section on page 6 of Table 2 in Appendix 2–A to reflect the new dollar amounts and the effective date. The table will be changed officially in a future change to the regulations. Accordingly, the Federal Travel Regulations, are amended as follows:

CHAPTER 2—RELOCATION ALLOWANCES

PART 6—ALLOWANCES FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

1. **Authority** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 5 U.S.C. 5707; Executive Order No. 11609, July 22, 1971, and No. 12466, February 27, 1984

2. Paragraph 2–6.2g is revised to read as follows:

2–6.2. Reimbursable and nonreimbursable expenses.

* * * * *

g. *Overall Limitations. The total amount of expenses that may be reimbursed is as follows:*

(1) In connection with the sale of the residence at the old official station, reimbursement shall not exceed 10 percent of the actual sale price or $15,525, whichever is the lesser amount.

(2) In connection with the purchase of a residence at the new official station, reimbursement shall not exceed 5 percent of the purchase price of $7,763, whichever is the lesser amount.

* * * * *

Dated: October 29, 1984.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84–30203 Filed 11–16–84; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84D–0347]

Action Level for Methyl Mercury in Fish; Availability of Compliance Policy Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of FDA Compliance Policy Guide 7108.07. The guide has been revised to change the basis for enforcement of the action level for mercury in fish from total mercury content to methyl mercury content. The revised action level, 1 part per million (ppm) mercury fromo methyl mercury, is effective immediately.

ADDRESS: Written comments regarding the action level and requests for single copies of the revised guide are to be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John M. Taylor, Center for Food Safety and Applied Nutrition (HFF–310), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0187.

SUPPLEMENTARY INFORMATION: Since its adoption, the 1 ppm action level for mercury in fish has been based upon the toxicity of methyl mercury. FDA has enforced this level, however, on the basis of total mercury because, at the time the agency established this action level, no suitable analytical enforcement method for methyl mercury existed. In most fish, almost all the mercury present is in the form of the methyl compound.

In the **Federal Register** of January 19, 1979 (44 FR 3990), FDA made a commitment to revise the action level to a methyl mercury basis when an appropriate method for this form of mercury became available. Currently, the method in the the fourteenth edition of the Association of Offical Analytical Chemists (AOAC) book of methods, § 25.146–25.152, is suitable for determining methyl mercury content for enforcement purposes. The agency has accordingly revised the mercury action level to make clear that agency enforcement actions will be based on the methyl mercury content of the fish.

The agency acknowledges that the revision of the action level might result in a slight increase in consumer exposure to methyl mercury. However, this increase in exposure will not be of public health concern. Previously, the agency considered that the total mercury measured was all from methyl mercury. Now, the agency can specifically measure the mercury from the methyl compound. The use of this new method thus effectuates the original intent of the 1 ppm action level. The agency reaffirms that this action level is adequate to protect the public health. The use of the new method will continue to assure that exposure to methyl mercury is adequately controlled.

Interested persons may submit written comments, along with supportive data, on FDA Compliance Policy Guide 7108.07, to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 9, 1984.

William F. Rondolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–30198 Filed 11–16–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 77N-0240; DESI 1786]

Certain Single-Entity Coronary Vasodilators—Oral Nitroglycerin; Drug Efficacy Study Implementation; Revocation of Exemption; Announcement of Marketing Conditions

Correction

In the correction to FR Doc. 84-23655 that appeared in the third column of page 45071, in the issue of Wednesday, November 14, 1984, make the following corrections:

1. In paragraph 2., The formula in the seventh line should have read "$(C_3H_5N_3O_9)$".

2. In paragraph 3., fourth line, "does" should have read "doses".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability Draft Land Protection Plan; Alibates Flint Quarries National Monument, Potter County, TX

Pursuant to the National Environmental Policy Act of 1969, Title 40 of the Code of Federal Regulations, Chapter 1 of Title 36 of the Code of Federal Regulations and the final interpretive rule for Preparation of Land Protection Plans printed in the **Federal Register** on May 11, 1983 (48 FR 21121), the National Park Service has prepared a Draft Land Protection Plan for Alibates Flint Quarries National Monument, Potter County, Texas.

The Draft Land Protection Plan addresses the protection of 291.74 acres within the authorized boundary that have not been acquired. It considers alternate means of protection, provides for public use and safety and identifies what land or interest in land need to be in Federal ownership in order to achieve managment purposes consistent with the intent of Congress in authorizing the park.

Copies of the Draft Land Protection Plan are available from Lake Meredith Recreation Area/Alibates Flint Quarries National Monument, Post Office Box 1438, Fritch, Texas 79036; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Anyone wishing to submit comments on the Draft Land Protection Plan should provide them to the Superintendent, Lake Meredith Recreation Area/Alibates Flint Quarries National Monument, at the address provided above, within 30 days from the publication date of this notice.

Dated: November 2, 1984.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 84-30241 Filed 11-16-84; 8:45 am]

BILLING CODE 4310-70-M

Availability Draft General Management Plan/Environmental Assessment; Port Union National Monument, Mora County, NM

Pursuant to the National Environmental Policy Act of 1969, and Title 40 of the Code of Federal Regulations, the National Park Service has prepared a Draft General Management Plan/Environmental Assessment, Fort Union National Monument, Mora County, New Mexico.

The Draft General Management Plan/Environmental Assessment will chart an effective management and development strategy for future resource management, visitor use, and operations at Fort Union National Monument.

Copies of the Draft General Management Plan/Environmental Assessment are available from Capulin Mountain/Fort Union National Monuments, Capulin, New Mexico 88414; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Anyone wishing to provide comments on the Draft General Management Plan/Environmental Assessment should provide them to the Superintendent, Capulin Mountain/Fort Union National Monuments, Capulin, New Mexico 88414, within 30 days from the publication date of this notice.

Dated: November 2, 1984.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 84-30240 Filed 11-16-84; 8:45 am]

BILLING CODE 4310-70-M

Indiana Dunes National Lakeshore Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Indiana Dunes National Lakeshore Advisory Commission will be held at 10 a.m., CDT, on Friday, December 7, 1984, at the Indiana Dunes National Lakeshore Visitor Center at U.S. Highway 12 and Kemil Road, Chesterton, Indiana.

The Commission was established by the Act of November 5, 1966, 80 Stat. 1309, 16 U.S.C. 460u-7, as amended by the Act of October 18, 1976, 90 Stat. 2530, 2533, to meet and consult with the Secretary of the Interior on matters related to the administration and development of the Indiana Dunes National Lakeshore.

The members of the Commission are as follows:

Mr. John R. Schnurlein (Chairperson)
Mr. Ronald Bensz
Ms. Anna R. Carlson
Mr. Harry W. Frey
Mr. R. M. Gacki
Ms. Gail H. Harris
Mr. James Holland
Ms. Lynne Kaser
Mr. James H. Lahey
Mr. William L. Lieber
Ms. Kay M. Rhame
Dr. John Tucker
Mr. Norman E. Tufford

Matters to be discussed at this meeting include:

1. Chairman's Quarterly Report.
2. Status of Land Protection.
3. Quarterly Status Report of 1984 Operations.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Dale B. Engquist, Superintendent, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304, telephone 219-926-7561.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the office of the Indiana Dune National Lakeshore located at 1100 North Mineral Springs Road, Porter, Indiana.

Dated: November 8, 1984.

Charles H. Odegaard,

Regional Director, Midwest Region.

[FR Doc. 84-30238 Filed 11-16-84; 8:45 am]

BILLING CODE 4310-70-M

Appalachian National Scenic Trail; Relocations of Rights-of-Way

AGENCY: National Park Service, Interior.

ACTION: Notice of relocation.

SUMMARY: The proposed relocations set forth below are deemed necessary to preserve the purpose for which the Appalachian National Scenic Trail was established. As a part of the program to protect and establish an Appalachian Trail corridor, the Department of the

Interior, in consultation with affected landowners, trail clubs, and state and Federal Government representatives, has determined that where the Trail is now along roads, close to houses or otherwise poorly located, the National Park Service, will seek an alternative location. When necessary, an alternative Trail route will be located outside the existing right-of-way pursuant to section 7 of the National Trails System Act, which established a process for necessary relocations after publication of notice in the Federal Register and appropriate consultation.

DATE: Written comments, suggestions or objections will be accepted until December 19, 1984.

ADDRESS: Comments should be directed to: Project Manager, Appalachian Trail Project Office, Harpers Ferry, West Virginia 25425.

FOR FURTHER INFORMATION CONTACT: David Richie, Manager, Appalachian Trail Project, Telephone (304) 535–2346.

SUPPLEMENTARY INFORMATION:

Background

The National Trails System Act became law on October 2, 1968. The Act created a system to identify and establish a National Trails System. It also established the Pacific Crest Trail and the Appalachian Trail as the intial National Scenic Trails.

Section 7 of the National Trails system Act created a process for the administration and development of National Scenic Trails. This process included the responsibility to select an initial right-of-way for the National Scenic Trails and to publish notice of this right-of-way in the Federal Register together with appropriate maps and descriptions. In selecting this right-of-way, the Secretary was required to obtain the advice and assistance of the states, local governments, private organizations, and landowners and land users concerned. For a two-year period after selection, he was also required to withhold federal action and to encourage the states or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations and individuals to provide the necessary trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of the National Scenic Trail. These responsibilities for the Appalachian Trail have been completed. A preliminary right-of-way and Trail route was selected after compliance with the consultation requirements of the Act and published in the Federal Register, Vol. 36, No. 197, Saturday, October 9, 1971, and the states and local governments have subsequently had the opportunity to act to protect the Trail.

Changes in the Trail route within the previously established right-of-way are routinely made. Section 7 also established a process for necessary relocations of the right-of-way after publication of notice in the Federal Register. This process includes the responsibility to relocate segments of a National Scenic Trail right-of-way if such a relocation is necessary to preserve the purpose for which the Trail was established.

On March 21, 1978, Pub. L. 95–248 was enacted amending the original National Trails System Act. The thrust of this amendment was to further the protection efforts under the original legislation, calling for an immediate federal land acquisition program. It also directed that this program be substantially completed within three years of September 30, 1978.

The original Act was further amended by Pub. L. 95–625 dated November 10, 1978. This Act eliminated the requirement for the Federal Government to wait two years after notice of selection of the right-of-way before acquisition could be initiated. We are kept advised on any action by states or localities to protect the Trail where relocations are involved.

As a part of this program to protect and establish an Appalachian Trail corridor, the Department of the Interior, in consultation with landowners, trail clubs, and government representatives, has determined that where the Trail is along roads, close to houses or otherwise poorly located, the National Park Service, will seek an alternative location, wherever possible, either pursuant to a change in Trail route, if feasible, within the existing right-of-way, or pursuant to the process outlined above by publishing a notice of right-of-way relocation in the Federal Register after appropriate consultation.

Consistent with this decision, the rights-of-way for the following sections of the Appalachian National Scenic Trail will be relocated outside of the originally designated rights-of-way to facilitate revised Trail routes that take advantage of the terrain so that these portions of the Trail meet the criteria and the purpose for which this Trail was established.

Beginning approximately 2,500 feet south of Joe's Hole on the Bald Mountain/Caratunk Town Line, Maine, continuing northwesterly ending at Middle Mountain, as indicated in panel 61A.

Beginning at Crocker Mountain, Maine, continuing southeasterly to a point approximately 2,500 feet southwest of the summit of Sugarloaf Mountain, turning southwesterly to Spaulding Mountain, continuing southwesterly to Lone Mountain, then descending Lone Mountain, turning northwesterly, as indicated in panels 85A, 85B, 85C, and 86A.

Beginning at the Jefferson National Forest, Troutville, Virginia, continuing northwesterly crossing Route 11/220 and passing under Interstate 81, then turning southwesterly parallel to I–81 for approximately 3,900 feet, then turning west as indicated in panels 567A, 568A and 569A.

Appropriate maps, as designated above, are provided as an appendix to this notice to indicate the revised rights-of-way and the Trail route within those rights-of-way. These changes are in compliance with provisions of Section 7 of the National Trails System Act, as amended, as discussed above.

Affected landowners have been contacted and afforded an opportunity to provide us their advice and assistance in selection of the revised rights-of-way and Trail routes within those rights-of-way. In addition, the rights-of-way and Trail routes have been selected in consultation with members of the Advisory Council for the Appalachian National Scenic Trail and with state and local officials.

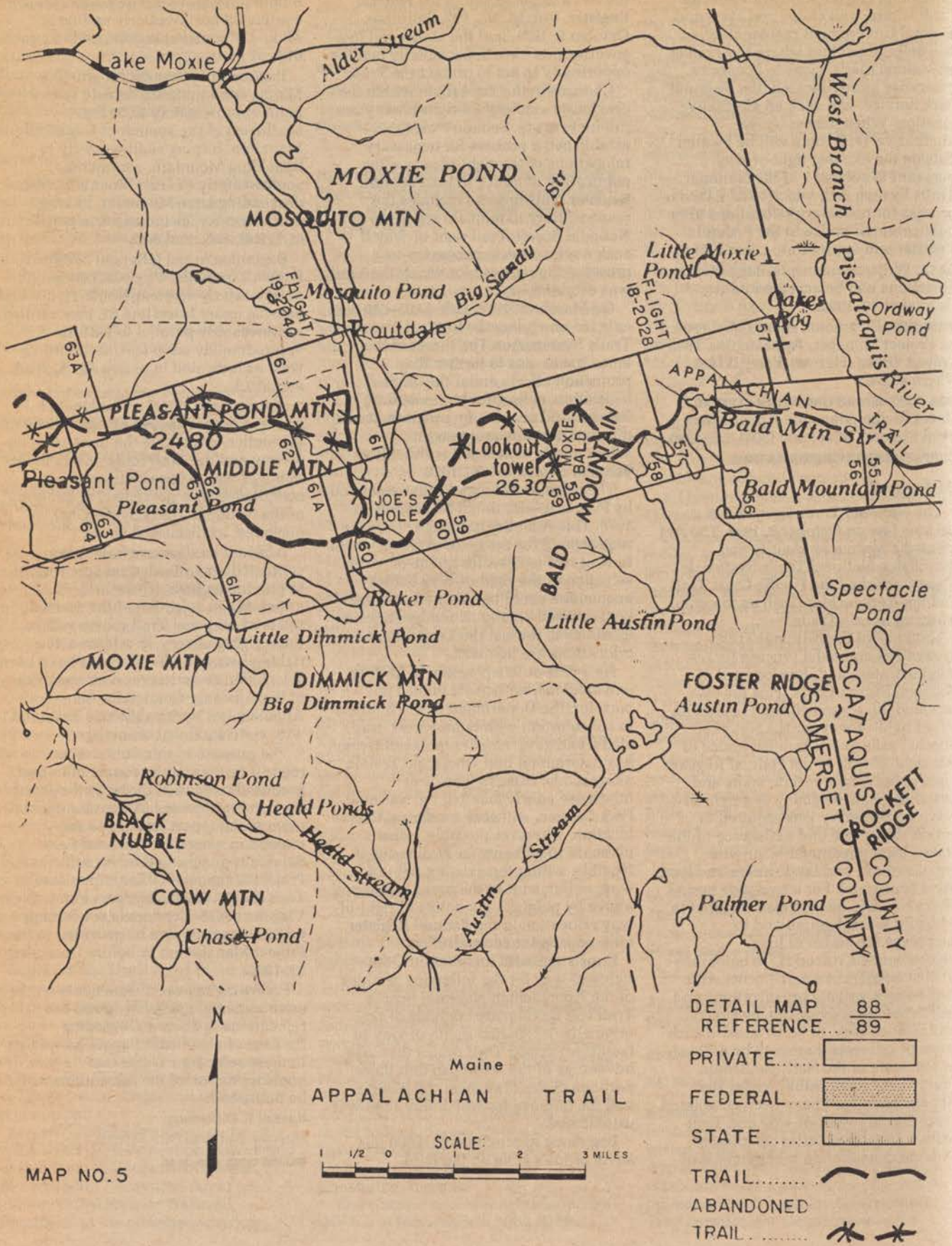
The purpose of this notice is to request further public comment in the proposed relocation of the trail right-of-way and trail routes. An environmental assessment report relating to each relocation where the National Park Service is acquiring land is on file in the Project Manager's Office, Appalachian Trail Project Office, Harpers Ferry, West Virginia 25425. Comments concerning relocations may also be provided to the Project Manager on or before December 19, 1984.

Following review of comments on the environmental assessment and the relocations, a decision regarding findings of significant impact pertaining to these relocations, and the implementation of the relocations, will be published.

Russell E. Dickenson,

Director, National Park Service.

BILLING CODE 4310-70-M


Lake Moxie
Alder Stream
MOXIE POND
MOSQUITO MTN
Mosquito Pond
Big Sandy Str
Trautdale
FLIGHT 19-2040
FLIGHT 18-2028
Little Moxie Pond
Oakes Bog
West Branch Piscataquis River
Ordway Pond
APPALACHIAN TRAIL
PLEASANT POND MTN
2480
MIDDLE MTN
Pleasant Pond
Pleasant Pond
Lookout tower 2630
MOXIE BALD MOUNTAIN
Bald Mtn Str
Bald Mountain Pond
JOE'S HOLE
BALD
Baker Pond
Little Dimmick Pond
Little Austin Pond
Spectacle Pond
MOXIE MTN
DIMMICK MTN
Big Dimmick Pond
FOSTER RIDGE
Austin Pond
PISCATAQUIS SOMERSET COUNTY
ROCKETT RIDGE
Robinson Pond
Heald Ponds
Heald Stream
BLACK NUBBLE
COW MTN
Chase Pond
Austin Stream
Palmer Pond
63A
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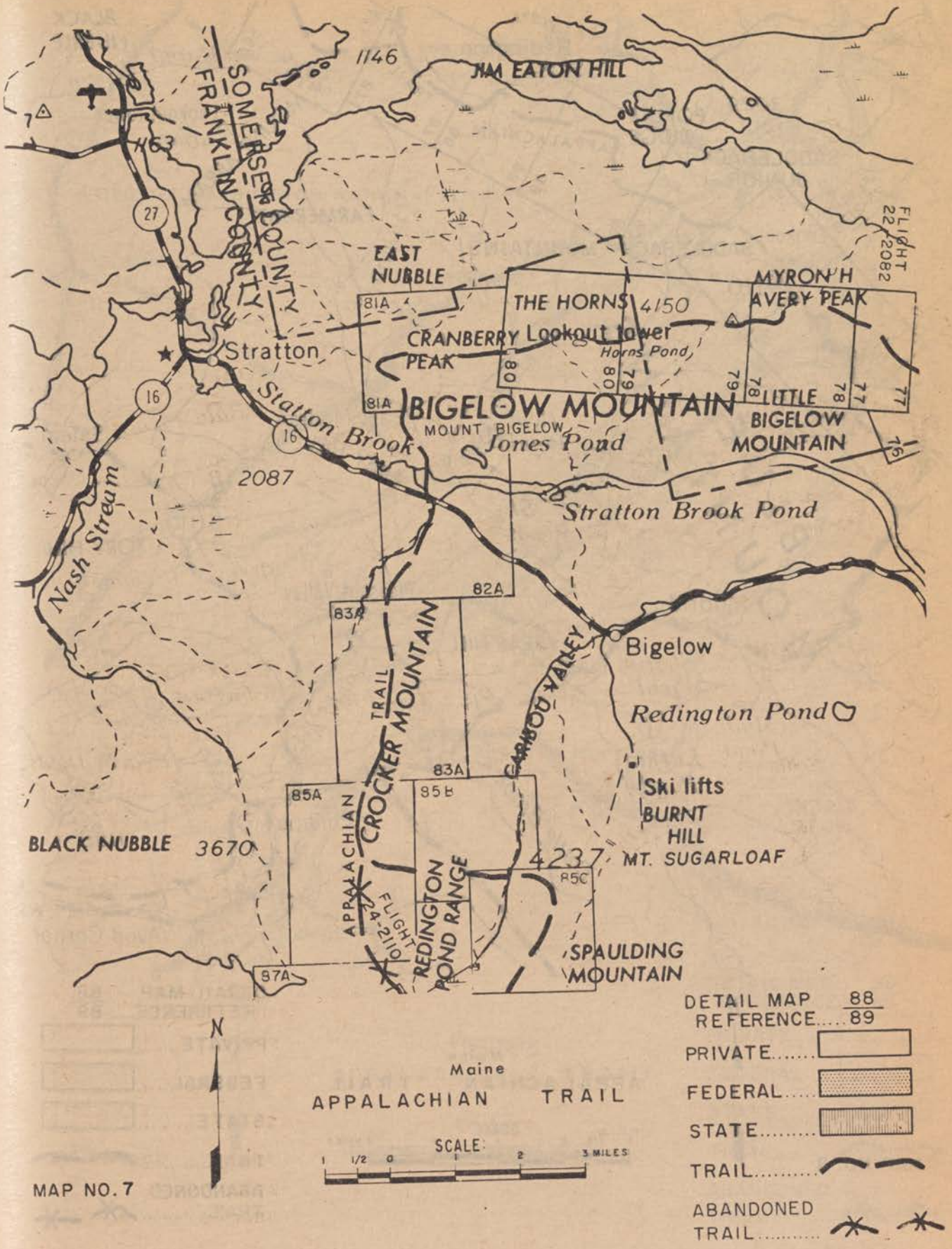
Maine
APPALACHIAN TRAIL
SCALE
1 1/2 0 1 2 3 MILES
DETAIL MAP REFERENCE.... 88/89
PRIVATE.....
FEDERAL.....
STATE.....
TRAIL.....
ABANDONED TRAIL.....
MAP NO. 5


1146
JIM EATON HILL
SOMERSET COUNTY
FRANKLIN COUNTY
1163
27
7
FLIGHT 22-2082
EAST NUBBLE
81A
THE HORNS 4150
MYRON H AVERY PEAK
CRANBERRY PEAK
Lookout tower
Horns Pond
80
79
78
77
Stratton
16
Stratton Brook
BIGELOW MOUNTAIN
MOUNT BIGELOW
Jones Pond
LITTLE BIGELOW MOUNTAIN
76
2087
Nash Stream
Stratton Brook Pond
82A
83A
TRAIL
CRANBERRY MOUNTAIN
CARIBOU VALLEY
Bigelow
Redington Pond
83A
85A
85B
Ski lifts
BURNT HILL
MT. SUGARLOAF
BLACK NUBBLE 3670
APPALACHIAN
CROCKER MOUNTAIN
4237
85C
FLIGHT 24-2110
REDINGTON POND RANGE
SPAULDING MOUNTAIN
87A
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Maine
APPALACHIAN TRAIL
SCALE:
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DETAIL MAP REFERENCE 88 89
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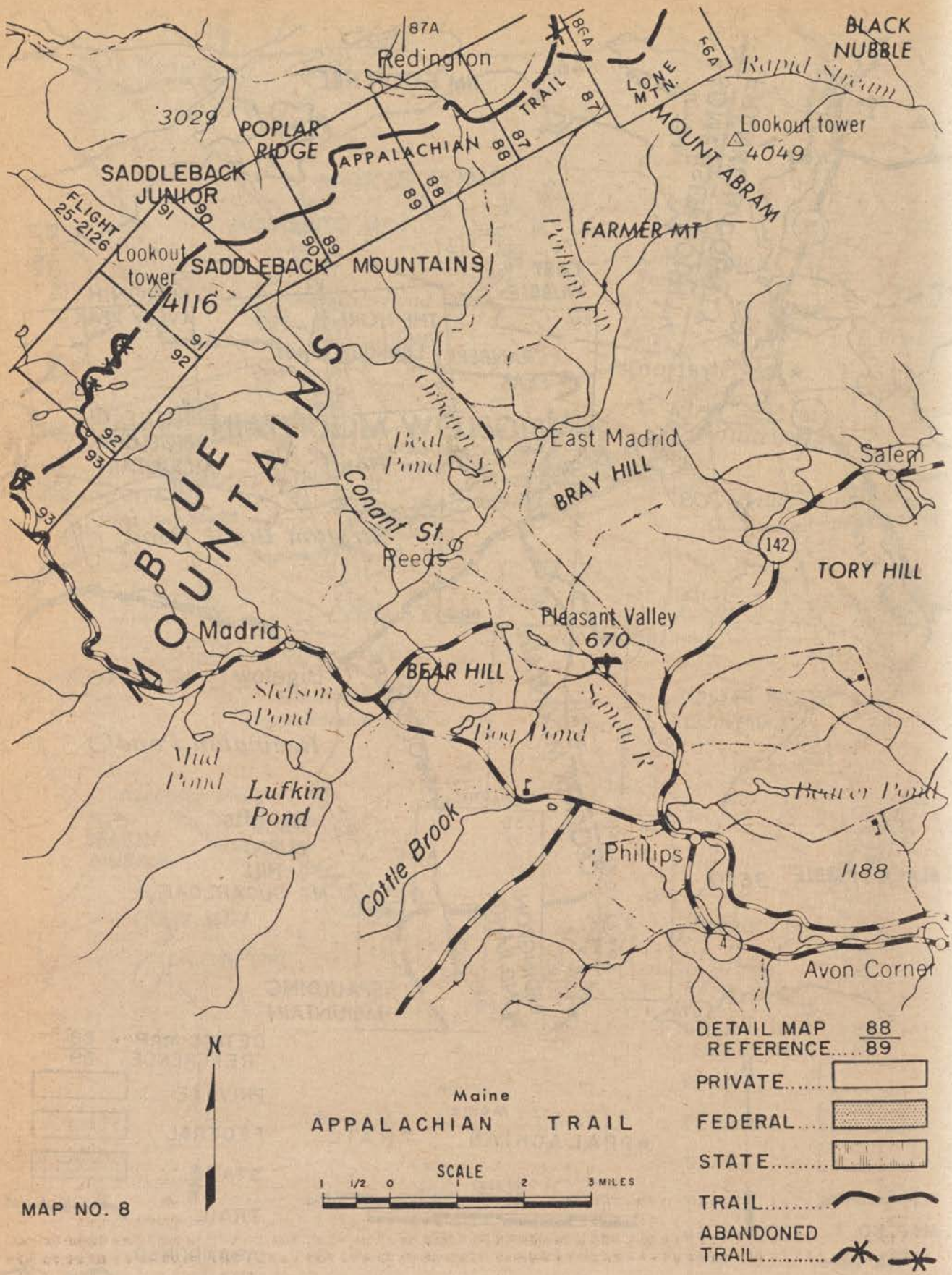
MAP NO. 7


87A
Redington
86A
LONE MTN.
46A
BLACK NUBBLE
Rapid Stream
TRAIL
3029
POPLAR RIDGE
APPALACHIAN
87
88
89
90
91
92
93
SADDLEBACK JUNIOR
FLIGHT 25-2126
Lookout tower
4116
SADDLEBACK MOUNTAINS
Lookout tower
4049
MOUNT ABRAM
FARMER MT
Perham Fm
BLUE MOUNTAINS
Orbeton Pond
Bear Pond
East Madrid
BRAY HILL
Salem
Conant St.
Reeds
142
TORY HILL
Pleasant Valley
670
Madrid
BEAR HILL
Stetson Pond
Mud Pond
Lufkin Pond
Bog Pond
Sandy R
Beaver Pond
Cottle Brook
Phillips
1188
Avon Corner
N
Maine
APPALACHIAN TRAIL
SCALE
1 1/2 0 2 3 MILES
MAP NO. 8
DETAIL MAP REFERENCE 88/89
PRIVATE
FEDERAL
STATE
TRAIL
ABANDONED TRAIL

N

VIRGINIA

APPALACHIAN TRAIL

SCALE:

1 1/2 0 1 2 3 MILES

MAP NO. 60

DETAIL MAP REFERENCE 88/89

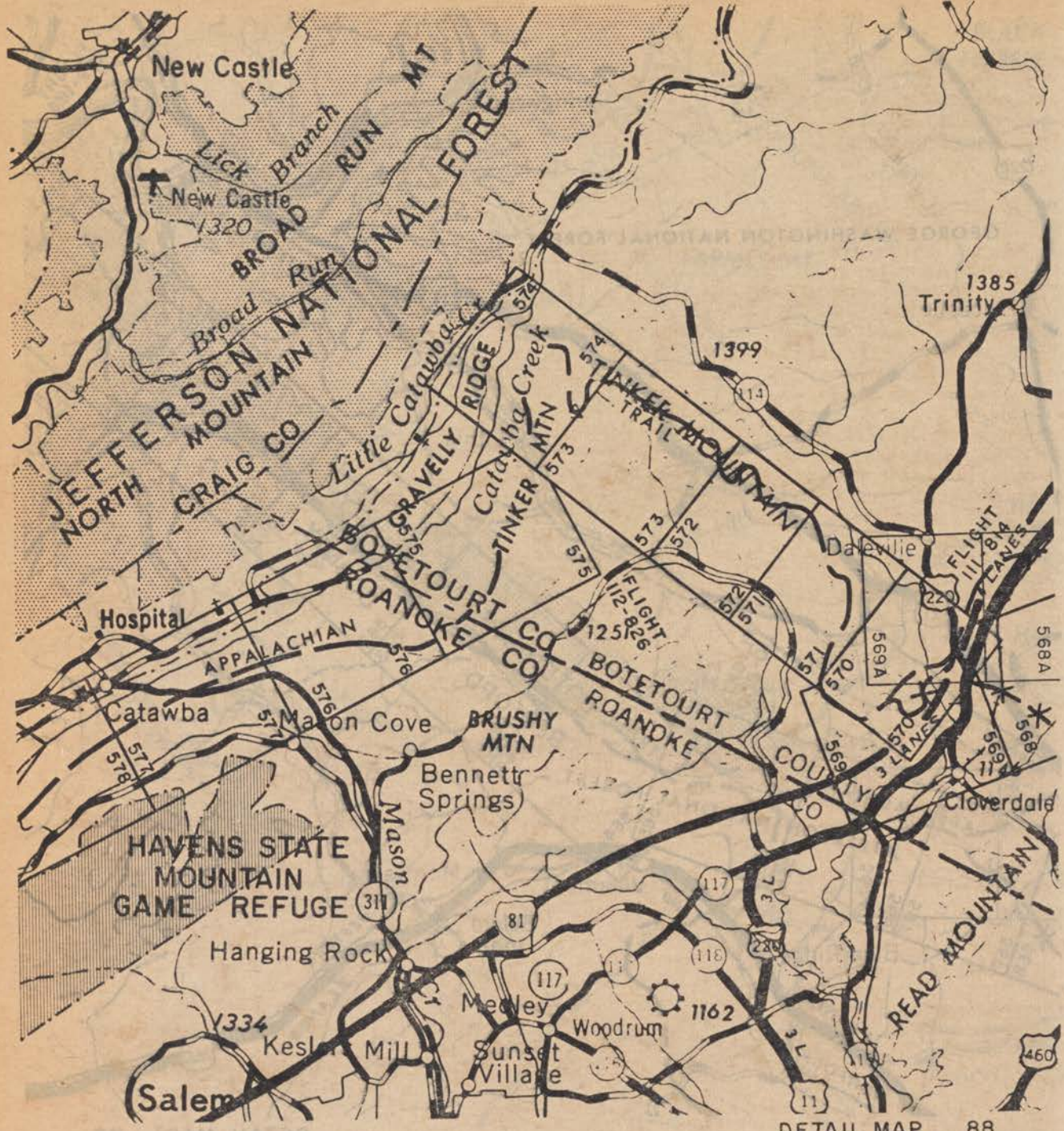
PRIVATE

FEDERAL

STATE

TRAIL

ABANDONED TRAIL



DETAIL MAP REFERENCE..... 88/89

PRIVATE.....

FEDERAL.....

STATE.....

TRAIL.....

ABANDONED TRAIL.....

VIRGINIA

APPALACHIAN TRAIL

SCALE: 1 1/2 0 2 3 MILES

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MAP NO. 61

[FR Doc. 84-30242 Filed 11-16-84; 8:45 am]

BILLING CODE 4310-70-C

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-12 (Sub-No. 81X)]

Southern Pacific Transportation Co.; Abandonment and Discontinuance of Service Exemption in Yamhill County, OR; Exemption

Southern Pacific Transportation Company, (SPT) has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments*, 1 I.C.C. 2d 55, decided April 16, 1984. SPT will discontinue service and abandon its line of railroad known as the Westside Branch between milepost 742.568 near Carlton and milepost 754.568 near Seghers, a distance of 12.00 miles in Yamhill County, OR.

SPT has certified that (1) no local traffic has moved over the line for at least 2 years, (2) overhead traffic is not handled on the lines, and (3) no formal complaint, filed by a user of rail service on the line, or by a state or local governmental entity acting on behalf of a user, regarding cessation of service over the line, either is pending with the Commission, or has been decided in favor of a complainant within the 2-year period preceding this notice. The Public Utilities Commission in Oregon has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment or discontinuance of service will be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on December 19, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by November 29, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 10, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: G.A. Laakso, One Market Plaza, Southern Pacific Bldg., San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided:

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-30209 Filed 11-16-84; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 274 (Sub-No. 10); Ex Parte No. 282 (Sub-No. 3)]

Environmental Notices in Abandonment and Rail Exemption Proceedings; Railroad Consolidation Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: By decision served and published April 17, 1984 (49 FR 15087), the Commission adopted regulations requiring rail carrier applicants in abandonment and exemption proceedings to issue environmental notices directly to the appropriate State agency. A list of the designated State agencies was published September 20, 1984 (49 FR 36942), but it contained some incorrect designations. A corrected list is published in this notice.

EFFECTIVE DATE: November 19, 1984.

FOR FURTHER INFORMATION CONTACT: Wayne Michel, (202) 275-7657.

SUPPLEMENTARY INFORMATION: We are publishing a revised list of the State agencies designated to receive environmental notices (see Appendix). In those instances where more than one agency was selected by the State, we have chosen the agency that will receive the notice. For those States that did not designate an agency, the notice must be served upon the governor as shown in the list.

Decided: November 13, 1984.

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

James H. Bayne,

Secretary.

Appendix

Alabama Department of Environmental Management, 2721 Gunter Park Drive, Montgomery, AL 36130.
Alaska Department of Environmental Conservation, 437 E Street, Anchorage, AK 99501.
Governor, State of Arizona, State Capitol, Phoenix, AZ 87007.
Governor, State of Arkansas, State Capitol, Little Rock, AR 72201.
Chief, Railroad Operations & Safety Branch, California Public Utilities Commission, 1390 Market Street, San Francisco, CA 94102.
Public Utilities Commission, 1580 Logan Street, Office Level II, Denver, CO 80203.
Governor, State of Connecticut, State Capitol, Hartford, CT 06115.
Federal Aid Coordinator, Budget Office, State Single Point of Contact, P.O. Box 1401, Dover, DE 19903.
Mayor, 1350 Pennsylvania Avenue, NW., Washington, DC 20004.
Executive Office of the Governor, Office of Planning & Budgeting, The Capitol, Tallahassee, FL 32301.
Administrator, Georgia State Clearinghouse, Room 608, 270 Washington Street, SW., Atlanta, GA 30334.
State of Idaho Transportation Department, P.O. Box 7129, Boise, ID 83707.
Governor, State of Illinois, State House, Springfield, IL 62706.
Indiana Department of Transportation, 143 west Market Street, Suite 300, Indianapolis, IN 46204.
Office of the General Counsel, Iowa Department of Transportation, Transportation Regulation Authority, 507 10th Street, Des Moines, IA 50319
Governor, State of Kansas, State House, Topeka, KS 66612.
Governor, Commonwealth of Kentucky, State Capitol, Frankfort, KY 40601.
Governor, State of Louisiana, State Capitol, Baton Rouge, LA 70804.
Governor, State of Maine, State House, Augusta, ME 04333.
Director, State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, MD 21201.
Governor, Commonwealth of Massachusetts, State House, Boston, MA 02133.
Michigan Department of Transportation, Bureau of Urban and Public Transportation, Box 30028, Lansing, MI 48909.
Governor, State of Minnesota, State Capitol, St. Paul, MN 55515.
Governor, State of Mississippi, New Capitol, Jackson, MS 39201.
Chief Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, Mo 65102.
Transportation Division, Department of Commerce, 1424 9th Avenue, Helena, MT 59620-0401.
Department of Environmental Control, P.O. Box 94877, Lincoln, NE 68509-4877.
State Office of Community Services, Capitol Complex, Carson City, NV 89710.
Governor, State of New Hampshire, State House, Concord, NH 03301.

Office of the Commissioner, Department of Environmental Protection, CN 402, Trenton, NJ 08625.
Governor, State of New Mexico, State Capitol, Santa Fe, NM 87503.
State Clearing House, Division of Budget, State Capitol, Albany, NY 12224.
North Carolina State Clearinghouse, 116 West Jones Street, Raleigh, NC 27611.
Governor, State of North Dakota, State Capitol, Bismarck, ND 58505.
Governor, State of Ohio, State House, Columbus, OH 43215.
Oklahoma Corporation Commission, Transportation Division, Railroad Department, Jim Thorpe Building, Oklahoma City, OK 73105.
Public Utility Commissioner, Rail/Air Program, Labor & Industries Building, Salem, OR 97310.
Governor, Commonwealth of Pennsylvania, The Capitol, Harrisburg, PA 17120.
Department of Administration, Statewide Planning Program, 265 Melrose Street, Providence, RI 02907.
Governor's Division of Transportation, Edgar A. Brown Building, 1205 Pendleton Street, Suite 476, Columbia, SC 29201.
Governor, State of South Dakota, State Capitol, Pierre, SD 57501.
Tennessee Department of Transportation, Public Transportation & Aeronautics Division, James K. Polk Building, Suite 700, Nashville, TN 37219.
Governor, State of Texas, State Capitol, Austin, TX 78701.
Office of Planning and Budget, State Capitol Building, Salt Lake City, UT 84114.
Governor, State of Vermont, State House, Montpelier, VT 05602.
Rail Division Administrator, Department of Highways & Transportation, 1221 East Broad Street, Richmond, VA 23219.
Governor, State of Washington, Legislative Building, Olympia, WA 98504.
West Virginia Railroad Maintenance Authority, P.O. Box 490, Moorefield, WV 26836.
Wisconsin Department of Transportation, Office of General Counsel, P.O. Box 7910, Madison, WI 53707.
State Planning Coordinator's Office, 2320 Capitol Avenue, Cheyenne, WY 82002.

[FR Doc. 84-30212 Filed 11-16-84; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 30558]

Industrial Development Corporation; Exemption From 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts the Industrial Development Corporation of Clinton County, PA, from 49 U.S.C. Subtitle IV [except sections 10905(f) (4), 10505(e) and (g)], in connection with operations over a 1.9-mile line in Clinton County, PA.

DATES: This exemption is effective on November 16, 1984. Petitions for reconsideration must be filed by December 6, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30558 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners representative: Peter A. Gilbertson, Suite 350, 1575 Eye Street, NW., Washington, DC 20005.

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., Interstate Commerce Commission, Room 2227, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: November 5, 1984.

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

James H. Bayne,

Secretary.

[FR Doc. 84-30210 Filed 11-16-84; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 30538]

Ford County Historic Railroad Preservation Foundation; Operation Exemption in Ford County, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10901 the operation by the Ford County Historic Railroad Preservation Foundation of that portion of the former Dodge City Branch of the St. Louis Southwestern Railway Company between milepost 351.00 and milepost 373.63 in Ford County, KS.

DATES: This exemption shall be effective on December 19, 1984. Petitions to stay must be filed by November 29, 1984. Petitions for reconsideration must be filed by December 10, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30538 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Vic Moser, 335 N. Washington, Suite 30, Hutchison, KS 67501.

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: November 9, 1984.

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

James H. Bayne,

Secretary.

[FR Doc. 84-30211 Filed 11-16-84; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Partial Consent Decree Pursuant to Comprehensive Environmental Response, Compensation and Liability Act of 1981; New Castle County, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 19, 1984, a proposed Partial Consent Decree in *United States of America* v. *New Castle County, et al.*, Civil Action No. 80-489, was lodged with the United States District Court for the District of Delaware. The proposed Partial Consent Decree concerns the hazardous waste site known as Tybouts Corner in New Castle County, Delaware.

Under the terms of the Partial Consent Decree, New Castle County, William C. Ward, and Stauffer Chemical Company will install an alternate water supply system for residences and facilities surrounding the Tybouts Corner Landfill. This Decree will not become effective unless the Court approves it before December 20, 1984. As a result thereof, the public comment period has been shortened to fifteen (15) days because of the need to expeditiously

install the alternate water supply system.

The Department of Justice will receive for a period of fifteen (15) days from the date of this publication comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *New Castle County, et al.*, D.J. Ref. 90-7-1-143.

The proposed Partial Consent Decree may be examined at the office of the United States Attorney, Federal Building, Wilmington, Delaware and at the office of Region III, U.S. Environmental Protection Agency, 6th and Walnut Streets, Philadelphia, Pennsylvania.

The Partial Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Rooms 1512 and 1644, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Partial Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice. In requesting a copy, please enclose a check in the amount of $1.20 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-30465 Filed 11-16-84; 10:28 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel Meeting; Amended Notice

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Exploration/Research Section) to the National Council on the Arts that was to be held on November 28, 1984, from 9:00 a.m.-5:30 p.m. in room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506, has been changed. The meeting will now be held on November 29, 1984 from 9:00 a.m.-5:30 p.m. in room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: November 8, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-30248 Filed 11-16-84; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer Research; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer Research.

Date and time: December 5, 1984 9:00 a.m. to 5:00 p.m.; December 6, 1984 9:00 a.m. to 5:00 p.m.; December 7, 1984 9:00 a.m. to 3:00 p.m.

Place: Room 543, National Science Foundation, 1800 G. Street, NW., Washington, D.C. 20550.

Type of meeting: Part Open—December 5 Closed—10:00 a.m. to 5:00 p.m.; December 6 Open—9:00 a.m. to 5:00 p.m.; December 7 Open—9:00 a.m. to 3:00 p.m.

Contact person: Mr. Kent K. Curtis, Division Director, Division of Computer Research, Room 339, National Science Foundation, 1800 G. Street, NW., Washington, D.C. 20550 Telephone: (202) 357-9747. Anyone planning to attend this meeting should notify Mr. Curtis no later than November 30, 1984.

Purpose of committee: To provide advice and recommendations concerning support of Computer Research.

Summary minutes: May be obtained from the contact person at the above address.

Agenda

Wednesday, December 5, 1984, Room 543—9:00 a.m. to 10:00 a.m.—Open; Room 543—10:00 a.m. to 5:00 p.m.—Closed

9:00 a.m.-9:30 a.m.—Office of Advanced Scientific Computing, John W. Connolly

9:30 a.m.-10:00 a.m.—Oversight Review Goals and Procedures, Kent K. Curtis

10:00 a.m.-5:00 p.m.—Oversight Review of Software Systems Science, Computer Systems Design, Software Engineering, Intelligent Systems, Special Projects, Computer Research Equipment

Thursday, December 6, 1984, Room 543—9:00 a.m. to 5:00 p.m.—Open

9:00 a.m.-10:00 a.m.—Status Report on Division of Computer Research, Kent K. Curtis

10:00 a.m.-10:15 a.m.—Break

10:15 a.m.-11:00 a.m.—Graduate Student Support in Computer Research, Lawrence H. Oliver

11:00 a.m.-11:30 a.m.—Coordinated Experimental Research, Bruce H. Barnes

11:30 a.m.-12:00 Noon—Presidential Young Investigators, Harry G. Hughes

12:00 Noon-1:00 p.m.—Lunch

1:00 p.m.-3:00 p.m.—Oversight Review Reports, Lawrence Snyder

3:00 p.m.-3:15 p.m.—Break

3:15 p.m.-5:00 p.m.—FCCSET Report and DARPA Strategic Computing Program, Robert E. Kahn

Friday, December 7, 1984, Room 540—9:00 a.m. to 11:00 a.m.—Open; Room 543—11:00 a.m.-3:00 p.m.—Open

9:00 a.m.-11:00 a.m.—Joint Meeting of Advisory Committee for Office of Advanced Scientific Computing and Division of Computer Research

11:00 a.m.-11:30 a.m.—Director of NSF, Erich Bloch

11:30 a.m.-12:00 Noon—Assistant Director for Mathematical and Physical Sciences, Marcel Bardon

12:00 Noon-1:00 p.m.—Lunch

1:00 p.m.-3:00 p.m.—Committee Business, Lawrence Snyder

3:00 p.m.—Adjourn

Reason for closing: The Committee will be reviewing grants and declination jackets which contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This session will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director of NSF on July 6, 1979.

November 14, 1984.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 84-30259 Filed 11-16-84; 8:45 am]

BILLING CODE 7555-01-M

Program Advisory Committee for Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act, as amended

Pub. L. 92–463, the National Science Foundation announced the following meeting:

Name: Program Advisory Committee for Advanced Scientific Computing.

Dates and Times: December 5, 6, 7, 8, 1984—Dec. 5, 7:00 P.M.–10:00 P.M.; Dec. 6, 7, 8:00 P.M. to 5:00 P.M.; Dec. 8, 8:00 A.M.–1:00 P.M.

Places:

Dec. 5—NSF
- Room 504—New Technologies (Dr. John Connolly)
- Room 510—Centers (Dr. Larry Lee)
- Room 543—Networking—(Dan Van Belleghem)

Dec. 6—The ASAE Conference Center, American Society of Association Executives, 1575 Eye Street NW., Washington, D.C. 20005

Dec. 7, 8—NSF, Room 540

Security notice: Due to security regulations, persons wishing to attend the December 5, 6, 7, 8, 1984 meetings must notify the Office of Advanced Scientific Computing by December 3, 1984 (202–357–7558).

Type of meeting: Part Open, Part Closed.

Open, Wednesday Night, Dec. 5th, 1984

Open, Dec. 6, 1984, ASAE Conference Center (Policy Advisory Committee), 8:00 A.M. to 1:00 P.M.

Closed, Dec. 6, 1984, ASAE Conference Center (Policy Advisory Committee), 1:00 P.M. to 5:00 P.M.

Open, Dec. 7, 1984, NSF (Policy Advisory Committee), 8:00 A.M. to 1:00 P.M.

Closed, Dec. 7, 1984, NSF (Policy Advisory Committee), 1:00 P.M. to 5:00 P.M.

Closed, Dec. 8, 1984, NSF, 8:00 A.M. to 1:00 P.M.

Contact person: Dr. John W. D. Connolly, National Science Foundation, Washington, D.C. 20550, Phone: (202) 357–7558.

Summary of minutes: May be obtained from Dr. John W.D. Connolly.

Purpose of committee: To provide advice and recommendations concerning NSF support of advanced scientific computing.

Agenda: The open session will be focused on planning and policy issues. These will include a review of recent actions, budget priorities, and future solicitations for supercomputer centers and networking. The closed sessions will involve review of pending proposals.

Reason for closing: The closed sessions of the meeting will deal with a review of proposals containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director of NSF on July 6, 1979.

November 14, 1984.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 84-30280 Filed 11-16-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Combined Subcommittees on Reactor Radiological Effects and Waste Management; Meeting

The ACRS Subcommittees on Reactor Radiological Effects and Waste Management will hold a combined meeting on November 30 and December 1, 1984, 1717 H Street, NW, Washington.

The meeting will, for the most part, be open to public attendance. Some portions of the meeting may be closed as required for the discussion of privileged information under Exemption 9(b).

The agenda for subject meeting shall be as follows:

Friday, November 30, 1984, Room 1167—8:30 a.m. until the conclusion of business

Saturday, December 1, 1984, Room 1046—8:30 a.m. until the conclusion of business

The Subcommittees will review research programs in the areas of: Chemical engineering (process control), occupational radiation protection, high- and low-level waste management, emergency planning, health effects, and meteorology and hydrology in order to formulate recommendations for the ACRS Report to the Congress on the NRC Safety Research Program for FY 1986 and 1987.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittees will then hear presentations by and hold discussions with representatives of DOE, the NRC Staff, Subcommittee consultants, and other interested persons regrding the previously named topics.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepared telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 13, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-30300 Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on November 28 and 29, 1984, in Room 1046, 1717 H Street, NW, Washington, DC.

Most of the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss proprietary information. A portion of the meeting will be closed to hold discussions which, if held in public session might result in the premature disclosure of information which would in turn frustrate the Commission's ability to implement affected RES programs effectively.

The agenda for subject meeting shall be as follows:

Wednesday, November 28, 1984—8:30 a.m. until the conclusion of business

Thursday, November 29, 1984—8:30 a.m. until the conclusion of business

The Subcommittee will review: (1) NRC–RES thermal-hydraulic research programs for the ACRS Report to Congress, (2) Yankee Atomic Electric's request for an exemption to Appendix K to 10 CFR 50.46, (3) analysis work performed by NRR as part of the ATWS resolution effort, (4) the NRR review of the Westinghouse Owners Group SG Tube Rupture Program, (5) the status of the NRR review of Westinghouse and

ENC ECCS Evaluation Models for Westinghouse UPI plants, and (6) the status of the USI A–43 resolution effort and development of associated Regulatory Guide 1.82.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their respective consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 13, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84–30301 Filed 11–16–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–335]

Florida Power and Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R to 10 CFR Part 50 to Florida Power and Light Company (the licensee), for the St. Lucie Plant, Unit No. 1, located in St. Lucie County, Florida.

Environmental Assessment

Identification of Proposed Action: The exemptions are related to Sections III.A, III.G and III.O of Appendix R to 10 CFR Part 50. Section III.A requires that two separate water supplies be provided. Section III.G calls for fire protection features to protect structures, systems, and components important to safe shutdown. This protection can be obtained by separation, utilizing fire barriers, installation of fire suppression systems, and enclosure of cable and equipment. Section III.O requires an oil collection system. The licensee requested exemptions for St. Lucie 1 in the areas of suppression system installation, separation distance of redundant safe shutdown trains, 3-hour fire rated barriers, 3-hour fire rated doors and the size of the oil collection tank.

These exemptions are responsive to the licensee's application for exemptions dated April 12, 1983, as supplemented by a letter dated April 25, 1983.

The Need for the Proposed Action: The proposed exemptions are needed because the features described in the licensee's request regarding the existing fire protection at their plant for these items are the most practical method for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action: The proposed exemptions will provide a degree of fire protection that is equivalent to that required by Appendix R for other areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impact associated with the proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the St. Lucie Plant Unit No. 1.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing 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 application for the exemptions dated April 12, 1983, and the supplement dated April 25, 1983, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW. Washington, D.C. 20555 and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Dated at Bethesda, Maryland this 9th day of November, 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 84–30303 Filed 11–16–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority: Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering granting of relief from the requirements of section XI of the ASME Boiler and Pressure Vessel Code as allowed by 10 CFR 50.55a to Tennessee Valley Authority (the licensee) for the Sequoyah Nuclear Plant, Units 1 and 2, located in Hamilton County, Tennessee.

Environmental assessment

Identification of Proposed Action: The proposed action would provide relief from hydrostatic testing requirements of the ASME Code Section XI for the installation of additional piping to the existing 14-inch Essential Raw Coolant Water (ERCW) and the diesel generator piping. Two sections of pipe, 10 feet in length and 14 inches in diameter, will be installed in the existing ERCW supply lines.

The Need for the Proposed Action: This new piping will provide a cooling water interface between the existing diesel generator building, turbine building, and the new diesel generator. The licensee was granted relief from ASME Section XI hydrostatic test requirements on December 23, 1982, for the replacement of portions of carbon steel piping in the ERCW until January 1986. The proposed relief requested by the licensee on September 21, 1984, is considered an extension of the previous relief. It is not practical to perform the hydrostatic test since it would involve long sections of 14-inch, 24-inch and 30-inch piping in the supply headers. The ERCW piping has no isolation valves. Also, the existing butterfly valves would have to be isolated since they are not designed to withstand the hydrostatic test pressure.

Environmental Impacts of the Proposed Action: The installation will be performed with both units shutdown. The proposed relief will provide alternate examinations to see that there is adequate assurance of the integrity of the new piping and associated welds as described in the licensee's request. Consequently, the probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined nor does the proposed relief otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed relief. With regard to potential non-radiological impacts, the proposed relief does not affect non-radiological plant effluents and has no other environment impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed relief.

Alternative Use Of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement for the Sequoyah Nuclear Station.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for 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 licensee's letter dated September 21, 1984. This is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington D.C. 20555 and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Bethesda, Maryland, this 13th day of November 1984.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 84-30302 Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Arkansas Power and Light Company; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-51, issued to Arkansas Power and Light Company (the licensee), for operation of the Arkansas Nuclear One, Unit No. 1 (ANO-1) located in Pope County, Arkansas.

In accordance with the licensee's application dated September 12, 1984, as supplemented November 8, 1984, the proposed amendment would provide additional operability requirements, limiting conditions for operation and surveillance requirements related to the Emergency Feedwater System (EFW) as a result of the EFW upgrade modifications which are required by NUREG-0737, Item II.E.1.2, Auxiliary Feedwater System Automatic Initiation and Flow Indication.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples (Example (ii)) of actions involving no significant hazards considerations is an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The proposed Technical Specification modifications impose additional limitations, restrictions and controls and, therefore, fall within this example. Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By December 19, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admited as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specifity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Suite 700, Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Bethesda, Maryland, this 9th day of November 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 84-30305 Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Arkansas Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–51, issued to Arkansas Power and Light Company (the licensee), for operation of the Arkansas Nuclear One, Unit No. 1 (ANO–1) located in Pope County, Arkansas.

The amendment would modify Table 3.5.1.1 of the ANO–1 Technical Specifications in the specification on pressurizer level channels in accordance with the licensee's application dated October 15, 1984. The amendment would reflect the number of instrument channels to monitor pressurizer level which will be available following the refueling for Cycle 7. The modifications necessitating this change will replace the existing pressurizer monitoring system, consisting of three selectable pressure transmitter inputs, with two independent instrument channels. This modification will provide separate instrument loops for pressurizer level completely independent of the non-nuclear instrumentation system in keeping with the alternate shutdown requirements of Appendix R to 10 CFR Part 50. The proposed change does not affect the minimum number of channels required to be operable or the minimum degree of redundancy required by the Technical Specifications.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in

accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is an amendment involving a change to make the license conform to changes in the regulations where the license change results in very minor changes to facility operations clearly in keeping with the regulations (Example (vii)). The proposed Technical Specification modification is a change resulting from a modification in keeping with changes in the regulations and resulting in minor changes to facility operations and, therefore, falls within this example. Therefore, since the application for amendment involves proposed changes that are similar to the example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By December 19, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Suite 700, Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the

Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Bethesda, Maryland, this 9th day of November 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 30306- Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Arkansas Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-51, issued to Arkansas Power and Light Company (the licensee), for operation of the Arkansas Nuclear One, Unit No. 1 (ANO-1), located in Pope County, Arkansas.

The amendment would permit operation of ANO-1 for Cycle 7 in accordance with the licensee's application for amendment dated September 26, 1984, as supplemented by letter dated October 31, 1984. The design cycle length would be 420 effective full power days (EFPD). The amendment would revise the Appendix A Technical Specifications to account for changes in power peaking and control rod worths and would consist of revised Reactor Protection System trip setpoints, regulating rod group insertion limits, axial power shaping rod insertion limits, axial power imbalance limits and control rod group assignments.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain Examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations relates to reload amendments involving no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question (Example (iii)). This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and the NRC has previously found such methods acceptable. The proposed amendment would permit operation for Cycle 7 with fuel that is not significantly different from that used in previous cycles. The mechanical design of the fuel assemblies in Cycle 7 is unchanged from Cycle 6. There are no significant changes in the nuclear design of Cycle 7. The thermal-hydraulic design evaluation remains bounded by the Final Safety Analysis Report and the previous reloads, and the thermal performance of the core during accidents and transients for the Cycle 7 reload remains within the bounds of previously accepted analyses. Therefore, since the application for amendment involves proposed changes that are similar to the example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By December 19, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of

the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth Street, NW., Suite 700, Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Bethesda, Maryland, this 9th day of November 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Divison of Licensing.

[FR Doc. 84-30307 Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Arkansas Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-51, issued to Arkansas Power and Light Company (the licensee), for operation of the Arkansas Nuclear One, Unit No. 1 (ANO-1) located in Pope County, Arkansas.

In accordance with the licensee's application dated October 9, 1984, the amendment would permit the Reactor Coolant System (RCS) to be heated above 280°F with the reactor subcritical and with 14 of the 16 steam system safety valves not operable (they would be gagged to prevent them from opening) and with 2 of the 16 safety valves set to open at higher pressures but low enough to provide overpressure protection. This amendment would allow the licensee to perform the 10-year hydrostatic test of the ANO-1 steam system as required by the Technical Specifications. The RCS would be heated by the use of Reactor Coolant pump operation and, therefore, the ANO-1 steam system would be tested by the use of steam rather than water.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change has been reviewed against each of the above criteria.

The proposed change would not involve an increase in the probability or consequences of an accident previously evaluated because the RCS would not be critical and the pressures in the steam system would not exceed the design margins.

The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated because any postulated accident that could result from such a change would indeed be bounded by accidents previously evaluated.

The proposed change would not involve a significant reduction in a margin of safety because the energy required to provide the pressures for testing could indeed be dissipated through the 2 ungagged safety valves, thus preventing an overpressure in the steam system. This would provide the same or higher protection to the steam system that 16 valves provide when the RCS is operating at full power. In

addition, the proposed change would not incur the stresses to the steam system which would result from the weight of the water if the system were to be tested by water pressure.

On this basis, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

By December 19, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW, Suite 700, Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Bethesda, Maryland, this 9th day of November 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 84-30308 Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270, 50-287]

Duke Power Co. (Oconee Nuclear Station, Units 1, 2 and 3); Exemption

I

The Duke Power Company (the licensee) is the holder of Facility Operating Licenses Nos. DRP-38, DPR-47, and DPR-55 which authorize the operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3 (the facilities), at reactor power levels not in excess of 2568 megawatts thermal (rated power) for each unit. The facilities are Babcock and Wilcox designed pressurized water reactors located at the licensee's site in Oconee County, South Carolina.

The licenses are subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

10 CFR Part 50.55a requires that piping and components of boiling and pressurized water plants by examined and pressure tested to the requirements of Section XI of the ASME Code and that the examinations and tests be completed during each of four (4) ten-year intervals. These ten-year intervals are calculated from the start date of commercial operation of the facility.

10 CFR Part 50.55a(g)(4) requires that licensees update their pump and valve inservice inspection (ISI) and testing (IST) programs to newer edition of Section XI of the Code each ten years. Since the regulations require these updates based on the 10-year anniversary of facility commercial operation, multi-unit sites often find that each unit has an ISI and IST program structured for a slightly different edition of the Code.

III

By letter dated December 2, 1983, the licensee requested an exemption to the requirements of 10 CFR Part 50.55a(g)(4) which would allow the use of a common start date for ISI and IST for all three Oconee units and for that date to be at other than 120 months from the date of commercial operation of any one unit.

According to the regulations, the second ten-year interval for the ISI program began or should begin on July 16, 1983, September 10, 1984, and December 17, 1985, for Oconee Units 1, 2, and 3, respectively. The licensee has requested a common start date of April 1, 1984. The Commission's staff has reviewed this request and has determined that a common ISI start date for the three units has inherent administrative, technical, and cost saving advantages, both for the licensee and the Commission. The staff has concluded that:

1. The same Code edition and addenda, by regulation, can be used as the basis for the ISI program for all three units;

2. Since the units are similar in design, only one ISI program would have to be written and submitted by the licensee;

3. The Commission's staff would have to review and approve only one submittal instead of three; and

4. The change of the ISI start date of April 1, 1984, will not affect the completion of examination and pressure test requirements for the inspection intervals.

The licensee has requested a common IST start date of July 1, 1982. If this exemption request were not granted, Oconee Unit 1 would be required to have an IST program structured to the 1980 Edition of the Code with Addenda through Winter 1980, and Oconee Units 2 and 3 would be required to have their IST programs structured to the 1980 Edition of the Code with Addenda through Winter 1981. Therefore, there would be very little change for the current 10-year update of the IST program.

Since the selected start date of July 1982 is basically one year prior to that which would normally be required by the regulations for Oconee Unit 1, future IST program updates for all three Oconee units will constitute a voluntary update to a newer Code sooner than would normally be required. For Oconee Units 2 and 3, the IST program will be in accordance with a slightly older edition of the Code than would have been required by the regulations, but the Commission's staff concludes that the use of a single IST program for all three Oconee Units is more beneficial in terms of net overall plant safety.

Therefore, the staff concludes that the exemption request should be granted. If a common start date were not established, the ISI and IST programs at Oconee would be accomplished, for some period of time, to two different ASME Codes. Although administratively possible, this situation could contribute to increased personnel errors in the performance of inspection and testing requirements to two different versions of the Code. This can create a substantial and additional administrative workload for what can be described as only nominal technical differences in the inspection and testing requirements.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee's letter of December 2, 1983, is authorized by law, and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby grants to the licensee an exemption from the requirements of 10 CFR 50.55a(g)(4).

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 43822).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 7th day of November 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-30304 Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-499 OL; 50-498 OL]

Houston Lighting & Power Co. et al.; Order

Atomic Safety and Licensing Appeal Board: Administrative Judges: Gary J. Edles, Chairman, Dr. W. Reed Johnson, Thomas S. Moore.

In the matter of Houston Lighting & Power Company, et al. (South Texas Project, Units 1 and 2) Docket Nos. 50-498 OL; 50-499 OL. November 13, 1984.

Order

Oral argument on the pending appeal of the Citizens Concerned About Nuclear Power, Inc. (CCANP) will be held at *9:30 a.m. on Thursday, December 13, 1984,* in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

Appellant CCANP will be allotted a total of one hour for the presentation of argument. It may reserve a portion of its time for rebuttal. The respondents Houston Lighting and Power Company and the NRC staff will be allotted a total of one hour for presentation of argument, to be divided as they see fit. In the absence of agreement, each respondent will be allotted 30 minutes. In preparing for argument, counsel may assume that the Board will be familiar

with the Licensing Board's decision that is the subject of the appeal, as well as the appellate positions of the parties as reflected in their briefs.

Each party is to notify the Secretary to this Board by letter, mailed no later than December 3, 1984, of the name of the person who will be arguing on its behalf. Respondents shall also notify us whether they have reached agreement on an allocation of time.

It is so ordered.

For the Appeal Board.

C. Jean Shoemaker,

Secretary of the Appeal Board.

[FR Doc. 84-30309 Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14232; (812-5922)]

Kansallis North America Inc.; Application for Order Exempting Applicant From all Provisions of the Act

November 9, 1984.

Notice is hereby given that Kansallis North America Inc. ("Applicant"), a corporation organized under the laws of Delaware, c/o Barry L. Dastin, Esquire, White & Case, 1155 Avenue of the Americas, New York, New York 10036, filed an application on August 16, 1984, for a Commission order, pursuant to section 6(c) of the Investment Company Act of 1940 (the "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.

Applicant states that it has been formed by Kansallis-Osake-Pankki, a commercial bank organized under the laws of Finland (the "Bank") solely as a financing vehicle for the Bank. Applicant represents that all of its capital stock will be purchased for cash and held by the Bank and that no other common or capital stock will be issued. Applicant states that its sole business will be the provision of funds to the Bank and substantially all of Applicant's assets will consist of amounts receivable from the Bank. Applicant states that, in connection with prior issuances of commercial paper in the United States, the Bank obtained an exemptive order under section 6(c) of the Act (Investment Company Act Release No. 10821). Applicant states that, because certain institutional purchasers of commercial paper may limit their purchases of debt obligations to obligations of domestic issuers, the Bank has organized Applicant to provide a vehicle through which it may sell commercial paper to such purchasers and others.

Applicant proposes to issue and sell in the United States short-term negotiable promissory notes of the type generally referred to as commercial paper (the "Notes"). Applicant states that the Notes will be direct liabilities of Applicant and will rank *pari passu* among themselves and equally with all other unsecured and unsubordinated indebtedness of Applicant and prior to the claims of holders of Applicant's common stock. Applicant represents that payment of the principal, interest and premium, if any, on the Notes will be unconditionally guaranteed by the Bank and thus the holders of the Notes could be considered holders of the Bank's obligations. Applicant states further that the proceeds of the sale of the Notes (to the extent not applied to repayment of maturing Notes or payment of current expenses) would be place on short-term deposit with, or lent to, the Bank. Applicant states that the deposits or loans would be withdrawn by, or repaid to, Applicant on terms substantially similar to those of the Notes and will allow Applicant to make timely payments on the Notes. Applicant states that the guarantee of the Bank will rank *pari passu* with other insecured and unsubordinated indebtedness of the Bank (including its deposit liabilities) and prior to the claims of holders of the Bank's common stock.

Applicant represents that the Notes will be of prime quality and will be issued in minimum denominations of $100,000 and the other terms of the Notes, including their maturity and manner of offering, will be such as to qualify them for the exemption from registration under the Securities Act of 1933, as amended (the "1933 Act"), provided by section 3(a)(3) of the 1933 Act. Applicant represents further that it will not issue and sell the Notes until it has received an opinion of its special legal counsel in the United States to the effect that, under the circumstances of the proposed offering, the Notes would be entitled to such exemption. Applicant does not request Commission review or approval of counsel's opinion regarding the availability of an exemption under section 3(a)(3) of the 1933 Act. Applicant states that it is not subject to the reporting requirements of the Securities Exchange Act of 1934 and will not become subject to such requirements in connection with issuance and sale of the Notes.

Applicant represents that the presently proposed issue of securities and all future issues in the United States will 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 special United States counsel will have certified that such rating has been received, provided, however, that no such rating will be required if in the opinion of special United States counsel for Applicant, such counsel having taken into account for the purpose thereof the doctrine of integration referred to in Rule 502 under the 1933 Act and various releases and no-action letters made public by the Commission, an exemption from registration is available respecting such issue under section 4(2) of the 1933 Act.

The Notes will be issued and sold by Applicant to a commercial paper dealer or dealers in the United States which will reoffer the Notes as principal to investors in the United States. The Notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold by the dealer to institutional investors and other entities and individuals who normally purchase commercial paper. Applicant undertakes to ensure that the dealer will provide to each offeree who has indicated an interest in Applicant's securities, and prior to any sale of Notes to such offeree, a memorandum which (i) describes Applicant's business and (ii) contains all of the information with respect to the Bank which the Bank is required, pursuant to the terms of its exemptive order under section 6(c) of the Act, to provide to offerees of its commercial paper. The memorandum will be at least as comprehensive as those customarily used in commercial paper offerings in the United States and such memorandum will be updated periodically to reflect material changes in the Bank's financial status to the extent not previously reflected in the memorandum.

Applicant states that it may, from time to time, offer other debt securities for sale in the United States which will in effect be guaranteed by the Bank by means of a guarantee or letter of credit. The proceeds of such securities will similarly be deposited with, or loaned to, the Bank. Future offerings by Applicant of securities in the United States will be made only pursuant to a registration statement under the 1933 Act or pursuant to an applicable exemption from registration under the 1933 Act and any such offering will be made on the basis of disclosure documents appropriate for such

registration or exemption, as the case may be, and in any event at least as comprehensive as those used in the presently proposed offering and in no event less comprehensive than those customarily used in similar offerings in the United States. Such disclosure documents will be updated periodically to reflect material changes in the Bank's financial status to the extent not previously reflected in such disclosure documents. Applicant undertakes to ensure that such disclosure documents will be provided to each offeree who has indicated an interest in Applicant's securities then being offered, prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement 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. Applicant consents to any order granting the relief requested being expressly conditioned upon Applicant's compliance with the foregoing undertakings regarding disclosure documents.

Applicant and the Bank will appoint United States Corporation Company as their agent to accept service or process in any action based on the Notes or the guarantee by the Bank and instituted in any State or Federal court by the holder of any of the Notes. Applicant and the Bank will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect to any such action and will also be subject to suit in any other court in the United States which would have jurisdiction. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes have been paid by Applicant or by the Bank under its guarantee.

Applicant also undertakes, in connection with any future offering in the United States of Applicant's securities, to appoint and have the Bank appoint an agent to accept any process that may be served in any action based on such securities and instituted in any State or Federal court in the City and State of New York in respect of any such action and will also be subject to suit in any other court in the United States that would have jurisdiction. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable so long as such securities remain outstanding and until all amounts due in respect of such securities have been paid.

Applicant does not believe that it is an investment company as defined in the Act; however, Applicant wishes to resolve any uncertainties concerning its status under the Act. Applicant submits that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the applicant may, not later than December 4, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exhange Commission, Washington, DC 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.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30292 Filed 11-16-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23476; (70-7034)]

Middle South Utilities, Inc.; Proposal To Enter Into Revolving Credit Agreement for the Issuance and Sale of Unsecured Promissory Notes

November 9, 1984.

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, proposes a transaction subject to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 and Rule 50(a)(2) thereunder.

Middle South proposes to enter into a revolving credit agreement ("Credit Agreement") providing for the issuance and sale by Middle South of up to $130,000,000 of its unsecured promissory notes to a group of commercial banks. The initial borrowing under the Credit Agreement will be used for the payment of any outstanding promissory notes issued by Middle South to various commercial banks under an existing credit agreement dated as of June 27, 1980, as amended (HCAR No. 21628, June 17, 1980). As of September 30, 1984, there were no balances outstanding under the existing credit agreement. The proceeds of the borrowings under the existing credit agreement were, or will have been, utilized by Middle South to purchase, at various times, the common stocks of certain of its subsidiary companies and for other lawful corporate purposes. Subsequent borrowings under the Credit Agreement will be used by Middle South to purchase additional common stock of its subsidiaries and for other lawful corporate purposes. The issuance and acquisition of such common stock will be the subject of separate filings with this Commission.

Under the terms of the Credit Agreement, Middle South may borrow and reborrow until December 31, 1985 by issuing to the participating banks its unsecured promissory notes payable on December 31, 1985 ("Notes"). Each borrowing and each payment by Middle South will be pro rata among the participating banks according to their respective Commitments. Subject to the right of Middle South at any time on three business days' notice to terminate the Commitments or from time to time to reduce the Commitments then in effect, the Commitments will remain in effect until December 31, 1985. Any such reduction of the Commitments will be accompanied by prepayment of the Notes and accrued interest thereon to the extent that the aggregate principal amount thereof then outstanding exceeds the Commitments of the participating banks as so reduced.

The Notes issued will bear interest from the date thereof on their unpaid principal amount at a rate per annum which shall be a percentage equal to the sum of ¾ of 1% and the product of 107% multiplied by the Base Rate. As used herein, the Base Rate means, at any time of determination thereof, the greater of (i) the prime commercial loan rate of Manufacturers Hanover Trust Company (the "MHTC Rate") then in effect or (ii) the sum of ½ of 1% per annum and the latest three-week moving average of secondary market morning offering rates for three-month certificates of deposit of major United States money market banks (the "C/D Rate"). The interest on the Notes will be payable quarterly in arrears. Based upon the MHTC Rate (12.50%) and the C/D Rate (10.35%) in effect as of October 26, 1984, the effective interest cost to Middle South of the proposed borrowings as of that date would by 14.125% per annum. Middle South presently intends to repay the Notes out of the proceeds of the sale of additional shares of its common stock.

The Notes will be prepayable at any time on two business days' notice in whole or in part without premium.

Middle South will agree to pay to each participating bank, quarterly in arrears, a commitment fee from December 31, 1984 to and including December 31, 1985 (or any earlier date of termination of the Commitments) of ½ of 1% per annum on the average daily unused portion of the Commitments in effect during the period for which payment is made.

The proposal 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 December 4, 1984, to the Secretary, Securities and Exchange Commission, Washingon, DC 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30294 Filed 11-16-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14231; (812-5939)]

Van Kampen Merritt Inc., Insured Municipals Income Trusts and American Portfolio Advisory Service Inc.; Filing of Application for an Order

November 9, 1984.

Notice is hereby given that Van Kampen Merritt Inc. ("Van Kampen"), Insured Municipals Income Trusts, 1901 North Naper Boulevard, Naperville, IL 60566 including the various state insured municipals income trusts and all other similar insured unit investment trusts to be sponsored in the future by Van Kampen (collectively, the "VKM Trust"), and American Portfolio Advisory Service Inc. ("American," collectively, "Applicants") 4200 Commerce Court, Lisle, IL 60532 filed an application on September 14, 1984, and an amendment thereto on November 5, 1984, for an order of the Commission pursuant to section 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 thereunder to the extent necessary to permit Van Kampen to purchase from Bond Investors Guaranty Insurance Co. ("BIG") insurance guaranteeing the payment in a timely manner of interest and/or principal with respect to securities in the VKM Trust; pursuant to section 17(b) exempting Applicants from the provisions of section 17(a) to the extent necessary to permit the VKM Trust to purchase certain insurance coverage and to accept any settlement which might arise from a claim made upon the insurance; and pursuant to section 6(c) exempting Applicants from the provisions of section 26(a)(2)(C) to allow the Trustee of the VKM Trust to make (and deduct as a VKM Trust expense) premium payments on the insurance because a portion thereof might be deemed to be made to an affiliated person. 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 and the rules thereunder for the text of the applicable provisions.

According to the application, the VKM Trust is a unit investment trust, comprised of separate and distinct series, each having a separate portfolio of underlying securities (each such series referred to as a "VKM Unit Investment Series"). The application states that the objectives of the VKM Trust are a high level of current income exempt from Federal income taxation accompanied by conservation of capital. The VKM Trust pursues these objectives by investing in fixed, diversified portfolios of long-term tax-exempt securities. In addition, with respect to each VKM Unit Investment Series, the VKM Trust obtains a municipal bond insurance policy guaranteeing the timely payment of principal and interest on the securities in the portfolio of such Unit Investment Series. the application represents that, during the initial offering period, the units are offered to the public at a public offering price based on the aggregate offering prices of the securities in the portfolio of the VKM Unit Investment Series plus a sales charge. The application further represents that, for secondary market purposes, units are offered at a price based on the aggregate bid prices of the securities in the portfolio of the VKM Unit Investment Series plus a sales charge. Each VKM Unit Investment Series to date has been created under the laws of the State of New York and is governed by the provisions of master and supplemental trust indentures between Van Kampen and Bradford Trust Company (the "Trustee").

Applicants state that each bond in the portfolio of a VKM Investment Series is covered by either "unit trust" or "new issue" municipal bond insurance. Applicants further state that bonds covered by a new issue policy are not usually insured by the VKM Unit Investment Series under its unit trust policy. According to Applicants, the VKM Trust primarily obtains unit trust insurance from AMBAC Indemnity Corporation ("AMBAC") and new issue insurance is obtained directly by the bond issuer. The annual premiums on unit trust policies purchased by the VKM Trust are a VKM Trust expense, whereas the premium for any new issue insurance policy is paid for in advance by the bond issuer.

Applicants state that, in January, 1984, Van Kampen was acquired by Xerox Corporation. Applicants further state that Xerox Credit Corporation, a wholly owned subsidiary of Xerox Corporation, has entered into an agreement with American International Group, Inc., Phibro-Salomon Inc., and Bankers Trust New York Corporation to become a shareholder in Bond Investors Group, Inc., a holding company, the principal asset of which is BIG, an insurance company organized under the laws of Illinois and licensed to engage in the underwriting and issuance of municipal bond guarantee insurance. Because Xerox Credit Corporation will own 25% of the equity of the organization, BIG could be considered an affiliate of an affiliate of Van Kampen.

According to the application, it is anticipated that approximately two-thirds of the total par value of each VKM Unit Investment Series will be insured by AMBAC. The application states, however, that Van Kampen has no assurance that AMBAC has sufficient insuring capacity to make additional commitments for insurance and to guarantee that Van Kampen will be able to continue to bring the VKM Trust to market in the volume Van Kampen desires. The application contends that reserve requirements imposed by various state insurance commissions and demands from competitor sponsors have prevented, and probably will continue to prevent, AMBAC from doing much more than meeting its commitments at the current levels to the sponsors with whom it is presently dealing. Applicants assert that no company or group of companies known to the Applicants has expressed any intention to provide such insurance to the VKM Trust in the immediate future. Applicants further assert that if the Commission does not permit the VKM Trust to acquire the insurance under the

arrangements described herein, Van Kampen will not be able to offer the VKM Trust in the volume it desires.

Applicants propose that BIG will provide direct insurance to the VKM Trust and reinsurance to AMBAC. Van Kampen represents that the aggregate face amount insured under unit trust policies by BIG from time to time for the VKM Trust will not exceed 40% of the aggregate face amount under unit trust policies in all applicable series of the VKM Trust. Only securities purchased after the date of the order of the requested exemption would be considered.

Applicants request an order pursuant to section 17(d) of the Act and Rule 17d-1 thereunder to permit BIG, subject to the aggregate face amount limitations, to provide insurance to the VKM Trust. According to Applicants, the proposed transactions would involve the payment by the VKM Trust to BIG of annual premiums. The premium rates will be determined by BIG within a rate framework applicable to all trust sponsors and filed with applicable state insurance regulatory authorities, based upon its determinations of the creditworthiness of the issuer of the bonds, the risk of default by the bond issuer, the potential liability arising from insuring such bond issue, and the demand of sponsors to apply for such insurance on behalf of their trusts. Applicants represent that the setting of BIG's premiums will not be controlled by the VKM Trust, Van Kampen, Xerox Corporation, Xerox Credit Corporation, or American. Applicants state that, once bonds have been deposited in a VKM Unit Investment Series, the premium rates for each issue of bonds is protected by the policy obtained by the Unit Investment Series. Applicants further state that the insurance policy is non-cancellable and continues in force so long as the Unit Investment Series is in existence, the insurer is still in business, and the bonds continue to be held by such Unit Investment Series.

According to Applicants, its proposed arrangement with BIG will be identical or substantially identical to the insurance currently being offered to all the sponsors of insured municipal bond trusts. Applicants represent that Xerox Corporation will indirectly have only a 25% interest in the earnings of BIG while it maintains a 100% interest in Van Kampen, the success of which is largely dependent upon competitively priced unit investment trusts.

Applicants state that, to eliminate any potential conflict of interest between Van Kampen, the VKM Trust, and any affiliated person of Van Kampen or the VKM Trust, as a condition to the granting of this exemptive request, Van Kampen undertakes that the provisions of the Trust Indentures and Agreements between Van Kampen and the Trustee will be amended to provide that American, a wholly owned subsidiary of Van Kampen and the evaluator of the VKM Trust, will be the exclusive entity to make recommendations to the Trustee with respect to the sale of any security of any VKM Investment Series. Van Kampen and American undertake that the board of directors of American will be increased by three disinterested persons. Applicants further state that American's board of directors will always consist of a minimum of three disinterested directors except for such reasonable periods necessary to fill vacancies. Van Kampen and American further undertake that American's board of directors, including a majority of the directors who are not interested persons, will adopt criteria providing the basis upon which American would make recommendations for the sale of VKM Unit Investment Series securities in a manner reasonably designed to protect the VKM Trust from any overreaching or unfairness with respect to insurance coverage. Finally, Van Kampen and American undertake that American's board of directors, including a majority of the disinterested directors, will review at least semi-annually all sales of portfolio securities for the purpose of determining whether such sales were effected in compliance with the adopted criteria.

The criteria to be adopted for the sale of VKM Unit Investment Series securities will include standards for determining when the cash in the VKM Trust for the series in question is inadequate for sale to satisfy redemptions; procedures for making the sales to satisfy redemptions; criteria for selecting bonds within each series to be put out for bids; and provisions for record keeping, reporting, and reviewing the sales of bonds. Applicants represent that any bonds in the portfolio which are in default or, except under compelling circumstances, which are in imminent danger of default, in the reasonable judgment of the Company, will not be sold. However, Applicants state, sales of bonds which have been insured by the issuer will not be restricted.

Applicants also request an exemption from the provisions of section 17(a)(1) of the Act to the extent that BIG might, by providing insurance directly to the VKM Trust or through reinsurance arrangements be deemed, as principal, to be selling any "property" to the VKM Trust, and an exemption from the provisions of section 17(a)(2) of the Act, to the extent that, in the event of a default on a bond, the insuring companies acquire an interest in either the coupons or principal of one of the bonds. Applicants assert that the terms of the proposed transaction, including the consideration to be paid or received are resonable and fair and do not involve overreaching on the part of any person concerned. The premiums to be charged with respect to providing such insurance and the amounts to be paid by the affiliated parties to the VKM Trust are fixed in nature and easily ascertainable (because they involve the payment of either a predetermined amount of interest due on a bond or the principal amount thereof at the time of maturity). Applicants further assert that the transaction is consistent with the policy of the VKM Trust, i.e., that it invest in municipal bonds insured as to the payment of principal and interest, and the transaction is consistent with the general policy and purposes of the Act.

Applicants also request an order of the Commission pursuant to section 6(c) of the Act for exemption from the provisions of section 26(a)(2)(C). Applicants state that the proposed transaction involves the payment by the Trustee on an annual basis of the insurance premiums necessary to keep the proposed insurance in force, and such payments may be deemed to be made to an affiliated person of the depositor of or principal underwriter of the VKM Trust. Applicants contend, however, that, even if the Commission permits the purchase of such insurance on behalf of the VKM Trust, the Trustee will not agree to the proposed transaction unless it is entitled to charge the VKM Trust for the expense of the required insurance premiums.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 3, 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 Applicants at the addresses 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 fthe Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30293 Filed 11-16-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21479; (SR-CBOE-84-29)]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Order Granting Accelerated Partial Approval of Proposed Rule Change

November 13, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 19, 1984, the Chicago Board Options Exchange, Incorporated ("CBOE") LaSalle at Van Buren, Chicago, IL 60605, filed with the Securities and Exchange Commission the proposed rule change described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

In its filing, CBOE proposes to: (1) Commerce closing rotations in expiring series of individual stock options on the last trading day prior to expiration as soon as practicable after 3:00 p.m. but not until a final price for the underlying stock is established on the primary market; and (2) extend open trading in expiring series of index options on the last trading day before expiration from 3:00 p.m. to 3:10 p.m. and eliminate, except in unusual circumstances, closing rotations in the expiring index options series. CBOE indicates that the statutory basis for both portions of the proposed rule change in section 6(b)(5) of the Act.

The CBOE states that the first portion of the proposed rule change would permit closing rotations in expiring series of individual stock options to be priced in relationship to the closing price in the primary market for the underlying stock. Under existing rules, closing rotations in expiring series of individual stock options commence at 3:00 p.m. CBOE has found, however, that a 3:00 p.m. closing rotation has not proved to be "entirely adequate to permit utilization of the closing price of the stock in establishing prices for the expiring option series." In particular, CBOE notes that orders to buy or sell substantial blocks of stock, that can have a material effect on the closing price of the stocks, are now occurring at the close of trading on the last business day before expiration, and that these transactions are not being reported over the Consolidated Transaction Reporting System until several minutes after 3:00 p.m. CBOE asserts that if these late reports reflect a change in the closing price of an underlying stock, the pricing of expiring options series during the closing rotation may be disrupted. The proposed rule change would avoid such pricing disruptions by permitting the closing rotations to commence only after the final price of the underlying stock has been established.

CBOE also has proposed to permit open trading in expiring series of index options to continue until 3:10 p.m. Chicago time on the Friday prior to expiration and eliminate closing rotations in such series, except in unusual circumstances.[1] In this regard, CBOE states that closing rotations in expiring index options series do no appear necessary because in-the-money long call and put positions are cash settled at expiration by the exercise procedures at parity with the closing index price. CBOE also indicates that extending open trading for expiring index option series to 3:10 p.m. would conform their trading hours to the trading hours of other standardized options.[2] In addition, CBOE notes that the rule change would conform CBOE's rule to the rules of the American Stock Exchantge, Inc. ("Amex").[3]

Interested persons are invited to submit written data, views 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 Fifth Street, NW., Washington, DC 20549. Reference should be made to file No. SR-CBOE-84-29.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the CBOE.

The Commission finds that the second portion of the proposed rule change—the portion permitting open trading in expiring index options series until 3:10 p.m., without closing rotations—is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the second portion of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that this part of the proposed rule change is identical to Amex rules that were published for comment and approved by the Commission. In addition, CBOE's S&P 100 and S&P 500 index options series will expire November 17, 1984, and approval of this portion of the rule change will enable the change to be in effect for the traditing day of November 16, 1984.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the portion of the proposed rule change eliminating closing rotations for expiring series of index options and extending open trading in such series to 3:00 p.m. on the last trading day prior to expiration hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30290 Filed 11-16-84; 8:45 am]

BILLING CODE 8010-01-M

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[1] Under CBOE Rule 6.2, Commentary .02, floor officials would be able to require a closing rotation for expiring index option series if unusual market conditions exist.

[2] Non-expiring individual stock options, for example, normally trade until 3:10 p.m. Chicago time.

[3] *See* Amex Rules 903C and 918C. *See also* Securities Exchange Act Release No. 20169, September 9, 1983, 48 FR 41545, September 15, 1983, in which the Commission approved a similar proposal by Amex to eliminate closing rotations in expiring index option series and to extend free trading in such series to 3:10 p.m. Chicago time on the last trading prior to expiration. *See also* the Commission's temporary approval of Amex's proposed rule change in Securities Exchange Act Release No. 19977, July 15, 1983, 48 FR 33388, July 21, 1983.

[Release No. 21476; (SR-CBOE-84-26)]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

November 9, 1984.

The Chicago Board Options Exchange, Incorporated ("CBOE") LaSalle at Van Buren, Chicago, IL 60605, submitted on August 15, 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 amend the Exchange's rules relating to arbitration of disputes between public customers and an associated person or a member of the Exchange. These amendments provide, in pertinent part, that the limit on small claims proceedings will be raised from $2,500 to $5,000 exclusive of interest and costs; that the time limitation upon submission will not apply to any case which is directed to arbitration by a court; that, where permitted by law, the statute of limitations will be tolled when a claimant, rather than all parties, files a submission agreement; that where there are multiple claimants or respondents, the Director of Arbitration shall have discretion to award more than one peremptory challenge to each party, and that there will be unlimited challenges for cause; and that the arbitrators may bar a respondent from presenting a defense if the respondent pleads only a general denial or fails to specify all available defenses. The proposed rule change also establishes a new fee schedule which slightly increases filing fees in certain cases.

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. 21360, September 27, 1984) and by publication in the **Federal Register** (49 FR 39401, October 5, 1984). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to self-regulatory organizations and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–30291 Filed 11–16–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular]

Notes; Public Debt Series—No. 35–84

Washington, November 9, 1984.

The Secretary announced on November 8, 1984, that the interest rate on the bonds designated Bonds of 2009–2014, described in Department Circular—Public Debt Series—No. 35–84, dated November 1, 1984, will be 11¾ percent. Interest on the bonds will be payable at the rate of 11¾ percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 84–30246 Filed 11–16–84; 8:45 am]

BILLING CODE 4810–40–M

VETERANS ADMINISTRATION

Advisory Committee on Former Prisoners of War; Meeting

The Veterans Administration gives notice under Pub. L. 92–463, section 10(a)(2) that a meeting of the Advisory Committee of Former Prisoners of War will be held at the Veterans Administation Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, on December 13 and 14, 1984. The purpose of the Committee is to consult with and advise the Administrator of Veterans' Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war and on the need of such veterans with respect to compensation, health care, and rehabilitation.

The meeting will convene at 9 a.m. both days in Room 119. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Miss Linda Gardner, Administrative Assistant to the Chief Benefits Director, Veterans Administration Central Office (phone 202/389–2455) prior to December 3, 1984.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. H.B. Mars, Acting Director, Compensation and Pension Service, Department of Veterans Benefits, Room 400, Veterans Administration Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Summary minutes of the meeting and rosters of the Committee members may be obtained from Miss Linda Gardner at the aforementioned address.

Dated: November 9, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84–30247 Filed 11–16–84; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 224
Monday, November 19, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL COMMUNICATIONS COMMISSION

FCC to hold open Commission meeting, Wednesday, November 21, 1984.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, November 21, 1984, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—*Title:* Report and Order to amend Part 2 of the Commission's Rules to provide frequencies for a Government and non-Government fixed service. *Summary:* The FCC will consider the amendment of its regulations to reallocate frequencies in the 900 MHz band for a Government and non-Government fixed service.

General—2—Report and Order to amend the Commission's Rules to provide additional frequencies for the use of Aural Broadcast Studio Transmitter Links and Intercity Relay Stations. *Summary:* The FCC will consider the amendment of its regulations to reallocate new frequencies for Aural Broadcast Studio Transmitter Links and Intercity Relay Stations.

General—3—*Title:* Amendment of Parts 2, 15, and 90 of the Commission's Rules and Regulations to Allocate Frequencies in the 896–902 MHz and 935–941 MHz bands for Private Land Mobile Use. *Summary:* The Commission will consider whether to adopt a Notice of Proposed Rule Making which proposes to release additional frequencies in the 900 MHz band for use by the Private Land Mobile Radio Services.

General—4—*Title:* Notice of Proposed Rule Making to amend Parts 2 and 22 of the Commission's Rules to provide additional frequencies for cellular service use. *Summary:* The FCC will consider a proposal to amend its regulations to reallocate frequencies at 845–851 MHz and 890–896 MHz for additional cellular use.

General—5—*Title:* Rulemaking Regarding Spectrum Allocation to Establish a Land Mobile Satellite Service for the Provision of Various Common Carrier Services (RM-4247). *Summary:* The Commission will consider whether to adopt a Notice of Proposed Rulemaking allocating spectrum to establish a Land Mobile satellite service and, is so, what procedures to follow regarding rules changes and acceptance of applications.

General—6—*Title:* Creation of An Additional Private Radio Service. *Summary:* The Commission will consider whether to adopt rules to implement the new Private Radio Communications Service (PRCS).

General—7—*Title: Report and Order* to amend the Commission's Rules to allocate spectrum for a Public Air-ground radiotelephone service. *Summary:* The FCC will consider whether to adopt a *Report and Order* to allocate frequencies in the 900 MHz bands for a new public air-ground radiotelephone service.

Common Carrier—1—*Title:* Memorandum Opinion and Order in the Matters of Pacific Bell, Southern Bell and South Central Bell, Southwestern Bell, New York Telephone and New England Telephone, New Jersey Bell, Northwestern Bell, Pacific Northwest Bell and Ameritech Operating Companies Petitions for Waiver of Section 64.702 of the Commission's Rules and Regulations To Provide Certain Types of Protocol Conversion Within Their Basic Telephone Networks. *Summary:* The Commission will consider whether to waive the *Computer II* Rules to enable the petitioning Bell Operating Companies to provide certain types of protocol conversion within their telephone networks, specifically X.25-to-X.75 protocol conversion.

Common Carrier—2—*Title:* Revisions to Tariff F.C.C. No. 259 (WATS) for Advanced 800 Services. *Summary:* Commission consideration of Transmittal No. 173 proposing to revise several existing Advanced 800 services and in addition to offer one new service, Call Prompter. MCI has filed a petition to reject or in the alternative to suspend and investigate on the grounds that an insufficient showing has been made under section 61.38 of the Commission's Rules.

Common Carrier—3—*Title:* AT&T Communications, Inc., Revisions to Tariffs F.C.C. No. 263 and F.C.C. No. 1 filed under Transmittal No. 79. *Summary:* The Commission will consider applications for review of an order by the Chiefs, Common Carrier Bureau denying petitions to reject or suspend tariff revisions filed by AT&T Communications, Inc. implementing its Block of Time optional calling plan.

Common Carrier—4—*Title:* Guidelines for Dominant Carriers Optional MTS Rates and Rate Structure Plans. *Summary:* The Commission will consider issuing a Notice of Proposed Rulemaking to invite comment on the adoption of guidelines for optional MTS rates and rate structures.

Common Carrier—5—*Title:* In the Matter of Changes in the Corporate Structure and Operations of the Communications Satellite Corporation. *Summary:* The Commission will consider the petitions for reconsideration, filed by Communications Satellite Corporation, M/A-COM, Inc. and United Satellite Action, of the actions taken in the Second Memorandum Opinion and Order in the *Comsat Structure* proceeding.

Common Carrier—6—*Title:* Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor: Sixth Report and Order (CC Docket No. 79-252). *Summary:* The Commission will consider issues raised in its NPRM concerning potential mandatory detariffing of all carriers subject to forbearance.

Common Carrier—7—*Title:* In the Matter of AT&T Earnings on Interstate and Foreign Services During 1978. *Summary:* The Commission will consider the issues that are presented by earnings that arose from the interstate and foreign service tariffs of AT&T during 1978.

Mass Media—1—*Title:* Application for Review of the Mass Media Bureau's action denying a petition for reconsideration and returning the low power television application of Arnold N. Applebaum for Channel 19, Paso Robles, California. *Summary:* The Commission will consider whether the Bureau properly returned, as unacceptable for filing, the application of Arnold N. Applebaum for a new low power television station on Channel 19, Paso Robles, California.

Mass Media—2—*Title:* Application for Review of the Mass Media Bureau's action denying a petition for reconsideration and returning the low power television application of Las Manzanas Television Company for Channel 53 in Seattle, Washington. *Subject:* The Commission will consider whether the Bureau properly returned the application of Las Manzanas for a new low power television station at Seattle, Washington, as unacceptable for filing.

Mass Media—3—*Title:* Application for review of the Mass Media Bureau's action denying a petition for reconsideration and returning the low power television application of Local Service Television, Inc., for a new low power television station on Channel 13 in Miami, Florida. *Subject:* The Commission will consider whether the Bureau properly returned the application of Local Service Television, Inc., for a new low power television station, as unacceptable for filing.

Mass Media—4—*Title:* Applications for consent to the assignment of licenses of UHF Stations KTXA-TV, Arlington, and KTXH-TV, Houston, Texas, to wholly owned subsidiaries of Gulf Broadcasting Company. *Summary:* The Commission will consider the applications to assign the

licenses of UHF Stations KTXA–TV, Arlington, and KTXH–TV, Houston, Texas, to wholly owned subsidiaries of Gulf Broadcasting Company. The assignees request grant of these applications pursuant to Note 4 of § 73.3555 of the Commission's Rules, which permits applications for UHF television stations to be considered on a case-by-case basis to determine whether common ownership of radio/television combinations in the same market would be in the public interest.

Mass Media—5—*Title:* Petition for Rule Making to delete a VHF television channel from New York City, New York and reassign that channel to Long Island, New York. *Summary:* The Commission will consider a Petition for Rule Making filed by Long Island Coalition for Fair Broadcasting, Inc. to amend the Television Table of Assignments by deleting a VHF channel from New York City, New York and reassigning that channel to Long Island, New York.

Mass Media—6—*Title:* Amendment of the List of major television markets. *Summary:* The Commission will consider adopting a *Report and Order* adding Melbourne and Cocoa, Florida to the Orlando-Daytona Beach, Florida major television market designation.

Mass Media—7—*Title:* Amendment of Part 74, Subpart L of the Commission's Rules Pertaining to FM Radio Broadcast Translator Stations. Amendment of Subparts F and L of Part 74 to permit use of alternative input sources for FM broadcast translator stations and to permit uniform 10 watt FM translator power. The Commission will consider the request by Moody Bible Institute for partial reconsideration of the original decision to deny Moody's previous request to amend the FM broadcast translator rules.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–30322 Filed 11–15–84; 9:37 am]

BILLING CODE 6712–01–M

2

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 12–84]

Announcement in Regard to Commission Meetings and Hearings.

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, and Time, and Subject Matter

Tues., Novc. 27, 1984 at 10:30 a.m.—Oral Hearings on objections to decisions issued under the Second Czechoslovakian Claims Program:
CZ–2–1107—Ludvika Kabatek
CZ–2–1101—Joseph Kabatek
CZ–2–0070—Paul Loyd, et al

Wed., Nov. 28, 1984 at 10:30 a.m.—Consideration of Final Decisions and Amended Final Decisions issued under the Second Czechoslovakian Claims Program, and Proposed Decisions issued under the Vietnam Claims Program (Pub. L. 96–606).

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111–20th Street, NW., Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111–20th Street, NW., Room 409, Washington, D.C. 20579. Telephone: (202) 653–6155.

Dated at Washington, D.C. on November 13, 1984.

Judith H. Lock,

Administrative Officer.

[FR Doc. 84–30415 Filed 11–15–84; 1:47 pm]

BILLING CODE 4410–01–M

3

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, December 5, 1984.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of November, 1984.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523–5920.

DATE OF NOTICE: November 14, 1984.

Mr. Rowland K. Quinn, Jr.,

Executive Secretary, National Mediation Board.

[FR Doc. 84–30416 Filed 11–15–84; 1:47 pm]

BILLING CODE 7550–01–M

federal register

Monday
November 19, 1984

Part II

Federal Trade Commission

16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles; Final Trade Regulation Rule

FEDERAL TRADE COMMISSION

16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Final Trade Regulation Rule.

SUMMARY: The Federal Trade Commission issues a final Rule, the purpose of which is to reduce oral misrepresentations, and consumer reliance thereon, in the used car transaction by providing consumers with accurate information concerning warranty coverage and other important information. The Rule requires used car dealers to disclose, on a window sticker ("Buyers Guide") posted on used cars offered for sale to consumers, information about the warranty coverage offered, the meaning of an "as is" sale and other related information.

This notice contains the Rule's Statement of Basis and Purpose incorporating a Regulatory Analysis and the text of the Rule.

EFFECTIVE DATE: May 9, 1985.

ADDRESS: Requests for copies of the Rule and the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Lemuel W. Dowdy, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 (202) 376–2893.

SUPPLEMENTARY INFORMATION:

List of Subjects in 16 CFR Part 455

Motor vehicles, Trade practices.

TRADE REGULATION RULE CONCERNING THE SALE OF USED MOTOR VEHICLES, STATEMENT OF BASIS AND PURPOSE AND REGULATORY ANALYSIS

I. Introduction

A. Overview of the Rule

In recent years, more than ten million used cars have been sold annually by franchised and independent dealers. For many consumers, the purchase of a used car represents a substantial, necessary investment in a reliable means of transportation. Despite the significance of this investment and the relative unfamiliarity of most consumers with the mechanical operation of an automobile, many used car buyers currently receive little accurate warranty and mechanical condition information to assist them in their purchase. Consumers' ability to obtain this information has been hampered by various unfair and deceptive practices identified during the course of this rulemaking proceeding. The record establishes that these practices have resulted in substantial consumer injury in the used car market. To correct these unfair and deceptive practices in the used car industry, it is necessary to promulgate the accompanying Trade Regulation Rule. By providing for the disclosure at the point of sale of information concerning the extent of warranty coverage, the Commission believes that used car dealers will be discouraged from engaging in the deceptive practices established in the record. Instead, used car buyers will be able to make informed purchasing decisions based on accurate and complete information about warranty protection offered.

The record demonstrates that used car dealers and their agents have engaged in deceptive sales practices. These include:

(1) Misrepresenting the mechanical condition of a used vehicle;

(2) Misrepresenting the terms of any warranty offered in connection with the sale of a used vehicle; and

(3) Representing that a used vehicle is sold with a warranty when the vehicle is sold without a warranty.

The record also demonstrates that used car dealers and their agents engage in unfair practices. These include:

(1) Failing to disclose, prior to sale, that a used vehicle is sold without any warranty; and

(2) Failing to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle.

The Commission has concluded that these acts and practices are deceptive or unfair within the meaning of Section 5 of the Federal Trade Commission Act and are appropriately remedied by the Trade Regulation Rule being promulgated today.

The primary purpose of this Rule is to prevent and discourage oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage. The Rule provides a uniform method for written disclosure of such information by means of a "Buyers Guide." The Rule requires clear disclosure through the Buyers Guide of the existence of any warranty coverage and of the terms and conditions of any warranty offered in connection with the sale of a used car, including the duration of coverage and the percentage of total repair costs to be paid by the dealer. The Rule also includes certain additional disclosures that are incorporated on the Buyers Guide, including: A list of the fourteen major systems of an automobile and defects that can occur in these systems; a suggestion that consumers ask the dealer if a pre-purchase inspection is permitted; and a warning against reliance on spoken promises that are not confirmed in writing. When the used car transaction is conducted in Spanish, the Rule requires that a Spanish-language version of the Buyers Guide be provided to the consumer, and the Rule includes a text for a Spanish-language version. In addition, the Rule provides that the Buyers Guide disclosures are to be incorporated by reference into the sales contract, and are to govern in the event of an inconsistency between the Buyers Guide and the sales contract. The Rule further requires dealers to give copies of the Buyers Guide reflecting the final terms of sale to the consumer.

This overview has highlighted the central elements of the Rule. Virtually all other provisions of the Rule, including certain definitions, are designed to ensure the integrity of this disclosure scheme. The Commission believes that this Rule, which requires that warranty information be provided in written form, will effectively curb many of the unfair and deceptive practices identified in the rulemaking record with minimal intrusion into the business operations of used car dealers.

B. Historical Background

The used car rulemaking proceeding grew out of an investigation begun by the Commission's Seattle Regional Office in 1973. That investigation resulted in a 1973 report which recommended that the Commission, pursuant to its authority under section 6(g) of the FTC Act,[1] regulate the sale of used cars through a system of required inspections by dealers, disclosure of defects, and mandatory warranties on parts found to be without defects.[2] Subsequently, at the Commission's direction, the staff of the Bureau of Consumer Protection in Washington, D.C. continued the investigation.

In 1975, during the pendency of the staff investigation, the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act ("Magnuson-Moss Act") became effective.[3] In Title I of the

[1] 5 U.S.C. 46(g).

[2] Seattle Regional Office Used Car Analytical Programming Guide (September 17, 1973).

[3] Pub. L. 93–637 (Jan. 4, 1975), codified at 15 U.S.C. 2301 *et seq.*

Magnuson-Moss Act, Congress directed the Commission to initiate a rulemaking proceeding dealing with "warranties and warranty practices in connection with the sale of used motor vehicles." [4] This statutory directive expressly authorized the Commission to proceed under both Title I of the Magnuson-Moss Act and any other statutory authority available to the Commission.[5]

An Initial Staff Report by the staff of the Bureau of Consumer Protection was published in December 1975. In that report, the staff recommended that the Commission initiate a rulemaking proceeding.[6] The Initial Staff Report described warranty practices, as well as a variety of other practices related to the sale of used cars, that, in the staff's opinion, violated Section 5 of the Federal Trade Commission Act,[7] as well as Title I of the Magnuson-Moss Act.

In compliance with the congressional directive, the Commission, after reviewing the Initial Staff Report, published an Initial Notice of Proposed Rulemaking ("Initial Notice") on January 6, 1976.[8] The Initial Notice proposed a Trade Regulation Rule designed to remedy the allegedly unlawful practices through (1) a "window sticker" posted on each car disclosing warranty terms, warranty disclaimers, prior use of the vehicle, mileage, prior repairs, and dealer identification information; and (2) a specified form of warranty disclaimer to be used in "as is" sale contracts. Additional remedies suggested for public comment in the Initial Notice included disclosure of mechanical defect information and a "pre-purchase inspection opportunity" which would have given consumers the right to take a car to a third party for inspection prior to purchase.

The Commission amended the Initial Notice with the publication of additional questions for public comment in a May 21, 1976, **Federal Register** notice ("Second Notice").[9] These additional questions focused on whether dealers should be required to disclose known defects and to disclose whether or not each car had been inspected for defects. The questions also sought comment on the best format for communicating the disclosures to the consumer. Other questions published in this Second Notice asked whether the Vehicle Identification Number (VIN) should be added to the form and whether disclosures should be required in sales of used cars between dealers.

Following publication of the Second Notice, the staff attempted to focus public comment by preparing and circulating to interested parties a suggested format (in the form of a window sticker) [10] for the disclosures proposed in the Initial and Second Notices. A Final Notice establishing the dates and locations of public hearings, setting the final date for receipt of written comments, and designating issues for consideration in accordance with § 1.13(d) (5) and (6) of the Commission's Rules of Practice, 16 CFR 1.13(d) (5), (6), was published on September 15, 1976.[11]

Written comments on the Initial and Second Notices and on the suggested format were received through October 22, 1976. Numerous comments were made by consumers, used car dealers, dealers associations, consumer groups, state and local law enforcement officials, members of Congress, legal aid attorneys, auto rental and leasing associations, federal agencies and other interested parties. Books, articles, research reports, and interviews conducted by Commission staff were also submitted for the rulemaking record.[12]

Following the written comment period, public hearings were held in six cities from December 6, 1976, through May 4, 1977.[13] All witnesses were given an opportunity to make an opening presentation followed by cross-examination conducted by Commission staff and by designated representatives of used car dealers, the auto rental and leasing industries, and consumer groups.[14] Rebuttal statements were accepted after the hearings until August 31, 1977.[15]

The written comments, the materials placed on the record by the Presiding Officer and the Commission staff, the hearing transcripts and exhibits, and the rebuttal statements comprise the principal evidentiary record of this proceeding. After the receipt of rebuttal statements, reports to the Commission based on the rulemaking record were prepared by the Presiding Officer,[16] who made findings on the issues that had been designated by the Commission for the public hearings, and by the Commission staff,[17] who summarized and analyzed the record evidence and made recommendations to the Commission for a Trade Regulation Rule.

The Presiding Officer found *inter alia*, that many used car dealers misrepresent or fail to disclose material facts relating to the mechanical condition of used cars and the dealer's responsibility for making repairs after sale. The staff, after coming to a similar conclusion, recommended a revised Trade Regulation Rule which would have required mandatory inspection and disclosure of defects regarding certain mechanical and safety components of used cars. The revised rule would have also required disclosures of warranty coverage, repair cost estimates, prior use, mileage, availability of service contracts, vehicle identification information, and dealership identification information. These disclosurers were to be made on a "window sticker" attached to the side window of the used car.

Pursuant to § 1.13(h) of the Commission's Rules of Practice, 16 CFR 1.13(h), publication of the Final Staff Report initiated a sixty-day comment period which afforded the public an opportunity to comment on the reports

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[4] 15 U.S.C. 2309(b).

[5] *Id.*

[6] Staff Report on the Used Motor Vehicle Industry: Proposed Trade Regulation Rule and Staff Memorandum (hereinafter cited as "Initial Staff Report"). The rulemaking record of this proceeding has been designated No. 215–54 in the Commission's Public Reference Branch. The Initial Staff Report and related documents are filed in category B of the record and are contained in volumes labeled 215–54–1–2.

[7] 15 U.S.C. 45.

[8] 41 FR 1089 (1976).

[9] 41 FR 20896 (1976). The publication of the Second Notice resulted from early comment criticizing the initial proposed rule.

[10] See Final Staff Report at Appendix D, *infra* n. 17.

[11] 41 FR 39337 (1976).

[12] The written comments and other written materials are filed in categories "C–M" of the rulemaking record and are contained in volumes 215–54–1–3 through 215–54–1–13.

[13] Hearings were held in Boston, Cleveland, Dallas, Los Angeles, San Francisco, and Washington D.C. The transcripts of the hearings were filed in Category "P" of the proceeding and are contained in volumes labeled 215–54–1–16.

[14] The designated representatives were Automobile Owners Action Council; San Francisco Consumer Action and California Public Interest Research Group; Car and Truck Renting and Leasing Association; American Automotive Leasing Association; and National Automobile Dealers Association.

[15] Rebuttal statements are filed in Category "Q" of the record and are contained in volumes labeled 215–54–1–17.

[16] Report of the Presiding Officer on Proposed Trade Regulation Rule For Sale of Used Motor Vehicles (16 CFR Part 455), May 22, 1978 (hereinafter cited as "Presiding Officer's Report"). Notice of publication of the Presiding Officer's Report was given on June 30, 1978. 43 FR 28521 (1978).

[17] Sale of Used Motor Vehicles, Final Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 455), September, 1978 (hereinafter cited as "Staff Report"). Notice of publication of the Staff Report was given on November 14, 1978. 43 FR 52729 (1978). Many of the citations in this statement are to the Staff Report, which recounts and summarizes the records evidence.

of the Presiding Officer and the staff. This comment period was originally scheduled to close on January 4, 1979. In order to allow additional time for comments, including comments on an FTC Bureau of Economics report placed on the record on January 5, 1979, the Commission extended the comment period for thirty days to February 13, 1979.[18]

On July 26, 1979, the staff's summary of post-record comments, memorandum recommending modifications in the proposed rule, and a memorandum from the Director of the Bureau of Consumer Protection outlining an alternative "optional inspection" rule were forwarded to the Commission. On September 25, 1979, the Commission heard oral presentation from selected rulemaking participants who had been invited to present their views directly to the Commission as provided in § 1.13(i) of the Commission's Rules, 16 CFR 1.13(i).[19] On October 11, 1979, the Commission met to consider whether to adopt a final rule, and if so, what form the rule should take. Although no final determination was made during that meeting, the Commission rejected the mandatory inspection approach recommended by staff and directed the staff to analyze an optional inspection rule.[20]

On April 4, 1980, the staff forwarded to the Commission a memorandum recommending adoption of an optional inspection rule. On May 16, 1980, the Commission met to consider the redrafted rule and, with certain modifications, tentatively adopted the staff recommendations.[21] The Commission further directed the staff to prepare a request for technical comment by the public on the likely effectiveness of the optional inspection proposal, the format and comprehensibility of the proposed disclosure form and any drafting errors in the text of the proposed Rule. Pursuant to § 1.14(a) of the Commission's Rules of Practice, 16 CFR 1.14(a), the Commission published the request for comment in the August 7, 1980, **Federal Register**.[22] Comments were accepted through November 7, 1980.[23]

On January 14, 1981, the staff forwarded to the Commission a summary of the technical comments and final recommendations for modifying the proposed optional inspection rule in light of those comments. A supplemental recommendations memorandum and revised summary of comments was forwarded by staff to the Commission on February 20, 1981. On April 14, 1981, the Commission met and determined not to adopt the "optional inspection rule." In its place, the Commission approved a Rule requiring, by means of a window sticker, the disclosure of warranty information and the disclosure of certain major defects known to the dealer at the time of sale. At the same meeting, the Commission directed the staff: to revise the list of defects that must be disclosed if known; to contract for consumer testing of the comprehensibility of the window sticker; to conform the text of the Rule to the concepts adopted in substance by the Commission; and to return the Rule and the Statement of Basis and Purpose to the Commission for promulgation.

On August 14, 1981, the Commission voted to promulgate a final Trade Regulation Rule Concerning the Sale of Used Motor Vehicles and publish a Statement of Basis and Purpose for the Rule.[24] On August 18, 1981, the Federal Trade Commission promulgated the final rule. [16 CFR Part 455 (1982)].

Section 21 of the FTC Improvements Act of 1980, 15 U.S.C. 57a–1 (Supp. IV 1980), gave Congress the power to veto a rule promulgated by the FTC if the Senate and the House of Representatives each adopted a concurrent resolution disapproving the rule within the time period provided in the statute. On May 18, 1982, the Senate passed Senate Concurrent Resolution 60 disapproving the Used Car Rule by a vote of 69–27. 128 Cong. Rec. Section 5402 (May 18, 1982). On May 26, 1982, the House of Representatives, by a vote of 286–133, joined the Senate in disapproving the FTC rule. 128 Cong. Rec. H2882–83 (May 26, 1982). Pursuant to 15 U.S.C. 57a–1, these actions constituted a veto of the rule. However, the legislative veto provision in Section 21 of the FTC Improvements Act of 1980 was held unconstitutional by the Supreme Court on July 6, 1983, *U.S. Senate* v. *FTC*, —— U.S. —— (1983), 103 S. Ct. 3556 (1983); *U.S. House of Representatives* v. *FTC*, —— U.S. —— (1983), 103 S. Ct. 3556 (1983). This decision invalidated the Congressional veto of the rule.

Prior to the Congressional veto, several parties sought judicial review of the rule in the United States Court of Appeals for the Second Circuit, *Miller Motor Car Corporation, et al.* v. *FTC*, 2d Cir. No. 81–4144. Pursuant to a stipulation by the parties in that proceeding, the court entered an order permitting withdrawal of these causes pending Congressional consideration of the rule. The order provided that the petitioners could reinstate the cases twenty days after any decision of the Supreme Court of the United States that has the effect of invalidating Senate Concurrent Resolution 60. On July 26, 1983, the lawsuit challenging the Used Car Rule was duly reinstated.

On August 9, 1983, the Commission determined that the rule would become effective six months after entry of a judgment by the court of appeals disposing of the reinstated petitions for review in *Miller Motor Car Corporation*. On the same date, the Commission determined to reexamine the rule to consider whether modifications are appropriate.

On August 16, 1983, petitioners in *Miller Motor Car Corporation*, filed a motion in the United States Court of Appeals for the Second Circuit seeking leave to make additional oral submissions and written presentations before the Federal Trade Commission. Pursuant to this motion and the Commission's own August 9, 1983, decision to reconsider the rule, the Commission entered into a joint stipulation with petitioners agreeing to a remand. On September 14, 1983, the court of appeals entered an order remanding the Used Car Rule proceeding to the Commission and granting the petitioners in *Miller Motor Car Corporation* leave to make additional submissions.

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[18] 44 FR 914 (1979). These post-record comments are filed in Category "S" of the record and are contained in volumes labeled 215–54–1–19.

[19] The participants were: National Automobile Dealers Association; San Francisco Consumer Action and California Public Interest Research Group; National Independent Automobile Dealers Association; American Car Rental Association; Virginia Independent Automobile Dealers Association; Consumer Bankers Association; Automobile Owners Action Council; National Consumer Law Center; and American Imported Automobile Dealers Association.

[20] The Commission also eliminated from further consideration the staff's proposals for disclosure of prior use and mileage of used cars.

[21] The Commission directed the staff (1) to delete the requirement that a dealer give an estimate of the cost to repair any system marked "Not OK"; (2) to add a requirement that dealers disclose all known defects (in addition to those discovered during the course of an inspection); (3) to eliminate a disclosure relating to vehicles that had been declared a "total loss" by insurers; and (4) to include in the text of the Rule a list of the unfair or deceptive practices in accordance with *Katherine Gibbs School (Inc.) v. FTC*, 612 F.2d 658 (2d Cir. 1979).

[22] 45 FR 52750 (1980).

[23] The comment period was scheduled to close on October 7, 1980, but was extended to November 7, 1980, in response to requests from the National Automobile Dealers Association and the Center For Auto Safety. See 45 FR 66810 (1980). These comments are filed in Category "T" of the record and are contained in volumes labeled 215–54–1–20.

[24] 46 FR 41328 (1981). This Statement of Basis and Purpose supersedes the Statement of Basis and Purpose adopted with the 1981 Rule.

The order also required the Commission to: (1) Reopen the record with respect to 16 CFR 455.2(c) and related sections, dealing with disclosure of known defects, and any other issues that the Commission, in its discretion, might elect to consider pursuant to the **Federal Register** notice of August 9, 1983, and (2) provide all interested persons with notice of this action and an opportunity to submit comments and rebuttal thereto. Except for purposes of the remand, the court retained jurisdiction over the rule.

On December 16, 1983, the Federal Trade Commission published an invitation of public comment in the **Federal Register**, 48 FR 55784 (1983). This notice invited written public comments on the provisions of the rule requiring dealers to disclose known defects. The purpose of the comment period was to assist the Commission in determining whether these provisions should be modified or eliminated.

In addressing these questions, commenters were asked to place particular emphasis on information obtained (such as data bearing on costs or benefits of the rule or changes in state or local laws or regulations) since the closing of the original rulemaking proceeding on August 31, 1977. Commenters were also urged to submit their views on matters of policy concerning the defect disclosure provisions as to which no previous opportunity to submit comments has been provided.[25]

The comment period was scheduled to end on January 16, 1984, but it was extended to January 31, 1984. On March 2, 1984, the Commission announced a 20-day period for rebuttal submissions.

The National Automobile Dealers Association petitioned the Commission on January 31, 1984, requesting an extension of the comment period for 60 days to allow NADA to complete and submit a cost/benefit study. The Commission denied this request, stating that it would consider accepting the study when it was completed. NADA submitted the completed cost/benefit study on March 22, 1984. On April 3, 1984, NADA filed an errata submission correcting a calculation in the cost/benefit study. The Commission received the study and the errata submission as record documents. Because the NADA study presented an extensive analysis of the costs and benefits associated with the defect disclosure requirement, the Commission announced a 20-day rebuttal period to allow interested parties to respond to the study and the errata submission. This rebuttal period ended on May 14, 1984.

On July 10, 1984, the Commission tentatively adopted a revised rule that eliminated provisions requiring that dealers disclose known defects. In addition, the rule modified the wording and prominence of the disclosures on the window sticker. On July 31, 1984, the Commission announced a 30-day comment period seeking comments on technical issues concerning the tentatively adopted rule and substantive comments on the implications of a survey of used car buyers recently placed on the rulemaking record.[26] After careful consideration and review of the comments submitted during the recent comment and rebuttal periods as well as the original rulemaking record taken as a whole, the Commission has voted to promulgate a revised Trade Regulation Rule concerning the sale of used motor vehicles.

C. Description of the Industry

With new car prices steadily rising, the used car market has become an increasingly attractive source of personal transportation for consumers. Industry data show that three of every four used car purchasers in this country buy used cars as their primary form of personal transportation.[27] The used car market continues to expand over the new car market.[28] In 1979, two of every three cars sold in the United States were used. Consumers in that year spent $66.7 billion, including the value of trade-ins, in purchasing 18.5 million used cars from all sources.[29] Dealers retailed 10.48 million of those cars for total revenues of over $45 billion.[30]

1. Used Cars Purchased

The typical used car purchased in 1979 can generally be described as a $3,660 intermediate-sized sedan slightly under five years old with 29,000 miles on the odometer. Twenty-nine percent of all used cars bought were one year old or less, 34 percent were two years old, and 37 percent three or more years of age.[31] Average prices were $6,300 for the latest models, $5,000 for year-old cars, $4,000 for 2-year old models, and $2,900, $2,300, $1,800, $1,500 and $1,000 respectively for cars 3–7 years of age and older.[32] Average mileage of these cars at the time of purchase ranged from 9,900 miles for the newest models to 66,250 miles for the oldest.[33]

2. Used Car Sellers

Sales by dealers accounted for 60 percent of all used car sales in 1979. Some 21,000 franchised new car dealers who also sell used cars dominate the dealer share of the used car market and retailed about 7.8 million units, or 42 percent of all used cars sold in 1979. Their total revenues were $32.6 billion, almost one-half the total amount paid by consumers for all used cars.[34] Cars sold at these dealerships for an average price of $4,200 and had been driven an average of 21,200 miles at the time of purchase.[35]

Independent dealers selling only used cars usually retailed older, less expensive cars; in 1979, the average car sold by such dealers cost $3,700 and had 32,800 miles on the odometer.[36] With

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[25] Although the Commission sought comments during the rulemaking proceeding on the general question of whether dealers should be required to disclose known defects on a window sticker [*See* 41 FR 20896 (May 21, 1976)], the Commission did not invite comments on the specific known defects disclosure provision that was included in the rule promulgated on August 14, 1981.

[26] A report on a National Survey of Private Buyers and Sellers of Used Automobile (Baseline Survey).

[27] Used Car Data, 1979 Hertz Corporation Poll, published in *Hertz News*, October 1, 1979, with additional data published on July 21, 1980 (hereinafter cited as 1979 Hertz Poll), 7/21/80 at 1. These data combine an analysis of 10-year used car sales data with the results of a 1979 Hertz national mail poll of used car buyers, internal Hertz data, and published industry figures. These publicly-issued studies have not been considered or relied upon by the Commission in making its decision to promulgate this Trade Regulation Rule; rather, this information is presented for illustrative, background purposes. While the Commission has not, therefore, considered the evidentiary value of these reports, the Commission notes that data from these studies have been cited by a major industry association in a post-record comment. National Independent Automobile Dealers Association (NIADA), T–742 at 4, 9.

[28] For example, in 1979, 10.3 million new cars were sold compared to 18.5 million used cars. See 1979 Hertz Poll, *supra* n. 27, Table IV.

[29] *Id.* Thirty-four percent of used car buyers traded in an older car when they bought one used in 1979. The value of trade-ins amounted to some 36 percent of the total market sales figures. *Id.* at 2. Other industry tabulations include only "net" payments to dealers, excluding trade-in value, and would therefore be significantly lower than the Hertz estimate.

The Hertz data also assume one transaction from driver to driver. For example, a car traded by a consumer to a dealer and subsequently resold to another private individual, even after several dealer-to-dealer title transfers, was counted as one transaction. The Hertz sales figures may therefore differ from other industry estimates that count the intermediate transfers as individual sales.

[30] *Id.*

[31] *Id.*, 7/21/80 at Table V. All dollar figures are rounded to the nearest $100. Thirteen percent of the cars were 7 or more years old.

[32] *Id.*

[33] *Id.* All mileage figures are rounded to the nearest 100. Intermediate-sized cars had the following average mileages: 1 year—13,200; 2 years—20,000; 3 years—30,000; 4 years—42,300; 5 years—51,600; and 6 years—58,600.

[34] *Id.* at Table III; Mitchell, National Automobile Dealers Association (NADA), Oral Presentation before the Commission, September 25, 1979, TR 5.

[35] *Id.* at Table V.

[36] *Id.*

unit sales of 3.3 million, their market share in 1979 was about 18 percent and total revenues were $12.6 billion.[37] There are some 36,000 independent used car dealers.[38]

Private sales to individuals at an average price of $2,835 accounted for the remaining 40 percent of used car sales in 1979.[39] These cars had an average of 36,999 miles on the odometer.[40] For purposes of this data, this category includes direct sales by fleet operators, such as government agencies, public utility companies, and lease-rental companies that periodically retail their vehicle fleets. Retail fleet operator sales to individuals comprised less than two percent of all used cars sold in 1979, although this category of used car seller is increasing.[41]

Commissioned sales agents are uniformly used in the industry by all but the smallest dealerships.[42] There is a high degree of movement of commissioned sales agents from dealer to dealer within the industry.[43]

3. Used Car Buyers

Compared to new car buyers, used car purchasers are typically younger—36 as opposed to 45 years of age—and their family unit earns less.[44] It appears from the statistics cited earlier in this section that many would-be new car buyers are seeking personal transportation from the used car market because of the lower cost involved.[45] Twenty-eighty percent of used car buyers in 1979 reported having professional or technical occupations and another 17 percent held managerial, official or proprietorship positions.[46] Some 15 percent of the used car buyers in 1979 who had previously purchased cars were in the used car market for the first time.[47] Sixty percent of used car buyers in that year financed an average of 69 percent of the purchase price, a figure which parallels the 61 percent new car transactions that are financed.[48]

Basis For a Rule

Our examination of the record in this proceeding convinces us that deceptive and unfair acts and practices are prevalent in connection with the sale of used cars. Consumers are frequently misled or deceived by affirmative misrepresentations concerning both the extent of warranty coverage offered by used car dealers and the mechanical condition of used cars. Moreover, consumers are harmed by dealers' failure to provide timely disclosure of "as is" sales or warranty terms. In the following section, we set forth a description of the used car industry and of the unfair and deceptive practices that the Commission seeks to address by the Trade Regulation Rule promulgated today.

A. Deceptive Practices in the Industry

The record in this proceeding demonstrates deceptive and unfair acts and practices by used car dealers. The principal abuses recorded relate to oral misrepresentations by dealers regarding: (1) Warranty responsibilities for after-sale repairs, and (2) mechanical condition at the time of sale. Such oral statements are often inconsistent with the warranty terms, or disclaimers thereof, provided in the written sales contract. Consumer injury occurs because consumers make purchasing decisions based on dealer deception, and not only fail to get the car they bargained for but face unexpected expensive repair bills.

1. Warranty Practices

a. *General Overview.* The record demonstrates the material significance to consumers of information concerning warranty coverage.[49] Nonetheless, many used car dealers mislead consumers into believing that they have broad post-purchase warranty coverage when in fact consumers receive limited or no warranty protection against repairs that may become necessary after the sale.[50] Frequently, dealers and their sales agents not only fail to disclose conspicuously the limited nature of their repair responsibility, but also orally misrepresent the extent of warranty coverage.[51] In many cases, dealers make verbal promises to repair defects after sale that are contradicted by final written contract terms disclaiming all repair responsibility.[52]

Abuses are particularly prominent in that portion of the used car market in which cars are sold with no warranty coverage or "as is." The record demonstrates that, in many "as is" sales, dealers regularly make oral representations of vehicle quality (condition) and warranty coverage (promise to repair after sale) that are not memorialized in the contract. Instead, those oral representations are contradicted by "as is" contract terms which enable dealers to renege on their oral promises legally.[53] Consumers, relying on these oral misrepresentations, often believe that they will receive more protection with respect to post-sale repairs than is actually provided. In fact, however, there is widespread failure by dealers to honor oral promises relied on by consumers in making purchasing decisions in both "as is" and warranted sales.[54] When dealers fail to honor their oral promises, used car buyers often face expensive and unexpected repair bills.[55] Such unanticipated repair bills occasionally result in loan default and vehicle repossession.[56]

b. *"As Is" Sales and Warranty Terms in the Marketplace.* A significant proportion of used cars are sold by dealers on an "as is" basis, with no written or implied warranty.[57] Two studies involving used car purchasers indicate that about half of all buyers purchase used cars with no warranty.[58]

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[37] *Id.* at Tables III, V.

[38] Lemov, NIADA, Oral Presentation before the Commission, September 25, 1979, TR 84.

[39] 1979 Hertz Poll, *supra* n. 27, 7/21/80 at Table V.

[40] *Id.*

[41] *Id.* at 4.

[42] Vojtko, TR 4274; Bigham, TR 5274–77. Small dealerships are staffed solely by the owner.

[43] Warwick, TR 5363; Bigham, TR 5274–77. One sales agent who described these practices in detail had been employed at different times by 20 franchised dealerships since 1963. Warwick, TR 5380.

[44] Family income averages $20,000 a year for used car buyers and $29,500 for new car buyers. 1979 Hertz Poll, *supra* n. 27 10/1/79, at 5.

[45] The Hertz data calculates that ownership and operating costs for the typical used car purchased in 1979, based on buyer expectations of 3 years and 30,000 miles of driving, are less than 24 cents a mile. The same costs for the average new 1979 model—a slightly-smaller, mid-range unit—are 36.5 cents a mile, about one-third more. *Id.*, 7/21/80, at 2. Used, standard-sized models can be less expensive to run than new, smaller cars because of the discounts available on them in today's market compared to the premium prices commanded by the smaller cars.

[46] *Id.*, 10/1/79, at 5. Another 33 percent were laborers, craftmen, or foremen; the remaining buyers reported their occupations as retired (5%), unemployed (4%), student (3%) or other (10%). *Id.*

[47] *Id.* at 2.

[48] *Id.* at 7. The Hertz Poll new car figure is based on a *Newsweek* Survey. Federal Reserve System Figures for 1977 show some 75 percent of new cars financed in that year.

[49] Staff Report at 291–305.

[50] See II.A.1.c(1) and (2) *infra.*

[51] *Id.*

[52] *Id.*

[53] Staff Report at 295–296 n. 96.

[54] *Id.* at 296–297 n. 96.

[55] In some extreme cases, these repair bills approach 20–50 percent of the car's selling price. *Id.* at 58–61, 299, n. 101.

[56] *Id.* at 300 n. 102. A legal aid attorney in Los Angeles testified that about half of the vehicle repossession cases with which he is familiar originated from dealers' failure to honor oral promises to repair in "as is" sales. Rouda, TR 3446.

[57] Used car dealers confirm the widespread use of "as is" sales. Many dealers reported selling cars exclusively on an "as is" basis or noted that a high percentage of used cars are retailed "as is." Some dealers testified that they rely on "as is" sales only for a small portion of cars sold and offer written warranties on newer models. Although most "as is" sales do involve older, generally cheaper cars, this is not necessarily so. A number of dealers suggest that any used car offered for sale may be sold "as is." Staff Report at 249–252 nn. 2–9.

[58] In the Survey Research Laboratory (hereinafter cited as SRL) study, *Beliefs and Experiences of*

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"As is" sales have a significant legal impact on consumers. In most states that have adopted the Uniform Commercial Code (UCC), the contract terms "as is" or "with all faults" exclude the implied warranties of merchantability and fitness for a particular purpose that normally would arise in a used car transaction under state law.[59] As a result, dealers selling cars "as is" are not legally responsible, as a rule, for defects that exist at the time of sale or repairs that become necessary after the sale is completed.[60] The legal effect of "as is" sales assumes particular importance for consumers in used car transactions because of the parol evidence rule enacted in most states as part of the Uniform Commercial Code. Under the parol evidence rule, evidence of any oral agreement that contradicts the final written contract terms is excluded.[61] Thus, in the event of a dispute over the extent of the dealer's responsibility for post-purchase repairs, consumers generally cannot use evidence of oral promises to repair in order to establish dealer liability.

Because of the severe legal consequences of an "as is" sale, consumers who purchase "as is" and experience post-purchase repair problems constitute a large percentage of used car complainants. State and local law enforcement and consumer agency officials report that "as is" sales represent a substantial portion of their used car cases and complaints; and legal aid attorneys, representing low-income consumers, agree that most of the used car problems affecting their clients occur in "as is" sales transactions.[62]

The terms of written warranties given to used car buyers vary markedly in duration, coverage, and allocation of costs between buyers and sellers.[63] Warranty duration generally ranges from 30 days or 1,000 miles to 12 months or 12,000 miles, with the longer duration terms typically given for late model cars.[64] When warranties are given, most extend for a period of 30 days, regardless of vehicle age.[65]

The warranty coverage of vehicle components tends to vary even more widely than does warranty duration. Coverage rarely extends to all vehicle systems and components. Rather, protection typically extends to the "drive train" (engine, transmission, and rear axle), or to "safety" components in those instances where dealers are required to warrant their cars under state safety inspection laws.[66]

The warranty term that varies most widely relates to allocation of cost—the respective shares of total costs to be paid by the dealer and buyer for repairs that become necessary after sale. Some dealers give warranties covering 100 percent of the repair costs for the more expensive, late model cars.[67] However, "split-cost" coverage is far more representative of the written warranties associated with used car sales.[68] "Split-cost" involves shared responsibility by the dealer and buyer, each paying a stated percentage of total repair costs. Although the percentage split figures vary considerably,[69] many dealers indicate that a 30-day warranty with an even "50–50" cost allocation is most common.[70]

Percentage discounts, substantively the same as "split-cost" warranties, are also common cost allocation terms used by dealers in warranties. Generally, discount terms give the buyer a 10–25 percent reduction on the cost of parts and labor for repairs made by the dealer after sale.[71] Some dealers restrict the discount to parts only or to labor only.[72]

A number of dealers also report selling service contracts with their used cars. The terms of service contracts sold to buyers vary almost as widely as those of written warranties [73] and range in cost from under $50 to over $200.[74] Unlike warranties, service contracts are priced separately and are not included in the price of the vehicle.[75]

In sum, the record evidence reveals a broad range of warranty terms offered to used car buyers to protect against repair expenses that become necessary after sale. In addition, most written warranties given by dealers cover only a portion of repair expenses that may become necessary after sale.

c. *Dealer Deception.*

(1) "As Is" Sales.

By far the most common abuse evidenced in the record with respect to warranties is the frequent dealer practice of making oral promises to repair defects arising after sale that contradict the written "as is" clause in the sales contract.[76] Dealers often couple these promises with oral representations about mechanical condition.[77] Thus, the record is replete with examples of "as is" sales in which representations were made to the effect that a particular vehicle was in "good condition" and assurances were given to the consumer that "if anything goes wrong, just bring it in and we'll take care of it.[75] Representations as to mechanical condition are rarely, if ever, incorporated into sales contracts.[79] They

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Dissatisfied Purchasers of Used Motor Vehicles, 52 percent of the responding buyers across the country reported receiving no warranty with their used car. HX 160(A), Appendix C, Question 21. In the study *An Investigation of the Retail Used Motor Vehicle Market: An Evaluation of Disclosure and Regulation* (hereinafter cited as Wisconsin Study), 43 to 55 percent of the sampled purchasers in Wisconsin, Iowa, and Minnesota bought their used cars "as is." HX 164(A), Table IV–20 at 30. Approximately half of the individual consumers who presented testimony in this proceeding complained of dealer practices involving "as is" sales. Staff Report at 252 n. 10.

[59] Uniform Commercial Code section 2–316(3)(a) states: (a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty.

[60] *See generally* Staff Report at 483–498 for a full discussion of state laws relating to "as is" sales.

[61] Section 2–202 of the UCC states:

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) By course of dealing or usage of trade (Section 1–205) or by course of performance (Section 2–208); and

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

[62] Staff Report at 249–251.

[63] *See generally* Staff Report at 253–260. In the Wisconsin Study, for example, 75–82 percent of Wisconsin dealers surveyed varied their warranties according to vehicle age, condition, and price. HX 164(A) at 44 and Table V–4, Question 4.

[64] Staff Report at 254 nn. 14–15.

[65] *Id.* at 255 n. 16.

[66] *Id.* at 255–256 nn. 17–18. A representative of the Center for Auto Safety, who surveyed dealer practices in Cleveland, Dallas, and Washington, D.C., by means of "test shoppers," observed that the "drive train" limitation was the most common restriction on 30-day warranties offered by the dealers surveyed. Wilka, TR 6458–59. However, coverage even under this type of restricted warranty may vary. One state official noted that the most popular warranty observed in Connecticut was a "drive train" warranty that covered only the "rear end" (i.e., differential and rear axle) and transmission. Simmons, TR 540.

[67] Staff Report at 257 n. 21.

[68] *Id.* at 257–260 nn. 22–29.

[69] *Id.* at 59–60 nn. 27–29.

[70] *Id.* at 258 nn. 23–24. The 30-day, 50/50 warranty was offered 25–40 percent of the time by dealers surveyed in the Wisconsin Study, for example—more than any other. HX 164(A) at Table V–4. Thirty-five percent of all dealers surveyed in Dallas, Cleveland, and Washington, D.C., by the Center for Auto Safety offered test shoppers a 30-day, 50/50 warranty. Wilka, TR 6458.

[71] Staff Report at 259 n. 25.

[72] *Id.* at 259, n. 26.

[73] *Id.* at 260–261, n.30.

[74] *Id.*

[75] *Id.*

[76] Presiding Officer's Report at 46–47, 125; Staff Report at 275–277, 286–287.

[77] Presiding Officer's Report at 125; Staff Report at 275–276.

[78] Staff Report at 276–277 n.65.

[79] Presiding Officer's Report at 47.

are, instead, almost always restricted to oral statements made during the bargaining process.[80]

As a result, used cars buyers with little or no mechanical condition information [81] about particular vehicles have been assured by salespersons of the quality of the vehicle they are buying. They often purchase "as is" and, by direct misrepresentation or inference, are led to believe that the seller will correct defects discovered after sale. Later, when defects are discovered and the buyer returns to the seller seeking repairs, he/she learns not only that the assertions about mechanical condition are untrue, but also that his/her sales contract fails to hold the seller responsible.[82] Thus, comsumers purchasing "as is" but relying on contradictory oral promises are stripped of the protection afforded by either express [83] or implied warranties and, at the same time, have no legal recourse against the dealer because prior or contemporaneous oral statements that contradict final written contract terms are generally not legally binding.[84] Evidence in the record demonstrates that this predicament occurs frequently in the used car market [85] and is often cited as the chief problem in used car sales.[86]

Several dealer practices lead to the situation described above. First, dealers commonly fail to provide adequate written definitions as to the real meaning of an "as is" sale.[87] Rather, when explanations are forthcoming, they typically take the form of oral statements relating a variety of plausible excuses as to why the vehicle can only be sold "as is". Thus, consumers are told that the vehicle's age, or mileage, or low selling price demand that the sale be on an "as is" basis.[88]

In light of these dealer practices, it is not surprising that a significance portion of used car buyers do not understand the legal significant of the phrase "as is." [89] In three studies of used car buyers, from 25 percent to as many as 59 percent of the persons surveyed failed to identify a correct description of an "as is" sale or mistakenly believed that the seller, or the seller and buyer jointly, would be legally responsible for repairs after sale.[90] These buyers were responding to hypothetical questions posed after sale. However, the widespread lack of basic consumer understanding about "as is" sales or implied warranties is corroborated in the record by legal aid attorneys, state and local officials, consumers, and consumer groups across the country, and even by some dealers.[91] Many of these same witnesses reported that used car buyers often believe, erroneously, that "as is" means "as it appears to be," referring to visible or known defects (like body rust or dents) as opposed to latent defects, or "as equipped," referring to vehicle accessories already installed. Indeed, the evidence demonstrates that a great many consumers who buy "as is" erroneously believe their cars are warranted in some manner—that the dealer will fix problems arising after sale—despite the written "as is" contract clause.[92]

It has been suggested that consumers' mistaken beliefs about warranty coverage in "as is" sales may be caused in part by their lack of experience in purchasing cars and by their general marketplace belief that sellers stand behind their products.[93] While this may provide a partial explanation, the record taken as a whole supports the finding that consumers' misunderstandings about their after-sale repair responsibility in "as is" sales stem primarily from deceptive practices by used car dealers and their sales agents.[94]

(2) Written Warranty Coverage.

Despite the crucial role that warranty information could play in used car purchasing decisions, many used car buyers who receive written warranties are unaware of their actual liability for repairs that may become necessary after sale.[95] The record further establishes that certain dealer practices lead to consumer misunderstandings regarding written warranty terms. Discrepancies between oral representations of the warranty coverage made while the consumer is first considering purchase and actual written warranty terms are commonplace.[96] Typically, purchasers who receive written warranties believe that more is warranted than is the case.[97] Oral representations of a "full 100%/30-day" warranty, for example, often turn out in fact to be limited "drive train" warranties (engine, transmission, and rear axle) or simple percentage discounts on labor or parts.[98] One consumer stated that an oral 6-month unconditional warranty was contradicted by the written 30-day warranty received.[99] Another consumer

[80] *Id.*

[81] Staff Report at 83–84 n.75.

[82] *Id.* at 274–280.

[83] The "as is" clause also contradicts express, oral representations concerning mechanical condition made during the bargaining process. Thus, it serves to negate express oral warranties as well as implied warranties.

[84] See II.A.1.b. *supra.*

[85] Staff Report at 295–300.

[86] *See, e.g.*, Wolkowitz, Legal Aid, HX 150 at 2; Epstein, Legal Aid, HX 166 at 2.

[87] For example, dealers are all too often silent about the meaning of "as is." When comments are made, they are usually in response to consumers' questions. When consumers who already thought they knew the meaning of "as is" were queried as to the basis for their "as is" knowledge, 82 percent said they already had this knowledge. Only 18 percent reported that the salesperson explained the meaning of "as is." National Analysts Inc., *Report on a Survey of Buyers of Used Cars* (hereinafter cited as National Analysts Study) HX 162(A), Table 19 at 21.

[88] *See, e.g.*, Baker, consumer, TR 466–67, 472 (salesmen said they could not warrant a car selling as cheap as $1,400, but that consumer would not run into any problems); McCalip, dealer, TR 6918–19 (dealer tells the consumer the car is now "as is," "that's why you're getting a lower price"); Warwick, salesman, TR 5378 (salesman will "talk his way around" the "as is" by saying that the car would cost more with a warranty); Brauchli, local official, TR 3807–08, 3830–31 (if dealer does explain, he will offer the buyer a "special deal", representing that "as is" is merely to protect the dealership, "but for you we'll stand behind the car").

[89] Presiding Officer's Report at 124; see II.A.1.b. *supra.* Some dealers believe that consumers do understand the meaning of "as is" but conveniently forget when problems arise. *See, e.g.*, Corkhill, dealer organization; C–23 at 12. However, other industry members recognized that a most frequently expressed complaint on the rulemaking record relates to lack of understanding on the part of consumers of what an "as is" sale means and that a contributing factor to that lack of understanding is dealer misrepresentation. NIADA, S–739 at 82–83.

[90] Wisconsin Study, HX 164(A) at 13; National Analysts Study, HX 162(A), Table 18, at 21; SRL Study, HX 160(A), Appendix C, Question 14 and accompanying table. *But see* Table 11 of the Baseline Survey showing that approximately 90 percent of both Wisconsin and non-Wisconsin consumers understood the meaning of an "as is" sale. The data do not raise serious questions about the need for an "as is" disclosure because, in the Commission's view, consumer deception relating to "as is" sales is probably caused more by the dealer's misrepresentations or failure to disclose that a particular car is being sold "as is" than by lack of general consumer understanding of the meaning of "as is". Moreover, as Table 15 of the study demonstrates, Wisconsin consumers were more likely to understand the dealer's post-sale repair responsibilities than were their counterparts in the rest of the country. This difference probably resulted from the "as is" and warranty disclosures mandated by the Wisconsin law.

[91] Staff Report at 263–264 n. 37; 290 n. 90.

[92] *Id.* at 279–280 n. 69. In addition, 28 percent of the responding used car buyers in the SRL Study who learned after sale that they had actually bought "as is" mistakenly believed, or were not sure, at the time of sale that their cars were warranted. HX 160(A), Table 12 and accompanying text at 2–24, Appendix C, Question 20.

[93] *Id.* at 280 n. 69.

[94] Presiding Officer's Report at 128. See nn. 78–83 and accompanying text *supra.*

[95] *See generally* Staff Report at 261–265, 278–281, and 288–290.

[96] *Id.* at 286 n. 84.

[97] *Id.* at 288 n. 88. In the Wisconsin Study, for example, a much greater proportion of Wisconsin consumers reported receiving 30-day, full coverage warranties than Wisconsin dealers reported giving them. *Id.* at 289, Table 1.

[98] *Id.* at 287 n. 85.

[99] Clifford, L–1134 at 1.

stated that an oral 90-day warranty promise was in fact a 30-day warranty.[100] Another consumer stated that oral representations made during the sales pitch differed from the actual terms of the $185 service contract received.[101] In one study, verbal assurances given by dealers differed from the actual written warranties in 34 percent of the situations where "test shoppers" were able to see a written warranty.[102] Consumers typically rely on these inaccurate verbal warranty descriptions in making purchasing decisions.[103]

As a result of these dealer practices at the time of sale, used car buyers are typically unaware of the actual terms of the written warranties they receive.[104] Thus, consumers rarely have a complete picture of the true cost of a used car purchase and often have a false impression of the dealer's actual after-sale repair responsibilities. The misrepresentations described above cause consumers to expand substantial sums of money for post-sale repairs which they are led to believe will be paid for by the dealer.[105]

d. *Dealer Unfairness.*

Many used car dealers also fail to provide clear, conspicuous, and timely written disclosure of the meaning of "as is." Many "as is" disclosures are couched in complex, legalistic terms which neither explain the meaning of "as is" in understandable language nor inform the buyer that the dealer is not responsible for any repair after the sale is final.[106] Other "as is" disclosures oversimplify the true meaning of an "as is" sale by merely stating that the vehicle is sold "As Is," or "As Is—With All Faults."[107]

Some dealers also do not conspicuously disclose the "as is" clauses in the sales contract nor present the clause to the consumer in a timely manner. Instead, disclosures generally are not made until the consumer is already committed to the purchase and is faced with a series of documents to sign in rapid order and in a pressured environment.[108]

As in the case of "as is" disclosure, dealers frequently fail to provide clear, conspicuous and timely disclosure of warranty terms. In many cases involving written warranties, dealers fail to disclose actual limitations and restrictions on coverage when orally describing warranty coverage, so that consumers are left confused about the extent of warranty coverage on the car. A used car salesman testified, for example, that dealers he knew of or worked for in California gave buyers "50/50 warranties" without explaining what that coverage actually meant.[109] In another study, warranty documents received by a large precentage of survey respondents failed to describe the items that the dealer would repair; the dealer's share of repair cost responsibility was also frequently not disclosed.[110] One legal aid attorney stated that most of his clients did not understand the meaning of a split-cost, 50/50 warranty.[111] Several consumers stated that, at the time of purchase, they were not aware of the terms of the warranty.[112]

Frequently dealers obscure the need for full warranty information disclosure by answering consumers' initial inquiries about warranty coverage with such generalities as "good warranty" or "full guarantee," with no further explanation of terms.[113]

Dealers also often fail to give the buyer copies of the written warranty until after the sales contract has been signed. A consumer group representative testified that, in a study of dealer practices conducted in Cleveland, Dallas, and Washington, D.C., detailed warranty information was given to the "test shoppers" (posing as consumers) only after persistent questioning.[114] In fact, potential buyers are usually not introduced to written warranty disclosures until after they have decided to buy and the sale is about to be finalized.[115] As the transaction is concluded in the pressured atmosphere of the dealer's "closing room,"[116] it is not surprising that consumers often fail to see or fully comprehend specific warranty terms.[117] The record establishes that copies of written warranties are rarely received by consumers before they enter the closing room.[118] At times the document is not provided until after the buyer signs the sales agreement.[119] In some instances, warranty documents are not provided to consumers at all.[120]

The Commission finds that, although the failures to disclose described above are not generally deceptive, such practices are unfair in violation of section 5 of the FTC Act. When dealer representations lead buyers to believe that warranty coverage is other than it in fact is, or that a car is sold with a warranty when it is not, the failure to disclose the true state of affairs constitutes deception. Failure to disclose

[100] Cash, L-1016 at 1.

[101] Kersey, TR 5836–40.

[102] California Public Interest Research Group, *A CALPIRG Study: Practices in the Used Motor Vehicle Industry* (hereinafter cited as "CALPIRG Study"), HX 82 at 17.

[103] Staff Report at 275–277 n. 66; 286–287 nn. 84–86.

[104] *Id.* at 281 n. 71.

[105] Presiding Officer's Report, "Findings on Issue 6," at 128.

[106] McCalip, dealer, TR 6918. See also Brown, dealer organization, HX 80 at 10 (dealers' written statement disclaiming warranties verbal sales representations which is signed by the buyer at the time of sale). *Cf.* Rothschild, legal aid, TR 3190 (unclear warranty disclaimers are among primary problems); Alpert, legal aid, J–17 at 3 ("as is" disclosures are technical). Whether the language suffices as an effective disclaimer under state law is, of course, a separate issue. Indeed, Comment 4 to UCC section 2–313, governing express warranties, makes it clear that a seller cannot negate responsibility for express warranties simply by inserting a clause in the contract "generally disclaiming all warranties, 'express or implied'." Such a clause, the comment states, "cannot be given liberal effect under § 2–316" (Exclusion or Modification of Warranties).

[107] Stine, state official, TR 4361 (occasionally sees a big "as is" stamped at the top of used car contracts with a 50/50 guarantee on brakes and shocks); Friedman, state officials, TR 4472–73 (typical disclosure in Colorado is "this car is being sold on an 'as is' basis"); Goldinger, local official, TR 3554 (current "as is" language in all contracts fails to inform consumers of the limitations of their rights); Fan, legal aid, TR 4130 (Dealers use standard form contract with large "as is"); Sugarman, Dealer, TR 4089 (consumer signs slip of paper stating that the sale is "as is").

[108] Although some dealers profess diligence in disclosing the "as is" nature of the sale, the record demonstrates that when this is so, it is typically after the consumer has decided to buy, or the disclosure is vague, inconspicuous, or incomplete. The most common "as is" disclosure practice evidenced in the record is that potential buyers are not introduced to the "as is" clause, if it is recognized at all, until the sale is about to be finalized. Typically, the buyer is shepherded into the "closing room." (a term used throughout the hearings to denote the room or place, typically within the dealer's place of business, where the potential buyer is taken to discuss the details of the transaction) where he or she is handed a number of documents to simultaneously read, digest, and sign and where the final selling price and financing terms, if any, are determined. Consumers, already emotionally committed to the purchase and anxious to close the deal, often fail to read each document thoroughly. Unless their attention is specifically directed to it, buyers do not see or fully comprehend the "as is" clause disclaiming all warranties. Staff Report at 265–268.

[109] Bigham, TR 5269.

[110] SRL Study, HX 160(A), Appendix C, Questions 23A, 23B. See also Staff Report at 283, n. 75; 285–286, nn. 79–83.

[111] Berry, TR 132–133.

[112] *See, e.g.*, Morrison, L–1068 at 2; Kersey, TR 5836; Carr I–80 at 1; Holliday, I–164 at 1.

[113] Staff Report at 285 n. 80.

[114] Wilka, TR 6457.

[115] SRL Study, HX 160(A), Appendix C, Question 22; Staff Report at 266 n. 42; 282 n. 72.

[116] See n. 90 *supra*. See also Staff Report at 282, n. 73; 538–539.

[117] *Id.* at 268 n. 47; 283, n. 74.

[118] *Id.* at 285 n. 82.

[119] *Id.* at 286 n. 83. Sixteen percent of the used car buyers responding in the SRL Study reported receiving the warranty sometime after signing the contract. SRL Study, HX 160(A) at Appendix C, Question 22.

[120] Staff Report at 284–285 n. 79.

information material in light of other representations also constitutes deception.[121] Absent any dealer practice that leads consumers to expect certain coverage, however, the failure to provide timely and complete information to consumers about important contract terms may cause substantial consumer injury, that consumers cannot reasonably avoid through the exercise of consumer choice, without offsetting benefits to consumers or competition. In such circumstances, the failure to disclose is unfair, but not deceptive.

The record clearly establishes that substantial consumer injury occurs as a result of dealers failing to disclose the meaning of "as is" or failing to disclose warranty terms. As discussed above, liability for post-sale repairs is a material factor in consumer purchasing decisions. Moreover, unexpected liability often causes consumers to be faced with expensive and unexpected repair bills.[122] Information regarding liability for post-sale problems is particularly important because dealers generally know more about the condition of the car than do consumers.[123] Moreover, the Commission discerns no benefits flowing from the practice of failing to provide timely disclosure of the dealer's responsibility for repairing post-sale problems except that dealers avoid the cost of making the disclosure. We believe, however, that the cost of providing such disclosures will be minimal.

We also conclude that consumers cannot reasonably avoid, through free purchase decisions, the injury caused by the dealer's failure to disclose its post-sale repair responsibilities. Information about the warranty terms offered or the fact that a particular car is being sold "as is" can be obtained only from the dealer. The record establishes that copies of the sales contract containing an "as is" clause or the terms of the written warranty are typically received by consumers in the "closing room" after the psychological decision to buy has been made.[124] The record further reveals that the sales contract containing the "as is" clause and the written warranty are often couched in complex, legalistic terms which most buyers cannot readily understand.[125] When consumers receive these documents along with many other sales documents in the "closing room," where there is little opportunity to consider all documents carefully.[126] In sum, the record shows that information which is essential to an informed consumer choice is not being effectively made available. Since the principal thrust of our consumer unfairness standard is to ensure that sellers do not harm the free exercise of consumer sovereignty or consumer choice, this conduct is unfair within the meaning of the FTC Act.

2. Mechanical Condition Practices

a. *Materiality of Mechanical Condition Information.* The utility of a vehicle as a means of transportation is directly affected by its mechanical condition. Therefore, it is not surprising that consumer research indicates consumers' consistent concern about mechanical condition.[127] In fact, mechanical condition at the time of sale is reported by consumers as the most important factor in reaching a purchasing decision.[128] Consumers who are aware of mechanical condition prior to purchase are able to use that information in pricing and selecting vehicles, as well as in budgeting for repair expenses. For example, record surveys indicate that consumers who had potential used car purchases inspected prior to purchase made significant use of inspection results in subsequent bargaining for repairs and price reductions or in making purchasing decisions.[129]

Mechanical condition information is also important because needed repairs resulting from hidden defects are costly to consumers. The rulemaking record demonstrates this fact. The Northern California Auto Club's diagnostic records showed 1,000 defects in 160 vehicles taken from dealers' lots to the diagnostic center by consumers considering purchase. The average estimated cost per vehicle for the repair of defects present was $162.89.[130] The Missouri Auto Club records showed an estimated average repair cost of $235.64 per car with 312 defects present in the 56 vehicles it surveyed.[131] In the National Analysts Study, consumers reported costs for defects repaired and estimated costs for defects which surfaced but remained unrepaired.[132] Actual repair expense ranged from a few dollars to $1500, with the average at $109. The average estimated costs for repairs not completed was $98. The Survey Research Laboratory Report also computed actual and estimated costs of repair.[133] Because this study received data only from complaining respondents, actual and estimated repair costs were significantly higher on a per vehicle basis. Estimated performed repair costs averaged about $350 per vehicle. In addition, respondents faced future repair costs (repairs yet to be performed) which were estimated at approximately $275 per car.

The great bulk of repair cost is borne by the purchaser.[134] Moreover, out-of-pocket costs caused by defects often go beyond the cost of repairs. Purchasers of defective vehicles can lose their only form of transportation, a loss which may lead to other dislocations, including missed work and loss of wages.[135] Other costs may be incurred when safety-related defects cause or contribute to accidents that damage property and cause personal injury or death.[136] The impact on the poor from the purchase of a defective used vehicle may be particularly severe, since an unexpected repair bill may seriously disrupt an already strained budget.[137]

Therefore, the Commission finds that mechanical condition information is material to the used car transaction. Dealer misrepresentations regarding mechanical condition are therefore deceptive acts and practices.

b. *Deception Concerning the Mechanical Condition of Used Cars.* The record demonstrates that misrepresenting a car's mechanical condition is a common dealer practice.[138] Record testimony and

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[121] See Ward Lab., Inc. 55 F.T.C. 1337 (1959), *aff'd* 276 F.2d 952 (2nd Cir.), *cert. denied* 364 U.S. 827 (1960).

[122] *Id.* at 296–297 n. 96.

[123] See Section IV.A.1.a *infra.*

[124] Staff Report 261–290.

[125] *Id.* at 268–284.

[126] *Id.* at 282–286.

[127] National Analysts Study, HX 162(A) at 8–9; Wisconsin Study, HX 164(A) at 16–17.

[128] Wisconsin Study, HX 164(A) at 16–17 and Table IV–1.

[129] Northern California Auto Club, HX 116(A) at 5–7; Missouri Auto Club, HX 158(A) at 5–7; Staff Report at 68 n. 54. *See also* Wisconsin Study, HX 164(A) at Tables IV–16, IV–17.

[130] HX 116(A) at 3–5; TR 4906–07.

[131] HX 158(A) at 4–5; TR 6828–29.

[132] HX 162(A) at 34–36. Respondents reporting defects (136 out of 400) were asked to provide actual and projected repair costs.

[133] SRL Study, HX 160(A) at 12.

[134] Seattle Regional Office Study, B–1 at 31; National Analysts Study, HX 162(A) at 34; Wisconsin Study, HX 164(A) at Table-IV-19. See also Baer, consumer organization, TR 3665; Baron, legal aid, TR 3911; Nowicki, state official, TR 2667–69; Newcomb, legal aid, J–74 at 1.

[135] Staff Report at 64 n. 49.

[136] *Id.* at n. 50.

[137] *Id.* at 64–65.

[138] Staff Report at 103 n. 102. One salesman testified that some dealers purposefully kept their sales staff ignorant about known defects to assure that salespeople would present the car for sale in a positive manner. Bigham, TR 5274–77. Some dealers, disputing that they engage in affirmative misconduct, state that they have difficulty

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documentary evidence regarding such misrepresentations are supported by data reported in several studies. In one study, complainants reported that sales agents commonly made general statements about the overall quality of the car. These statements were coded as very favorable in 34 percent of the cases, favorable in 56 percent, and neutral in the remaining 10 percent. Only 2 of the over 800 respondents reported that the salesman made a negative comment.[139] Complainants were also asked if any specific representations were made about different vehicle components, and responses to this question were cross-tabulated against reported defects. The study found that where a specific component had been represented as being in good condition, the complainant was more likely to have had a problem with that component than if no specific positive comment had been made.[140] This finding suggests that defects have been hidden behind contradictory oral statements.[141]

In the National Analysts Study, consumers reported that dealers discussed mechanical condition in about three-quarters of the cases and nearly always described it as good or very good.[142] These descriptions were later thought to be inaccurate 13 percent of the time.[143]

The National Analysts Study also correlated defect discovery data with disclosure practices data. The correlation revealed that consumers encountered greater post-sale defect problems when the salesperson remained silent with regard to defects than when he or she did disclose defects.[144]

The Wisconsin Study provided additional data on the accuracy of dealer representations by comparing representations of mechanical condition made by dealers and private sellers. With regard to general mechanical condition, 17.1 percent of the consumers surveyed reported inaccurate information from the dealer compared to 9.4 percent who reported receiving inaccurate information from private sellers.[145]

The Missouri and Northern California Auto Club Studies provide additional data on the accuracy of sales representations. In these studies, respondents were asked whether, before the consumer's Auto Club inspection, the salesman had said anything about the condition of each system in which the Auto Club subsequently found a problem. Out of a total of 1,312 defects discovered by the inspection, only 87 were discussed in any manner by a salesman.[146] Of the 87 defective components discussed, 14 had been described by the salesman as being in good condition, 12 had been described as "probably allright" and 60 had been described as being in need of repair.[147]

The possibilities for deception in the used car market were described by Stanley Hoynitski, who testified on behalf of the Pennsylvania Automobile Dealers Association.

> The used car business is a natural business for some unscrupulous businessmen. . . . The nature of the motor vehicle, with its many thousands of internal parts, makes it highly susceptible to hidden defects, known or unknown to the seller. There is need to protect the consumer from these unscrupulous dealers who I acknowledge have crept into the [used car] business.[148]

One factor which facilitates a dealer's ability to make general representations about the quality of a used car without questioning by consumers is the general industry practice of appearance reconditioning known as "detailing."[149] After dealers obtain vehicles, they routinely engage in detailing, whereby the vehicle's interior, exterior, trunk, and engine compartment are thoroughly cleaned in order to enhance the car' saleability.[150] Because many consumers rely on appearance cues in estimating a vehicle's mechanical condition, consumer injury can result when detailing obscures poor mechanical condition. That consumers think an attractive car is also sound mechanically is well-established in the record through testimony and documentary evidence.[151] Furthermore, survey data demonstrate that consumers judge a car's mechanical condition based on appearance cues and think that "clean" cars are in substantially better mechanical condition than cars described as being somewhat less attractive.[152] Another study shows that dealers identify "exterior condition" as the most important factor affecting a consumer's purchasing decision.[153] Therefore, it is not surprising that dealers invest heavily in detailing. One dealer association official stated that his membership spent an average of $53 per car on appearance work.[154] Regardless of whether "detailing" is used solely to make the car more marketable or to disguise poor mechanical condition, the practice of detailing contributes to the persuasiveness of dealer representations that a car is in sound mechanical condition when such is not the case.

c. *Consumer Reliance on Dealer Representations and Injury.* The record clearly demonstrates the existence of a substantial information disparity between the buyer and seller in the used car market relating to the mechanical condition of used cars.[155] Used motor vehicle purchasers do not have at their disposal, as a general rule, information sufficient to arrive at an informed buying decision. Insofar as mechanical condition is concerned, consumers are dependent, with rare exception, on the seller's representations to inform them of mechanical condition.[156] The record also shows that many purchasers base their assessments of the condition and value of a particular vehicle on dealer oral representations and on the physical appearance of the car.[157] The record shows that consumer injury results from buyer reliance on oral representations and promises by the seller which are inconsistent both with the actual condition of the car as known to the dealer and with the terms of the written contract. Moreover, representations as

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controlling oral representations made by salespeople. *See, e.g.*, Vojtko, TR. 4274; Jones, C–56 at 3.

[139] SRI Study, HX 160(A) at 13.

[140] *Id.* at Table 7.

[141] This finding may, to some extent, have resulted from consumers' propensity to remember the sales agent's representations about a particular component more clearly if they had a problem with that component.

[142] HX 162(A) at Tables 13 and 14.

[143] *Id.* at Table 15. We note there is no basis for inferring that the dealer knew the information was inaccurate.

[144] *Id.* at Table 25.

[145] HX 164(A) at Table IV–4.

[146] Northern California Auto Club, HX 116(A) at 4–5; Missouri Auto Club, HX 158(A) at 4–5.

[147] Since one respondent did not respond, there were a total of 86 responses rather than 87.

[148] Hoynitski, dealer organization, TR 8037.

[149] The Commission does not hold that "detailing" in and of itself is deceptive. However, as described herein, detailing can lend credence to oral misrepresentations.

[150] Staff Report at 97–98 n. 94.

[151] *Id.* at 99 n. 95.

[152] *Id.* at 100–101 nn. 96, 97.

[153] Wisconsin Study, HX 164(A) at 43.

[154] Negri, dealer organization, TR 4103.

[155] Presiding Officer's Report at 90–92; Staff Report at 83–97.

[156] Presiding Officer's Report at 90, 128.

[157] Staff Report at 118–122. The record does show that a minority of consumers obtain third-party inspections by independent mechanics. *Id.* at 93–95, 119–120. The record contains conflicting evidence as to whether such inspections are allowed throughout the industry. Dealers and others asserted that inspection opportunities are currently available to consumers. *Id.* at 87. However, the record demonstrates that off-premises inspections are not allowed on a regular basis. *Id.* at 89. Thus, in the current state of the market, consumers obtain little information about the mechanical condition of a prospective used car purchase from any source other than the dealer.

to the mechanical condition are seldom, if ever, incorporated into sales contracts. They are restricted almost entirely to oral statements made by the dealer during the selling process and, thus, are unenforceable should the consumer attempt to sue to recover damages for dealer misconduct.[158]

Based on the evidence in the rulemaking record, the Commission finds that many used car dealers have knowingly misrepresented the mechanical condition of the cars they sell and thereby cause substantial injury to consumers.

B. Prevalence Of Unfair and Deceptive Acts and Practices in the Marketplace

In assessing the prevalence, or frequency, of unfair and deceptive practices occurring in the used car industry, the Commission has examined a number of factors. These include the number of consumer complaints reported to the Commission and to state and local agencies; documentary evidence such as written warranties and warranty disclaimers used by dealers in used car transactions; testimony offered by state and local law enforcement officers, consumer agency officials, legal aid attorneys, consumer group representatives, individual consumers, used car dealers, present and former used car sales agents, mechanics and automobile repair instructors; and empirical studies of used car dealer practices, the mechanical condition of used cars on dealers' lots, and used car buyer attitudes and beliefs. This evidence is set forth in detail in section II.A. above, and establishes that many dealers misrepresent or fail to disclose material facts concerning the terms and extent of warranty coverage and the mechanical condition of cars at the time of sale.

In recent years approximately ten million used cars have been purchased annually from the nation's 60,000 used car dealers.[159] These dealers, as an established business practice, make oral representations concerning warranties and mechanical condition. The record demonstrates that many dealers or their sales agents make oral promises to repair after sale which are contradicted by "as is" warranty disclaimers or other written contract terms. Additionally, many dealers fail to inform consumers prior to purchase of limitations on warranties provided to them or of the meaning of key terms in the purchase contract (e.g., the "as is" clause). In those cases where warranty coverage is disclosed before the sale is consummated, it is typically in the pressured atmosphere of the "closing room", where consumers' full understanding of contract terms is thwarted. Consumers unexpectedly learn the full extent of their repair responsibility when dealers fail to honor these oral promises or when discrepancies between verbal and written warranties are discovered after sale.[160]

Moreover, the record demonstrates that many dealers also misrepresent the mechanical condition of the cars offered for sale. Several studies in the record demonstrate that dealer representations of condition at the time of sale are inconsistent with consumer perception of the condition of the car immediately after the sale.[161]

In the face of repeated testimony concerning the large number of used car complaints filed by consumers with consumer agencies or legal aid offices and record studies, some dealers and dealer organizations argue that the number of valid consumer complaints about used cars and used car dealers is insignificant when compared to the total volume of used cars sold.[162] The National Automobile Dealers Association (NADA) concludes that the National Analysts Study provides evidence that unfair and deceptive sales techniques are not prevalent in the used car industry.[163] Accepting the data that demonstrate 13 percent of the respondents in that study received inaccurate information, NADA concludes that the 13 percent deceptive rate figure does not establish prevalence.[164] Assuming approximately 10 million sales by used car dealers per year, a 13 percent deception rate would suggest a possible 1.3 million incidences of deception per year.[165] Data from the Wisconsin Study, cited by NADA,[166] demonstrate that 20.8 percent of the responding consumers report misrepresentation by dealers of mechanical defects.[167] The Commission believes that these record studies reveal a widespread occurrence of deceptive practices that is otherwise reflected in the rulemaking record.[168]

In addition, the Commission recognizes the formal complaints actually filed by consumers represent only a small portion of problems experienced by used car buyers.[169] A scientific measure of the level of unreported problems was provided as an adjunct to one of the studies entered into the record. In that study, it was estimated that complaints reflect only one to three percent of actual problems.[170] Similarly, although the actual number of warranty and warranty disclaimer documents in the record is small, state and local consumer agency officials, legal aid attorneys, and some industry members report that they are typical of the industry.[171]

We therefore determine that the rulemaking record taken as a whole demonstrates the prevalence of unfair and deceptive practices. The clear and unavoidable conclusion established by the record is that many dealers do misrepresent or fail to disclose material facts relating to the dealer's responsibility for making repairs after sale or misrepresent the mechanical condition of vehicles offered for sale. The practices are pervasive and among the chief sources of complaints received by various consumer protection organizations throughout the country.[172] The record evidence is therefore sufficient to convince the Commission that these unfair and deceptive practices are prevalent.

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[158] Presiding Officer's Report at 47.

[159] Staff Report at 455, Appendix 1. For data on the number of used car dealers nationwide, see Mitchell, NADA and Lemov, NIADA, Oral Presentation before the Commission, September 25, 1979, TR 5, 84.

[160] In the CALPIRG Study (where test shoppers saw a warranty before sale), verbal and written warranties given by dealers differed 34 percent of the time. HX 82 at 17.

[161] *See, e.g.*, National Analysts Study, HX 162(A) at Tables 14, 15; SRL Study, HX 160(A) at Table 7; Wisconsin Study, HX 164(A) at Table IV–4; HX 116(A) at 4–5; HX 158(A) at 4–5; Staff Report at 103–107 nn. 102–107.

[162] Staff Report at 42–43, n. 6. See, e.g., NIADA, S–739 at 70–72; NADA, S–738 at 174–187.

[163] NADA S–738 at 179.

[164] *Id.* at 179–180.

[165] This figure is based on 10 million sales per year by used car dealers. The significance of the National Analysts Study is enhanced by the fact that data are drawn from a sample of all purchasers in 20 states and is therefore not limited to complaints. HX 162(A) at 1–4. The Wisconsin Study data demonstrate a 17.1 percent deception rate. HX 164(A) at Table IV–4.

[166] NADA, S–738 at 181.

[167] Wisconsin Study, HX 164(A) at Table IV–21.

[168] The Commission has earlier noted limitations on its interpretation of the results of the CALPIRG Study. See n. 138 *supra*. Although the methodology and results of other record studies have been challenged (see Presiding Officer's Report at 105–116; Staff Report at 19–37), the Commission believes that these studies, while not necessarily flawless in methodology in every respect, provide probative evidence of practices in the used car market which other record testimony corroborates.

[169] Staff Report at 44 n. 8; Andreasen, TR 6944–45; 6966–68; 6979–80. The Commission notes that dealer organizations, in their post-record comments, reject the "tip of the iceberg" theory. NIADA, S–739 at 70–71; NADA, S–738 at 173–174. The Commission notes that consumer complaints are but one measure of the existence of a market problem.

[170] Staff Report at 45 n. 9.

[171] *Id.* at 268–70 nn. 48, 50–55.

[172] Presiding Officer's Report at 47–48.

C. Legal Basis for the Rule

1. Rulemaking Authority

The Commission's authority to promulgate this trade regulation rule is derived from two sources. The first of these is section 109(b) of the Magnuson-Moss Warranty Act, which states in pertinent part:

> The Commission shall initiate within one year after the date of the enactment of this Act a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer by this title, shall prescribe rules dealing with such warranties and practices. In prescribing rules under this subsection, the Commission may exercise any authority it may have under this title, *or other law*, and in addition it may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of such disclosure. (emphasis supplied) [173]

As the rulemaking record establishes, warranty practices in the used car market have resulted in significant consumer injury. In the preceding section of this Statement,[174] we have summarily described the practices which have deceived buyers about the extent and terms of their warranty coverage. There, we recounted evidence concerning oral misrepresentations by dealers about the scope and terms of warranty coverage as well as unfair failures to disclose the limited nature of their post-sale repair responsibilities. In many instances, verbal promises to repair have been negated by final contract terms containing an "as is" clause that disclaims all responsibility for post-sale repairs. These promises are exacerbated by widespread consumer misunderstanding of the term "as is" and by dealers' failure to disclose, in an adequate and timely manner, the existence and meaning of this term.

These practices, therefore, fall squarely within the scope of section 109(b). By addressing them in a Rule, the Commission is following its statutory mandate "to supplement the protections offered to the consumer" by the Warranty Act.

The second source of statutory authority for this rulemaking is the Federal Trade Commission Act, a source implicitly preserved by 109(b), which permits the Commission to "exercise any authority it may have under this title, or other law" in promulgating rules under that Section. Section 111(a)(1) of the Warranty Act is more explicit:

> Nothing contained in this title shall be construed to repeal, invalidate or supersede the Federal Trade Commission Act. . . .[175]

Section 5(a)(1) of the FTC Act declares unlawful "unfair or deceptive acts or practices in or affecting commerce," and section 18(a)(1)(B) of the Act authorizes the Commission to enforce that statutory provision by prescribing

> Rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce. . . . Rules under this Subparagraph may include requirements prescribed for the purpose of preventing such acts or practices.[176]

The Commission believes that the record should contain a preponderance of substantial reliable evidence in support of a proposed rule before that rule is promulgated. This belief is based partly on the Commission's perception of its function and partly on statutory and judicial authority. Any rule promulgated by the FTC may be challenged in court and may be set aside if "the court finds that the Commission's action is not supported by substantial evidence in the rulemaking record . . . taken as a whole," FTC Act section 18(e)(3)(A), 15 U.S.C. 57(e)(3)(A) (West Supp. 1983). Congress imposed this high standard as a "greater procedural safeguard" because of the "potentially pervasive and deep effect" of FTC rules. *American Optometric Ass'n* v. *FTC*, 626 F.2d 896, 905 (D.C. Cir. 1980) (Quoting H.R. Rep. No. 1107, 93d Cong., 2d Sess. 45–46, 1974 U.S. Code Cong. & Ad. News 7702, 7715.) Therefore, the Commission takes seriously its responsibility to determine if there is a preponderance of substantial reliable evidence to support a proposed rule, and to see that any supporting evidence is clearly recorded.

Initially, the Commission requires substantial evidence for the factual propositions underlying the determination that an existing act or practice is legally unfair or deceptive. When substantial evidence both supports and contradicts such a finding, the Commission bases its decisions on the preponderance of the evidence. Before promulgating a rule rather than bringing individual cases, however, the Commission believes the public interest requires answers to the following additional questions: (1) Is the act or practice prevalent? (2) Does a significant harm exist? (3) Will the proposed rule reduce that harm? and (4) Will the benefits of the rule exceed its costs? [177]

In analyzing each of these questions, three types of evidence are frequently brought to bear: quantitative studies, expert testimony, and anecdotes. The Commission has the flexibility to marshal evidence for a rulemaking record that combines the best mix of these three. However, it has a responsibility to see that the best evidence reasonably available is included.[178]

The best evidence will often be surveys or other methodologically sound quantitative studies. Carefully prepared studies can often give a reliable answer to each of the four questions. First, reliable estimates of the incidence of a practice are an integral part of an assessment of prevalance and are frequently well-suited to quantitative methods. Second, the overall harm caused by a problem is best measured by determining both the magnitude of consumer injury when it occurs and the frequency of such an injury. This issue is also well-suited to quantitative analysis. Third, the effectiveness of a proposed remedy can often be shown only by quantitative studies since informally observed changes may be influenced by other, uncontrolled factors, or may be the result of chance (*i.e.*, not statistically significant). Finally, quantitative studies are most helpful when comparing costs with benefits.

In many instances, of course, precise quantitative answers to these questions are not possible, or could be obtained only at a prohibitive cost. In such cases, the Commission will seek alternative ways to conduct a systematic assessment of the benefits and cost of its regulatory proposals. As in considering the merits of a rule, the Commission will balance the benefits and costs of obtaining additional information. Although carefully structured quantitative studies are generally preferred as evidence in a rulemaking record, the Commission believes that it is possible in some instances to support a rule without such studies.

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[173] 15 U.S.C. 2309(b).

[174] For further discussion of the abuses relating to warranties, see Section II.A.1. *supra*.

[175] 15 U.S.C. 2311(a)(1).

[176] 15 U.S.C. 57a(a)(1)(B).

[177] Although the Commission believes that these questions should be asked and, to the extent possible, answered in every rulemaking on the basis of the best evidence reasonably available, it recognizes there is room for variation in the specific answers that would justify the issuance of a rule, depending upon the circumstances of each particular rulemaking. Different industries lend themselves in varying degrees to answering these questions. The characteristics of the industry, the ability to reasonably gather information, the burdensomeness of the regulation, and the agency's ability to address the unfair or deceptive practice by alternative means must be considered.

[178] The concept of "reasonably available" takes into account the practical resource constraints on the ability of the Commission or parties to a rulemaking to marshal evidence bearing on a particular problem.

The second type of evidence is expert testimony. The primary use of expert testimony is in providing underlying technical details, such as medical or engineering facts or information concerning state law and procedures. Expert testimony is also useful to address the methodology of quantitative studies, and its possible effects on the results. Finally, experts can give their own opinions regarding the issues facing the Commission. These opinions are usually predictions of what quantitative studies would show. As such, they are less satisfactory than an actual study. When an expert's opinion conflicts with the conclusions of a study, the study itself is generally more reliable, unless deficiencies in the methodology or execution of the study have been established and a better study would, in all likelihood, support the expert's opinion.

A third type of evidence is anecdotes. Narratives of specific consumer injuries are helpful in certain ways. They call attention to a possible problem; they illustrate the contours of a known problem; and they may suggest areas for further inquiry. By themselves, anecdotes are generally good evidence that some harm exists. Without thorough exploration of the details of individual examples, however, anecdotes cannot establish the cause of a problem. Moreover, anecdotes give little evidence of the frequency of the harm, they provide limited evidence for the effectiveness of a proposed rule and virtually no evidence of the balance of benefits and costs. Therefore, anecdotal evidence is rarely sufficient to provide the "substantial evidence" which the Commission requires in the rulemaking record.

The foregoing section of this Statement describes practices which, as discussed below, are unfair or deceptive practices under section 5 of the Act. In addition to the warranty practices outlined above, the record also demonstrates that used car buyers are often deceived about the mechanical condition of the cars they purchase by various practices.[179]

2. Section 5 Analysis

a. Deception. Certain elements undergird all Commission findings of deception. On October 14, 1983, the Commission adopted a Policy Statement on Deception setting forth in detail an analysis of its deception jurisdiction.[180] The Commission summarized its deception authority by stating that it will find an act or practice deceptive if there is a representation, omission, or practice that is likely to mislead consumers acting reasonably under the circumstance, and the representation, omission, or practice is material. These elements articulate the factors actually used in earlier Commission cases to identify whether an act or practice was deceptive.[181]

The requirement that an act or practice be "likely to mislead" reflects the long established principle that the Commission need not find actual deception to hold that a violation of Section 5 has occurred.[182] This concept was explained as early as 1964, when the Commission stated:

> In the application of the [the deception] standard to the many different factual patterns that have arisen in case before the Commission, certain principles have been well established. One is that under Section 5 actual deception of particular consumers need not be shown.[183]

Similarly, the requirement that an act or practice by considered from the perspective of a "consumer acting reasonably in the circumstances" reflects the fact that virtually all representations, even those that are scrupulously honest, can be misunderstood by some consumers. The Commission has long recognized that the law should not be applied in such a way as to find that honest representations are deceptive simply because they are misunderstood by a few.[184] Thus, the Commission has noted that an advertisement would not be considered deceptive merely because it could be "unreasonably misunderstood by an insignificant and unrepresentative segment of the class of persons to whom the representation is addressed."[185] In recent cases, this concept has been increasingly emphasized by the Commission.[186]

The third element of deception is materiality. As noted in the Commission's policy statement, a material representation, Commission, act, or practice involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product. Consumers thus are likely to suffer injury from a material misrepresentation.[187] This element too is well established in past Commission deception cases.[188]

b. Unfairness. The Commission's authority to prohibit unfair acts or practices in the marketplace is well established. The Commission and the courts have developed an extensive body of law concerning unfair practices.[189]

The Wheeler-Lea amendment of 1938 and the 1975 and 1980 FTC Improvements Acts constitute legislative recognition that, in an imperfect system, certain commercial practices may impose undue costs and risks on individuals, depriving them of the benefits normally associated with free and vigorous competition.[190] In this proceeding, the Commission is exercising its unfairness jurisdiction to determine whether dealers' failure to disclose the "as is" nature of the sale or to make warranty terms available to consumers prior to the sale of a used car is an unfair practice.

In December 1980, the Commission prepared a formal statement analyzing the legal basis for the exercise of its Section 5 consumer unfairness jurisdiction.[191] That document reviewed

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[179] The most serious of these forms of deception occurs in the sale of "as is" cars. At least 50 percent of all used cars are sold with no warranty. See Staff Report at 248–53; 295–300. *See also* Presiding Officer's Report at 46–47; 124–25.

[180] Commission letter to Hon. John D. Dingell, Chairman, Subcommittee on Oversight and Investigations (hereinafter cited as "Deception Statement"). Letter from Commission to the Honorable Bob Packwood and the Honorable Bob Kasten (March 5, 1984). *See also* Cliffdale Associates, Inc., Docket No. 9156 (March 23, 1984).

[181] Sears, Roebuck and Co., 95 F.T.C. 406 (1980), *aff'd*, 676 F.2d 385 (9th Cir. 1982).

[182] See generally, Deception Statement at 4–7 and cases cited therein for a more detailed discussion of the "likely to mislead" principle.

[183] Statement of Basis and Purpose, Cigarette Advertising and Labeling Rule, p. 84, 29 FR 8324 (1964).

[184] Heinz W. Kirchner, 63 F.T.C. 1282 (1963), *aff'd*, 337 F.2d 751 (9th Cir. 1964). However, if a representation or practice is directed at a distinctive target group, the Commission will determine the effect of the representation on a member of that group. Ideal Toy Co., 64 F.T.C. 297, 310 (1964). See Deception Statement at 7–14.

[185] Heinz W. Kirchner, 63 F.T.C. 1282 at 1290.

[186] *See, e.g.*, American Home Products, D.8918 (1981); Sterling Drug, D.8919 (July 5, 1983); Bristol-Myers, D.8917 (July 5, 1983), appeal docketed, No. 83–4167 (2d Cir. Sept. 12, 1983). This concept also is discussed at DS 7–15 and the cases cited therein.

[187] The policy statement specifically recognizes that an act or practice need only be likely to cause injury to be considered deceptive. Actual injury is not required. DS 16.

[188] American Home Products, 98 F.T.C. 136 (1981), *aff'd*, 695 F.2d 681 (3d Cir. 1982) Ford Motor Co., 84 F.T.C. 729 (1974) (consent), *modified*, 547 F.2d 954 (6th Cir. 1976), *reissued*, May 16, 1977 (slip opinion). See Statement of Basis and Purpose, Cigarette Advertising and Labeling Rules, DS 15.

[189] See generally, FTC v. R.F. Keppel Bros., 291 U.S. 304, 313 (1934); Statement of Basis and Purpose Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 FR 8324, 8355 (1964); All States Industries Inc. v. F.T.C., 423 F.2d 423 (4th Cir.), *cert. denied*, 400 U.S. 233, 244–45 n.5 (1972); Spiegel, Inc., 88 F.T.C. 425 (1975), *aff'd in part*, 540 F.2d 287 (7th Cir. 1976).

[190] *See, e.g.*, Horizon Corporation, 97 F.T.C. 464 (1981).

[191] *See* Letter from the Commission to the Honorable Wendell H. Ford and the Honorable John

Continued

the Commission's prior exercise of its unfairness jurisdiction and clarified the criteria for its future use of this authority.

Consumer injury is the central focus of any inquiry regarding unfairness. Not every instance of consumer injury is unfair, however, because virtually any commercial practice involves a complex mix of benefits and costs. In its statement, the Commission observed that:

> To justify a finding of unfairness the injury must satisfy three tests. It must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could not reasonably have avoided.[192]

The Commission's unfairness authority does not extend to trivial or speculative harm. "An injury may be sufficiently substantial, however, if it does a small harm to a large number of people, or if it raises a significant risk of concrete harm."[193] Furthermore, except in aggravated cases where tangible injury can be clearly demonstrated, subjective types of harm—embarrassment, emotional distress, etc.—will not be enough to warrant a finding of unfairness. Rather, economic or other tangible harm must also be present.[194]

Failing to disclose warranty terms and "as is" disclaimers before the bargaining process begins causes substantial injury to consumers. Consumers who overestimate the extent of warranty protection are likely to pay significantly more for the car than they would if this information had been disclosed. Such information is particularly important when dealers misrepresent the mechanical condition of the car. The only arguable countervailing benefit to consumers or competition produced by a dealer's failure to disclose warranty terms in a timely manner would be that dealers can avoid the exceedingly small cost of disclosure. The injury caused by failing to disclose warranty terms, however, far outweighs any countervailing benefit.

Further, we conclude that the injury produced by a dealer's failure to disclose this information could not reasonably be avoided through the exercise of consumer sovereignty. Consumers must rely on the dealer to provide accurate information about written warranties provided with a vehicle. Consumers cannot use general knowledge of warranties offered by used car dealers to predict what a particular dealer will offer because warranty terms given to used car buyers vary markedly.[195]

3. Regulatory Analysis

Section V of this Statement sets forth a detailed discussion of the benefits and costs of each rule provision. This analysis is no different from that embodied in the statutory requirement to conduct a regulatory analysis.[196] For this reason, the Commission has integrated the regulatory analysis with the Statement of Basis and Purpose for the Rule.

D. Remedies

Section 109(b) of the Magnuson-Moss Warranty Act explicitly authorizes the Commission to issue rules "dealing with" used car warranties and warranty practices and, in prescribing such rules, to require a "disclosure that a used motor vehicle is sold without any warranty" as well as the specific "form and content of such a disclosure."[197] Complementary remedial authority is found in section 18 of the FTC Act, which authorizes the Commission, in addition to issuing rules defining unfair or deceptive practices, to include in its rules "requirements prescribed for the purpose of preventing such acts or practices."[198]

In fashioning any such remedy for the deceptive practices found to exist in the rulemaking record, the Commission is bound to show a "reasonable relationship" between the remedy and the practice.[199] The Commission's approach to fashioning a remedy in rulemaking is different from that used in individual cases because rules regulate innocent parties as well as law violators. This distinction makes careful attention to the effectiveness of the remedy particularly important in rulemaking. Evidence of the effectiveness of a remedy may be more difficult to obtain than evidence establishing the existence and prevalence of unlawful practices because evidence bearing on the effect of a remedy is inherently predictive. However, the Commission believes that remedies, as all other aspects of a rule, should be supported by the best evidence reasonably available.

After a careful examination of the record, the Commission has developed a Rule that it believes will be an effective remedy for the unfair and deceptive practices in the used car industry. The Commission, therefore, believes that the Rule and each of its elements described below represent a justifiable exercise of its statutory authority.

1. Warranty and "As Is" Disclosures

The record clearly demonstrates that "as is" sales are fraught with dealer misrepresentations regarding both mechanical condition of cars sold and dealer after-sale repair responsibility.[200] In addition, the record demonstrates that many consumers do not understand the nature of an "as is" sale.[201] Such ignorance is aggravated by dealer practices that result in inconspicuous, untimely, and unclear disclosures.[202] The record further demonstrates that dealers orally misrepresent the terms of written warranties and service contracts and fail to make timely, conspicuous, and clear disclosure of warranty and service contract terms.[203]

To remedy these unfair and deceptive practices, the Rule requires that, on the window sticker, dealers indicate whether a warranty is offered or whether the car is sold "as is", i.e., without any warranties.[204] If a warranty is offered, the dealer must disclose on the sticker the systems that are covered, the percentage of total repair costs paid for by the dealer and the duration of the warranty.[205] If a service contract is offered, the dealer must indicate its cost.

Some industry members argue that warranty or "as is" disclosure requirements are unnecessary because they duplicate the pre-sale availability requirements of the Magnuson-Moss Warranty Act and existing state law

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C. Danforth (Dec. 17, 1980) (hereinafter cited as "Commission Unfairness Statement"). *See also* Horizon Corporation, 97 F.T.C. 464 (1981); Letter from the Commission to the Honorable Bob Packwood and the Honorable Bob Kasten (March 5, 1982) (hereinafter cited as "Commission Letter").

[192] Commission Unfairness Statement, *supra* note 191.

[193] *Id.*

[194] *Id.*

[195] *See* discussion of warranty terms in the used car industry in Section II A.1.b. *supra*.

[196] Section 22 of the Federal Trade Commission Act, as amended, 15 U.S.C. 57b–3. The statutory authority specifically provides for integrating the regulatory analysis with the Statement of Basis and Purpose. *See* FTC Act section 22(b)(3)(A)(ii), 15 U.S.C. 57b–3.

[197] 15 U.S.C. 2309(b).

[198] 15 U.S.C. 57a(a)(1)(B). The Commission's authority to adopt such requirements was recognized in Katharine Gibbs School (Inc.) v. FTC, 612 F.2d 658, 662 (2nd Cir. 1979).

[199] FTC v. National Lead Co., 352 U.S. 419, 428–29 (1957); Jacob Siegel Co. v. FTC, 327 U.S. 608 (1946). This standard was recently held applicable to Section 18 rulemaking. American Optometric Ass'n v. FTC, 626 F.2d 896, 911 n.8 (D.C. Cir. 1980).

[200] Staff Report at 103–130, 262–280, 295–299; NIADA, S–739 at 82–83.

[201] *See* n. 92 and accompanying text *supra*.

[202] Staff Report at 262–80; 295–300; NIADA, S–739 at 82–83.

[203] *Id.* at 280–290; 303–305.

[204] This remedial approach has been commented upon favorably by one industry organization. See NIADA, S–739 at 112–113, 120–121, Appendix B.

[205] *Id.* at 111–113, 130–121, Appendix B.

with regard to "as is" disclosures.[206] The warranty and "as is" disclosures required by this Rule do not duplicate Magnuson-Moss Act requirements but supplement them as specifically directed by Congress in Section 109(a). Section 109(a) specifically directed the Commission to address, with regard to the used car industry alone, the appropriate disclosure for sales in which "no warranty" was given. The Act itself does not require disclosures regarding "as is" sales. Likewise, state laws with regard to "as is" sales do not require point of sale disclosures but disclosure prior to consummation, i.e., in the "closing room." [207]

These requirements will remedy the deceptive practice of misrepresentation concerning post-sale repair responsibilities and unfair failure to disclose warranty coverage. Moreover, the fact that the disclosure will be available to consumers on a window sticker will ensure that consumers will receive warranty information at a time when the information can influence their purchasing decision. The Baseline Survey indicates that a disclosure of warranty information on a window sticker increases consumers' understanding of the dealer's post-sale repair responsibility.[208] Therefore, the warranty disclosure provisions of the Rule, which respond directly to both the dealer deceptions about warranties and unfair failures to disclose warranties, will provide an effective remedy for the documented abuses.

2. Spoken Promises Warning

The Rule also requires a disclosure to consumers that, unless oral promises are reduced to writting, they are difficult to enforce. As noted above, the record is replete with evidence that dealers orally misrepresent both the mechanical condition of used cars and the dealer's after-sale repair responsibility.[209] The record demonstrates that consumers rely on oral statements made by dealers at the point of purchase even though those oral statements are not confirmed in writing.[210] Consumers are therefore frequently deceived at the point of purchase by representations which are not only untrue but also unenforceable. A warning to consumers that all oral promises should be reduced to writing is therefore clearly justified by the record.[211]

We believe that the level of oral misrepresentation at the used car lot can be reduced if consumers are informed of the need to secure a written record of all promises made in connection with a used car sale.[212] By introducing this information into the used car market, the Commission expects consumer reliance on oral statements to decrease and insistence on a written confirmation of representations made at the time of sale to increase. If the consumer is able to obtain written confirmation of those statements in a sales contract that can be used in the event of a dispute, many dealers are likely to be more reluctant than they are at present to make false or misleading oral statements. As a result, a "spoken promises" warning should act as a deterrent to deception in the used car market and is clearly related to deceptive practices by used car sellers.

3. List of Major Mechanical and Safety Systems

The list of major mechanical and safety systems is designed to address the record evidence that misrepresentations concerning mechanical condition are often made on a system-by-system basis. The components listed are those most likely to be represented by dealers as being in good condition without any confirmation of such representations in writing.[213]

The list of systems on the Buyers Guide is reasonably related to these abuses. The list provides a framework for consumers to evaluate the extent of the warranty coverage which must be indicated on the warranties section of the sticker. Consumers will also be able to utilize the list when comparing the warranties offered on different cars or offered by different dealers. The list also serves other remedial purposes. By identifying the major components of the car, the list counters the specific dealer misrepresentations that certain consumer-noted problems are minor.[214] It also identifies for consumers the systems they may wish to have inspected by a third party prior to purchase. Further, it provides information about major defects that could occur in these systems to provide further guidance to consumers on what should be evaluated during the third-party inspection.

4. Notice of Availability of Pre-Purchase Inspection Opportunity

Pre-purchase inspection by a third party can provide consumers with valuable information regarding the mechanical condition of a used car and can considerably enhance the consumer's bargaining position.[215] However, the record demonstrates that few consumers actually seek independent inspections by a qualified mechanic.[216] The record shows that this result is in part caused by certain dealer practices which discourage the consumer's use of independent pre-purchase inspections.[217]

Dealers make general representations that their cars are in sound mechanical condition.[218] Consumers rely on dealer representations of sound mechanical condition and thus do not perceive a need to obtain an independent pre-purchase inspection.[219] In addition, the record demonstrates that dealers commonly "detail" cars. Since consumers often believe that "good looking" cars are "good running" cars, this dealer practice discourages consumer belief in the need for inspections.[220]

Although the record does not support imposition of a mandatory right to independent, off-the-lot, pre-purchase inspections,[221] it does support a required disclosure which suggests that consumers inquire about the availability of an independent, pre-purchase inspection. Such a disclosure focuses consumer attention on the idea of pre-purchase inspection as a means of evaluating a car's mechanical condition. In addition, the notice allows consumers to gauge dealers representations concerning mechanical condition by measuring those representations against dealer willingness to permit third-party inspections and independent confirmaton of such representations.

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[206] *See* Merrill-Wahus, dealer organization, T-165; Sapp, dealer organization, T-503; Stores, dealer organization, T-567; Boniface, dealer, T-217; Nicholson, dealer, T-710; Lohmann, dealer, T-714.

[207] Staff Report at 483–498.

[208] *See* n. 293 *infra*.

[209] Staff Report at 103–130; 262–90; 295–315.

[210] *Id.* at 108–110, 274–277. While the industry recognizes that oral misrepresentation occurs, it denies prevalence. *See, e.g.*, NIADA, S–739 at 70–71; NADA, S–738 at 174–187.

[211] Industry members also recognize the need for such a disclosure. *See, e.g.*, Virginia Independent Automobile Dealers Association, T–700 at 9; NIADA, S–739 at 121; NIADA, T–742 at Appendix 1. Industry objections to earlier proposals for this disclosure were addressed to tone rather than substance. *See, e.g.*, NADA, T–740; Antoniewicz, dealer organization, T–500; Sapp, dealer organization, T–503. The language of the disclosure has since been modified.

[212] The Commission notes that certain industry members reach a similar conclusion. *See* NIADA, S–739 at 112–113.

[213] Staff Report at 109–115.

[214] Staff Report at 108 n. 104.

[215] Staff Report at 67–70.

[216] *Id.* at 93–94

[217] *Id.* at 87–89 n. 81.

[218] *Id.* at 103–109.

[219] *Id.* at 109–130.

[220] *Id.* at 97–103.

[221] *See* Section IV.C. *infra*.

III. Section-by-Section Analysis

Section 455.1(a)—List of unfair or deceptive acts or practices.

The record of this rulemaking proceeding documents the widespread occurrance of a variety of unfair or deceptive practices in the used car market. These practices are specifically enumerated in this subsection of the Rule.[222] As set forth below, engaging in any of the practices enumerated in this section is not a violation of the Rule. Compliance with the Rule is attained by meeting the requirements of §§ 455.2 through 455.5 of the Rule. Nevertheless, the Commission, based on the record of this proceeding, considers these practices to be unfair or deceptive under Section 5 of the Federal Trade Commission Act, so that violations will be subject to future law enforcement actions by the Commission.

Section 455.1(b)—Definition of rule violation.

As noted immediately above, compliance with the Rule is attained by meeting the requirements of §§ 455.2 through 455.5 of the Rule. Each violation of this Rule, which is issued pursuant to section 18 of the Federal Trade Commission Act, carries a civil penalty of up to $10,000 which the Commission may seek in the appropriate federal district court. It is therefore essential that the provisions of this Rule precisely describe the responsibilities of each person covered. To insure such precision, this subsection limits any rule violation to the failure to comply with the remedial provisions set forth in §§ 455.2 through 455.5 of the Rule. By defining a Rule violation in terms of compliance with these explicit requirements, there is no question as to the steps that a used vehicle dealer must take to comply with the Rule.

Section 455.1(c)—Definitions.

The scope of the Rule adopted here is determined largely by the definition of key terms described in this subsection. As set forth below, each of these terms has been specifically defined so as to insure the most appropriate coverage of the Rule.

Section 455.1(c)(1)—"Vehicle".

As initially proposed, [223] the Rule would have covered any motorized vehicle, including motorcycles, designed to carry not more than 15 people. However, upon consideration of the evidence in the record, the Commission has concluded that, while the definition of "vehicle" should be broad enough to include the many personal use vehicles on the market, the definition should not be so broad as to cover vehicles that are generally used for commercial activity. Under §455.1(c)(1), coverage of the Rule has been limited to vehicles, other than motorcycles, of a size and weight most often purchased by individual consumers.[224]

The size and weight limitations in the definition of "vehicle" are designed so as to include light-duty trucks which are frequently used for personal activities, because the record reflects numerous consumer complaints concerning such vehicles.[225] Conversely, large trucks are excluded from the definition because of their specialized commercial nature and because buyers of large trucks generally appear to be more knowledgeable and sophisticated than the average used car buyer.[226] To distinguish between trucks used for commercial purposes and those used for personal transportation, the Commission has relied upon criteria developed by the Environmental Protection Agency for the classification of light-duty trucks.[227] The size and weight parameters set in the definition of "vehicle" also exclude large recreational vehicles from the Rule. There is insufficient evidence in the record to conclude that sales of these vehicles are characterized by the deceptive practices that the Rule is designed to prevent.

Finally, the definition of "vehicle" excludes motorcycles. While some witnesses suggested inclusion, there is little record evidence regarding deception by motorcycle dealers.[228]

Section 455.1(c)(2) defines "used vehicle" in a manner consistent with the Commission's decision in *Peacock Buick, Inc.*[229] In *Peacock*, we concluded that the term "used car" should include "any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer."[230]

An alternative definition to "used vehicle" suggested during the rulemaking proceeding turned on whether a car had been previously sold to a person who "purchased the vehicle in good faith" for a purpose other than resale or whether a car had been previously used in a variety of specified situations (e.g., as a rental or driver education car or as a demonstrator). Based on record comment[231] and our own analysis, we have concluded that this definition would be not only confusing to consumers and dealers but also difficult for the Commission to enforce. Accordingly, the Commission has adopted the present definition in an effort both to clarify and to simplify the question of which vehicles are covered by the Rule.

In adopting this definition, the Commission specifically intends to include within the scope of the Rule cars identified on the record as "demonstrators."[232] Many states, for the purpose of titling laws, identify as "new" vehicles for which title has not passed to a purchaser despite extensive use of the vehicle as a demonstrator model. However, the record reflects that used cars sold as "demonstrators" are subject to dealer oral misrepresentations concerning overall quality of mechanical condition.[233] Therefore, the Commission has concluded that, notwithstanding the various state titling laws, there is substantial record justification and legal precedent for including demonstrators within the scope of the Rule.[234]

Insofar as a vehicle is sold for its parts and not as an operating vehicle, there appears to be no need to provide consumers with the kind of information customarily used to evaluate an automobile as a means of personal transportation. Accordingly, the definition of "used vehicle" specifically excludes those used cars sold only for salvage.

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[222] Although one participant contended that a substantially similar list failed to meet the specificity requirements enunciated in *Katharine Gibbs School (Inc.)* v. *FTC*, 612 F.2d 658, 662 (2nd Cir. 1979), the Commission believes that the list of unfair or deceptive practices meets the Gibbs standard. *See* NADA, T-741, at 31.

[223] 41 FR 1089 (1976).

[224] Staff Report at 397–399.

[225] Staff Report at 400–402.

[226] *Id.* at 401.

[227] 41 FR 56316 (1976).

[228] Staff Report at 403.

[229] 86 FTC 1532 (1975).

[230] *Id.* at 1566.

[231] Staff Report at 404.

[232] "Demonstrators" included cars represented as "dealer demonstrators" "factory demonstrators," "executive demonstrators" and the like. *Id.* at 344.

[233] *See, e.g.*, Towle, TR 577–83; Brewton, TR 2761–66.

[234] Our decision to include demonstrators in the definition of "used vehicle" does not in any way preempt state titling laws which identify demonstrator models as "new" cars. The Rule adopted here does not interfere with the classification of demonstrators for purposes of title; the Rule only requires that, if driven more than the limited number of miles needed to move or road test a vehicle, a car, when offered for sale, must display the Buyers Guide so as to provide consumers with warranty disclosures. Moreover, it should be noted that the Rule does not conflict with other federal statutes. At most, some dealers may find that they will have to post the federally-mandated new car vehicle disclosure sticker (required under the Monroney Act, 15 U.S.C. 1231 *et seq.* (1972)), as well as the Buyers Guide, in those few instances (*e.g.*, demonstrators) where a vehicle straddles the line between new and used.

Section 455.1(c)(3)—"Dealer".

This subsection defines a "dealer" in terms of the number and frequency of used car sales or offerings. The original rule proposed by the Commission defined a dealer as anyone who engaged in the business of offering for sale or selling used cars to the general public. Based on testimony in the record indicating the difficulty of interpreting the phrase "in the business of," [235] the Commission has concluded that a numerical standard would be easier to enforce and would provide better notice to the public concerning the applicability of the Rule. The record reflects that most states set the dividing line between a dealer and a casual seller of used cars at between three and six vehicles each year.[236] We have determined that five vehicles is the optimal cut-off point because any number less than that may unnecessarily include within the Rule occasional private sales of personal cars by their owners. Conversely, a number greater than five increases the risk that the Rule will be inapplicable to the so-called "curbstone" seller who, though buying and selling a substantial number of used cars per year (often from a residential location) may not formally be engaged in what would be termed the "business" of used car sales.[237]

The definition of "dealer" also excludes those who engage in the private sale of used cars, other than those who sell more than five cars per twelve-month period. Although a number of witnesses testified in favor of subjecting private sales to the requirements of the Rule,[238] the Commission does not find any basis to extend the provisions of the Rule to the private market. Indeed, the record discloses considerable evidence indicating that, in many instances, consumers receive more accurate information about the mechanical condition of used cars from private parties than from used car dealers.[239] The record also indicates that private parties generally do not offer warranties in connection with the sale of their used cars.[240] Therefore, the Commission finds that the record has not documented a sufficient incidence of deceptive sales practices in the private market to justify what would be a substantial expansion of the Rule's scope.

A considerable amount of discussion in the record focused on the question of whether the Rule should cover both franchise and independent used car dealers. Our review of the record in this regard convinces us that both types of used car dealers should be included within the scope of the Rule, since the frequency of dealer misrepresentation concerning warranty coverage and mechanical condition, as well as the severity of defects occurring soon after sale, is sufficiently great among both franchise and independent dealers.[241]

The definition of dealer specifically excludes banks, financial institutions, and a lessor selling leased vehicles to the vehicle's lessee, to a buyer procured by the vehicle's lessee, or to the lessee's employee. Thus, in most instances, sales of leased vehicles by the vehicle's lessor, where the lessor retains no actual or constructive possession of the vehicle, are exempt from the Rule.

By the terms of this exemption, banks and financial institutions selling used cars forfeited as collateral on consumer loans also need not comply with the requirements of the Rule. Various banking representatives have requested that this exemption be extended to the affiliates and subsidiaries of banks and financial institutions.[242] The gravamen of the banks' arguments is that confusion will occur if the Rule does not explicitly permit banking affiliates and subsidiaries to conduct the same type of used car sales as the banks themselves may conduct without coming under the Rule. However, the Commission believes that the record does not include sufficient evidence to determine the extent to which existing banking regulations might permit financial institutions to engage in the retail sale of used cars through businesses operated by their affiliates and subsidiaries. Therefore, the Commission declines to extend the exemption for banks to include banking affiliates and subsidiaries.[243]

Some witnesses appearing in the proceeding argued in the rulemaking record that fleet sales of used cars are not made in a retail sales environment.[244] However, the record demonstrates that many fleet operators sell significant numbers of used cars to individual consumers at retail.[245] As a result, the Commission has determined that fleet sales should remain within the coverage of the Rule. Fleet operators remain free to petition the Commission and present evidence indicating that an exemption would be appropriate.

The Commission intends, by the exemptions from the definition of "dealer," to remove from the scope of the Rule used car sales where the absence of a retail sales environment substantially diminishes the risk of the deceptive practices that we have found to be characteristic of used car sales presentations.

Section 455.1(c)(4)—"Consumer".

This subsection defines the class of persons intended to be the direct beneficiaries of the disclosures required by the Rule. The definition adopted here extends beyond the definition of "consumer" in the Magnuson-Moss Act [246] and in other product information disclosure statutes [247] to include any person who is not a used car dealer. The record fails to establish that business purchasers in general are more knowledgeable than other consumers with regard to mechanical condition and warranty information. The Commission, absent record evidence to the contrary, cannot presume that those purchasing used cars for other than personal use, particularly small businesses that may be owned and operated by individuals, are more sophisticated than individual private purchasers with respect to the warranty coverage that may be provided or the mechanical condition of used cars. Moreover, we believe that a definition of consumer which would require dealers to differentiate purchasers on the basis of knowledge or sophistication in the area of used cars would unfairly burden used car dealers. It is, in our judgment, extremely difficult to predict who is likely to shop at a particular used car lot or what will be level of sophistication among the various persons who decide to buy. To require that the dealer estimate the sophistication of prospective purchasers would be an onerous task that would unnecessarily increase a dealer's risk of violating the Rule. Therefore, in order to insure the necessary pre-sale

[235] Staff Report at 405–407.

[236] *Id.* at 406.

[237] *Id.*

[238] *Id.* at 407.

[239] HX 164(A) at Tables IV–3, IV–4.

[240] See, e.g., HX 164(A) at Table IV–20 (97.6 percent of respondents reported receiving no warranty from the private seller).

[241] Staff Report at 408–415.

[242] *See* Motion of Consumer Bankers Association, April 13, 1981; American Bankers Association, T–747. While we are mindful of the Federal Trade Commission Act's exclusion of banks from the Commission's jurisdiction under Section 5, the Commission believes that subsidiaries of financial institutions which are engaged in the business of selling used cars are covered by this Rule.

[243] The Commission notes that these issues may be more appropriately explored in the context of an exemption proceeding under section 18(g) of the Federal Trade Commission Act.

[244] Staff Report at 415.

[245] *Id.* at 416.

[246] Under sections 101 (1) and (3) of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 (1), (3), a "consumer" means a buyer of any product normally used for personal, family, or household purposes.

[247] *E.g.*, Consumer Credit Protection Act, 15 U.S.C. 1602.

availability of the information disclosures prescribed in the Rule without unduly burdening used car dealers, the Commission has adopted a more inclusive definition of "consumer." [248]

Sections 455.1(c) (5), (6), (7)—"Warranty," "Implied warranty," and "Service contract".

These subsections define the terms "warranty," "implied warranty," and "service contract" in a manner which conforms to the definitions of those terms in the Magnuson-Moss Warranty Act.[249] Persons subject to this Trade Regulation Rule should be aware that the provisions of the Magnuson-Moss Warranty Act and the Commission's Rules interpreting that Act are fully applicable to any written warranty offered in connection with the sale of a used Car.[250] Persons affected by this Rule should therefore consult the terms of the Magunson-Moss Warranty Act and the Commission's Rules interpreting that Act for a clear explanation of the duties arising under the Act.

In the definition of "service contract", we intend to clarify our intent not to regulate service contracts in those states which classify such contracts as "repair insurance". In those states, service contracts are regulated by state insurance authorities and are therefore excluded from the Commission's jurisdiction by the McCarran-Ferguson Act.[251]

Section 455.1(c)(8)—"You".

The term "you" in the operative sections of the rule refers to used car dealers. However, in the Buyers Guide prescribed by the Rule, "you" refers exclusively to the purchaser of a used car. This distinction is recognized in the definition set forth in this subsection. The Commission has adopted this distinction in an effort to clarify and simplify the Buyers Guide.

Section 455.2(a)—General duties.

The Rule requires that before offering a used vehicle for sale to a consumer, dealers prepare and display the "Buyers Guide" on the side window of the vehicle. This placement should attract consumer attention without blocking the driver's line of sight during a test drive or otherwise interfering with a dealer's sales presentation.[252] The Rule also prescribes the precise size, type style, and format of the window sticker. In the Commission's opinion, a uniform method of disclosure will alleviate confusion and possible deception which might result from inconsistent versions of the Buyers Guide. A standardized form will also minimize the risk to dealers who might otherwise post a disclosure form which does not satisfy the Rule's requirements and who would thereby subject themselves to potential liability. Finally a standardized form will facilitate consumer comparison of warranty coverage offered by different dealers of different vehicles.

In order to evaluate the effectiveness of the Buyers Guide in communicating information to consumers concerning a used car, the Commission's staff arranged for a series of consumer comprehension tests.[253] Based on the consumer testing results, the Commission incorporated into the 1981 Buyers Guide a variety of technical changes in the graphic design of the Guide and the language used to convey the various information disclosures. The Buyers Guide included in the Rule we promulgate today has been revised to make the warranty and "as is" disclosures more prominent.

As explained below, the Buyers Guide contains several information disclosures that the Commission believes to be necessary to prevent deception in the used car marketplace: (1) A warning concerning the importance of obtaining oral promises in writing; (2) a listing of a major systems of an automobile; and (3) a recommendation that consumers ask about pre-purchase inspection opportunity.

The Buyers Guide encourages consumers to obtain in writing all promises made in connection with a used car sales presentation. This information is vital to consumers who may try to enforce a dealer's promises only to find that promises not reduced to writing or included within the terms of the written sales contract are unenforceable. The spoken promises warning, therefore, is designed to reduce dealers' oral misrepresentations—and consumer reliance thereon—that the record demonstrates occur with frequency in the used car market.[254]

Second, the Buyers Guide lists the major systems in an automobile along with some major defects that may occur in these systems. The Commission has concluded that, in order to benefit from the warranty disclosures required by the Rule, consumers need to be aware of the major automotive systems they should evaluate before purchasing a used car. This is especially so in light of overwhelming record data indicating lack of consumer knowledge with regard to mechanical condition and warranty terms. By prominently displaying this information at the point of purchase, the Buyers Guide will provide consumers with a valuable frame of reference within which to evaluate dealer oral representations regarding mechanical condition and warranty coverage. Consumers can also use the list of major defects as a guide in obtaining a pre-purchase inspection by an independent mechanic.

Third, the Buyers Guide advises consumers to ask the used car dealer about the possibility of pre-purchase inspections. Consumers can use third-party information concerning the mechancial condition of a used car to determine whether the dealer has engaged in misrepresentation or failure to disclose material information during the transaction.[255] This information also may assist consumers in negotiating improved warranty coverage or a lower purchase price.

Section 455.2(b)—Disclosure of warranty information.

In section 109(b) of the Magnuson-Moss Act, Congress directed the Commission to initiate this proceeding to determine the need for rules concerning warranty practices in the used car market. As summarized in Section II.A.1 of this Statement of Basis and Purpose, the evidence received by the Commission during the rulemaking proceeding demonstrates that, because of unfair and deceptive dealer practices, consumers generally have little understanding of the extent of warranty coverage (or lack thereof) accompanying

[248] Certain dealers may have clientele (*e.g.*, large businesses that regularly purchase used vehicles) that clearly do not require the disclosures provided by the Rule. Although the Commission believes that these dealers are few in number, the Commission would consider the advisability of exempting such dealers from the Rule. Therefore, it would be appropriate for such dealers to file a petition for exemption with the Commission to enable the Commission to consider these specialized situations.

[249] 15 U.S.C. 2301(6)(B), (7), (8).

[250] *See, e.g.*, 15 U.S.C. 2302–2308. See also 16 CFR Parts 700 (interpretations of Magnuson-Moss Warranty Act); 701 (disclosure of written consumer product warranty terms and conditions); 702 (presale availability of written warranty terms); and 703 (informal dispute settlement procedures).

[251] 15 U.S.C. 1011.

[252] The Rule also permits the removal of the Used Car Buyers Guide for purposes of a test drive. *See* § 455.2(a)(1).

[253] Market Facts Inc., "Exploratory Research into Consumer Attitudes Toward the Used Car Buyers Guide," May 1981. The Commission also contracted for consumer testing for previous versions of the Rule. *See* Hollander Study (August 1980) and Public Communications Center Study (December 1980), Attachments to Staff Memorandum to the Commission, Final Recommendations Concerning Used Car TRR, dated January 14, 1981.

[254] *See* Sections II.A.1, II.A.2 *supra.*

[255] *See* Sections II.D.4 *supra.*

the purchase of a used car. Consumers therefore do not fully anticipate the repair costs that may accompany the ownership of a used car.[256] There is also substantial evidence that used car dealers frequently misrepresent or fail to disclose both the terms and conditions of warranty coverage offered to their consumers.[275]

The Commission has determined that the least burdensome, most economical means of insuring the availability of adequate used car warranty information is to provide consumers with point-of-purchase disclosures. Accordingly, § 455.2 of the Rule imposes on used car dealers a duty to fill in and display a Buyers Guide on all used cars sold to consumers. If a warranty accompanies a car offered for sale, a dealer must, under the Rule, inform the buyer whether the warranty is full or limited, what percentage of the repair cost the dealer will pay, the systems covered by the warranty, and the duration of the warranty. The dealer must also indicate, by marking the correct disclosure on the Used Car Buyers Guide, if no warranty accompanies the car (i.e., the car is sold "as is") or if state law "implied warranties" are the consumer's only form of postsale protection.[258] Finally, the Rule requires each dealer to indicate the availability, if any, of a service contract covering repair costs. It is the Commission's belief that this warranty information, when displayed on the Buyers Guide, should prevent the failures to disclose and the misrepresentations of warranty coverage documented in the record. It also should assist consumers in evaluating the long-term cost of used car ownership and thereby reduce the extensive consumer injury that results from unanticipated repair costs.

During the course of this proceeding, the Commission considered several different methods of disclosing the warranty information required by the Rule. Because of the many different warranties in the marketplace and the various methods of describing those warranties, the Commission has adopted a disclosure format that provides blank spaces for the dealer to use in describing the system covered by a warranty and the duration of that warranty. However, notwithstanding the flexibility afforded by this method of warranty information disclosure, the use of shorthand phrases to describe the systems of a car (e.g., "drive train" to describe the engine, transmission, drive shaft, and differential) is prohibited by § 455.2(b)(2)(ii) of the Rule. The record reflects that shorthand phrases, such as "drive train" or "power train", are used by dealers to connote parts of a car but that consumers do not understand such shorthand terms and are therefore not able to assess the value of a warranty offered on a "drive train."[259] Furthermore, such shorthand terms do not convey identical meaning throughout the used car industry.[260] Therefore, while the Commission wishes to provide flexibility to dealers in describing systems covered by warranties, we are requiring that dealers spell out which specific systems are covered by the warranty.

Some dealers may wish to provide warranty coverage for some systems of a used car and at the same time disclaim all other express or implied warranty coverage for the other systems of the car. In addition, some dealers may wish to list on the Buyers Guide the specific exclusions from the warranty coverage. Therefore, a dealer may use the space provided for the warranty disclosures to write in such disclaimers or exclusions.

Sections 445.2(c-e)—Additional disclosures.

A number of the Rule's additional disclosure requirements are intended by the Commission to integrate the information provided by the Buyers Guide into the contract of sale between used car dealers and consumers and to memorialize on the form the details of each sales transaction so that the Buyers Guide may be used in the event of a dispute between buyer and seller.

Section 455.2(c)—Name and address.

Section 455.2(d)—Make and model.

Section 455.2(c) requires the name and address of the business or dealership selling the car to be listed on the Buyers Guide. By requiring that the seller identify in writing the person responsible for selling each used car and making the disclosures required by the Rule, the Commission intends to enhance the value of the Buyers Guide as evidence in the event that disputes arise between buyers and sellers. The same purpose is served by the requirement in § 455.2(d) that the dealer disclose on the Guide the make, model, model year, and vehicle identification number of each used car.

Section 455.2(e)—Complaints.

The rulemaking record indicates that dealers report difficulty in controlling the oral representations of salespeople and that salespeople often are not informed of material facts by the dealer.[261] If disputes arise over Buyers Guide disclosures, consumers must be able to identify the person responsible for handling consumer complaints. This is especially true in light of the fact that salespeople in the used car business are often transient.[262] As a result, § 455.2(e) of the Rule requires each dealer to identify on the Buyers Guide the person to contact if a problem arises after sale.

Section 455.3—Incorporation of the Used Car Buyers Guide into sales contract.

To insure that the disclosures made on the Buyers Guide are available to the consumer, § 455.3(a) provides that each dealer must deliver to the purchaser at the time of sale a copy of the Buyers Guide containing all of the disclosures required by the Rule and reflecting the agreed-upon terms of warranty coverage. Section 455.2(b) provides that changes in the terms of warranty coverage must be reflected on the Buyers Guide.

Section 455.3(b) of the Rule further strengthens the importance of the Buyers Guide by requiring that the information on the window form be incorporated by reference into the sales contract for each used car sold. By integrating the Buyers Guide within the "four corners" of the used car sales contract, the Commission intends that the Buyers Guide become part of the written agreement between buyer and seller, so that, in the event of disputes between buyers and sellers, the information on the Buyers Guide would fall outside the exclusions of the parole evidence rule of contract law.

To inform consumers that the information on the Buyers Guide is a part of the sales contract and governs in the event that the sales contract contains contradictory terms, § 455.3(b) contains a disclosure that must be incorporated into all sales contracts. The Commission believes that the sales contract disclosure will clarify for both consumers and dealers the necessity for the information on the Buyers Guide to accurately reflect the terms of the sale.

By requiring the addition of the specific clause into consumer sales contracts, the Commission intends to insure that the protections of the Rule

[256] Staff Report at 261–305.

[257] *Id.*

[258] A separate "Implied Warranties Only" disclosure is prescribed for use in those states that prohibit "as is" sales, and in those instances where a dealer chooses to sell a used car with neither an express warranty nor an "as is" disclaimer.

[259] Staff Report at 255 nn. 17, 19; 287, n. 85.

[260] *Id.* at 255–256 nn. 18, 19.

[261] *Id.* at 103–109 nn. 102–106.

[262] *See, e.g.*, Warwick, TR 5380.

are available to consumers. Thus, we intend that consumers who are injured by dealer deceptions concerning the disclosures on the Buyers Guide could bring breach of contract actions, since those disclosures are a part of the contract. In other trade regulation rules, we have also required that clauses reflecting particular consumer rights be added to consumer contracts.[263]

Section 455.4—Contrary statements.

As noted throughout this Statement of Basis and Purpose, the Commission has found that one of the principal consumer abuses in the used car market is oral misrepresentation concerning the warranty coverage that the dealer intends to provide after the time of sale and the mechanical condition of used cars. To enhance the effectiveness of the written disclosures in the Buyers Guide, the Commission has incorporated into § 455.4 of the Rule an explicit prohibition of oral or written statements or other practices that alter or contradict the disclosures in the Buyers Guide. This provision is not intended to interfere with negotiations between dealers and consumers concerning the terms and conditions of warranty coverage. However, any final warranty terms agreed upon in such negotiations must be identified in the sales contract and summarized on the copy of the Buyers Guide given to the buyer.[264]

Section 455.5—Spanish languages sales.

Earlier versions of § 455.5 of the Rule had required that the Buyers Guide be in the language in which the sale is conducted. Such an open-ended requirement could have resulted in Buyers Guide translations of varying linguistic quality and accuracy unless the Commission were to publish official Buyers Guide translations in all of the several dozen languages used in the United States. The evidence in the record indicates that, besides English, Spanish is the language most frequently used during used car sales transactions.[265] Therefore, the Commission has decided to limit the scope of § 455.5 to Spanish translations of the Buyers Guide so as to insure that Spanish-speaking citizens may have access to the Buyers Guide information. Where the sale is conducted in Spanish, § 455.5 requires that a Spanish version of the Buyers Guide be posted and provided to the purchaser. For those dealers who conduct transactions both English and Spanish, both versions of the Buyers Guide may be posted.

Section 455.6—Exceptions.

The standards for state exemptions set forth in § 455.6(a) conform to the congressional directive in the FTC Improvements Act of 1980 concerning state exemptions from the Funeral Industry Trade Regulation Rule. The Commission will assess requests for exemptions from state agencies by analyzing the state requirement in comparison to the Rule. The Commission here offers no opinion as to whether there are any state or local regulations currently in effect which do provide a level of protection as great as or greater than that provided by the Rule. Instead, as set forth in § 455.6(b), the Commission will determine the appropriate interrelationship between the Rule and state regulation on a case-by-case basis in the context of an exemption proceeding conducted pursuant to § 1.16 of the Commission's Rules of Practice. Appropriate petitions for exemption made by state governments will be evaluated to determine the overall level of protection to consumers and whether the state scheme that offers protection as great as, or greater than, the Rule is administered and enforced effectively. Should a jurisdiction be granted an exemption under this section, the Commission intends to forgo enforcement of the Rule in that jurisdiction while the exemption is in effect.

Section 455.7—Severability.

By this section, the Commission expresses its intention that each provision of the Rule is separate and severable. If one or more parts are found to be invalid, the other portions of the Rule will continue in effect.

IV. Alternatives Considered

During the course of this proceeding, the Commission considered several alternatives to the Rule it adopted in August 1981. Each variation involved warranty disclosures including an explanation of "as is" sales, a list of major mechanical systems, a disclosure of known defects, and a spoken promise warning. Except for the known defects disclosure, the Commission is convinced that record evidence indicates each of these features should be included in any rule designed to address the unfair and deceptive practices identified in this record, which lead to consumers experiencing unanticipated repair costs following purchase.[266]

The options considered could be described generally as various methods for requiring disclosure of information from the dealer concerning the mechanical condition of the cars the dealer offers for sale. Those alternatives were:

1. Disclosure of Known Defects
2. Mandatory Inspection
3. Optional Inspection
4. Mandatory Third-Party Inspection
5. Cooling-off Period
6. Disclosure of Prior Use
7. Disclosure of Odometer Accuracy
8. Disclosure of Estimated Repair Costs
9. Disclosure of Prior Repairs
10. Disclosure of Flooded or Wrecked Vehicles

A. Disclosure of Known Defects

The 1981 Rule contained provisions requiring dealers to disclose certain material defects, if known at the time of sale. (See August 1981 Rule 16 CFR 455.2(c) (1982)). That Rule defined the specific defects that were to be disclosed in §§ 455.6 (a) through (i). Sections 455 (j) through (n) set forth tests to be used by dealers to determine the existence of defects.

The August 1981 Rule provided in § 455.2(c) that dealers have knowledge of a defect when they obtain facts or information about the condition of a vehicle (e.g. through an inspection, from a previous owner, from the seller at an auction) which would lead a reasonable person under the circumstances to conclude that the car contained one or more of the defects listed in the Rule.

Finally, the 1981 Rule did not allow dealers to use lower standards for determining that a defect exists in older cars. Consequently, the age of the vehicle would have been irrelevant to the assessment of whether the vehicle satisfied the defect standards.

The Commission has reviewed the known defects disclosure provisions of the August 1981 Rule pursuant to a remand from the United States Court of Appeals for the Second Circuit in *Miller Motor Car Corporation, et al.* v. *F.T.C.* 2d Cir. No. 81–4144. The court ordered the Commission to reopen the rulemaking record with respect to the provisions requiring dealers to disclose known defects and provide all interested persons an opportunity to submit comments and rebuttal statements.[267] As a result of this review,

[263] *See, e.g.*, Cooling-Off Period For Door-to-Door Sales, 16 CFR Part 429; Preservation of Consumers' Claims and Defenses (Holder-in-Due-Course), 16 CFR Part 433. *See also Arthur Murray Studio of Washington* v. *FTC*, 458 F.2d 622 (5th Cir. 1972); *All-State Industries, Inc.* v. *FTC*, 423 F.2d 423 (4th Cir.) *cert. denied*, 400 U.S. 828 (1970).

[264] Staff Report at 313 n. 122.

[265] *Id.* at 545 nn. 15 and 16.

[266] For these reasons, the Commission rejected the alternative of issuing no rule.

[267] As stated earlier, the court's order was issued pursuant to a joint stipulation by the parties agreeing to an order remanding the rule to the Commission for reconsideration.

the Commission has decided not to include a known defect disclosure requirement in the Rule, to make the warranty and "as is" disclosures on the Buyers Guide more prominent, and to make other minor adjustments to the Buyers Guide.

In reaching its decision, the Commission carefully analyzed the rulemaking record including the comments submitted during the recent comment and rebuttal periods to determine the potential effects of the known defects disclosure requirement, both intended and unintended. The Commission has concluded that the known defects disclosure requirement will not provide used car buyers with a reliable source of information concerning a car's mechanical condition and that the provision would be exceedingly difficult to enforce.

We believe that the warranty and "as is" disclosures—along with the warning about spoken promises and the pre-purchase inspection notice—are effective remedies for the deceptive practices occurring in the used car industry. The record provides solid support for the conclusion that the benefits of these remedies far outweigh their costs. The record does not support, however, a conclusion that the benefits of the defects disclosure requirement outweigh its costs. The Commission's reasons for promulgating a rule without the known defects disclosure provision are set forth below.

1. The Reliability of Information Disclosed Under a Known Defects Disclosure Requirement

Any benefits from a known defects disclosure requirement depend on the extent to which dealers have detailed knowledge about the mechanical condition of the vehicles they sell and whether the dealer's knowledge of defects can be communicated in a way that will not be confusing to potential used car buyers.

a. Dealer Knowledge of Defects. In order to provide useful disclosures under the known defects disclosure requirement, dealers must have knowledge of specific defects. If dealers do not ordinarily possess knowledge about specific defects, they would only be able to discover such information through additional inspections. Inspections will be costly and will ultimately raise the price of used cars.[268] Therefore, in determining the costs and benefits of the known defect disclosure requirement, the issue of whether dealers ordinarily have knowledge about specific defects is an important one.

Despite the importance of this question, there is relatively little direct evidence that addresses it. The record does indicate that most experts and commenters agree that all dealers assess the *general* condition of the cars they sell and that individual dealers may examine cars thoroughly. However, even during the initial rulemaking proceeding there was disagreement concerning what the record reveals about the extent of the *average* dealer's knowledge of the condition of specific systems in his or her cars at the time of sale. The Presiding Officer concluded that:

> In many instances, dealers themselves do not know the extent of defects present in a vehicle. To be sure, nothing in the record would indicate that dealers are regularly caught short, buying or taking in trade vehicles on which they have made major miscalculations on overall physical condition. The record supports the findings, however, that dealers may not have precise knowledge of all defects which are present in a vehicle.[269]

In 1981, the Commission disagreed with the Presiding Officer and concluded that, although the dealer inspection process is not perfect, dealers know of specific significant defects. This decision was based on the following inferences drawn from record evidence: (1) Dealers routinely inspect vehicles for defects; (2) dealers who purchase cars at auctions can and do inspect for defects after purchase and have an option to rescind or renegotiate the sale if they find sufficient problems with the vehicle; (3) when not purchasing at auction, the industry practice is to appraise a vehicle before purchase (usually through a visual inspection and road test) and (4) after purchase by dealers, additional defects are discovered during further inspections, appearance reconditioning, and repairs.[270] In addition, in 1981, the Commission relied on survey evidence indicating high levels of significant mechanical defects occurring within the first weeks of ownership and a decreasing frequency of defect discovery in subsequent periods.[271]

The Commission's current review of both the preexisting rulemaking record and the additional comments submitted during the present proceeding indicates that the conclusion that dealers ordinarily know about specific defects may well be incorrect and, in any event, is not supported by a preponderance of substantial reliable evidence.

First, careful inspections do not always reveal or predict mechanical problems that may occur shortly after the sale. Thus, there is little basis for inferring knowledge from the mere fact that failures occur after purchase. In Wisconsin, where dealers are required to inspect their cars and disclose the results of the inspection, one record study indicates that 51 percent of Wisconsin used car buyers ultimately repaired problems not known when they bought their cars.[272] These data are consistent with another record study which indicates 52.1 percent of Wisconsin consumers, who purchased cars after the Wisconsin law went into effect, discovered defects after the sale.[273] Moreover, in a comment supporting the "known defects" provision, Detroit II,[274] a company currently providing warranties for used cars, points out that even after cars are inspected for inclusion in their warranty program and all "known defects" are repaired, a survey of their buyers revealed that "slightly over 50% of them have some sort of mechanical problem within 45 days of the sale."[275] The Detroit II figures are within the range of the incidence of mechanical problems experienced by used car buyers generally.[276]

Second, dealer knowledge about general condition of a car does not necessarily mean that the dealer has knowledge of specific defects. Although there is evidence that dealers have a

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[268] There is little agreement on exactly how costly these inspections might be. *Compare* Staff Report 213–29 (estimates range from a few dollars to $800 or more) *with* HX–164(A) Table V–9 (Wisconsin dealers' estimates range between $6.75 and $50).

[269] Presiding Officer's Report at 91 (footnote omitted).

[270] 1981 Statement of Basis and Purpose, 46 FR 41328, 41342.

[271] *Id.* at 41337.

[272] Table 16 of the Baseline Survey shows that 65 percent of Wisconsin consumers made repairs, but only 14 percent (Table 9) knew of problems when they bought the car. Thus, at least 51 percent (65 percent minus 14 percent) experienced unknown problems.

[273] Wisconsin Study HX 164(A) at Table IV–12.

[274] At the time Detroit II submitted its comment, approximately 20 dealers in Florida were participating in the Detroit II inspection/warranty program.

[275] XB–02 at 1 (The Detroit II Corporation, Inc.). Approximately five hundred cars were included in the survey. The reliability of the survey is uncertain because neither the survey questionnaire nor an explanation of the methods used to compile survey data was submitted with the comment.

[276] *See* Staff Report 46–48. In a national survey, about 34% of respondents reported that they experienced defects in used vehicles. About 50% of these occurred in the first month. HX–162(A) at 29 (National Analysts Study). In a local survey, 68.1% of used cars had defects that appear in the first 90 days after the sale B–1 at 27 (Seattle Survey).

high degree of confidence in their ability to assess the general condition of a car through a walk-around examination and a test drive,[277] this general assessment of overall condition is probably sufficient to protect the dealer's interest only because most buyers are likely to perform no more than a similarly superficial examination.[278] Moreover, the dealer's evaluation is likely to focus on the cost of appearance reconditioning or detailing because, as the record indicates, many consumers believe that a "good looking" car is also mechanically sound.[279] There is, however, no evidence that such measures are ordinarily adequate to reveal specific mechanical defects.[280]

Third, although the record contains anecdotal evidence indicating that dealers know about specific defects, other record evidence supports the conclusion that most dealers do not have knowledge of specific defects. Indeed, the record contains extensive testimony from dealers and vocational educational instructors that the inspection process is uncertain and imperfect.[281]

Even though the utility of a "known defects" disclosure depends on dealers having system-by-system information about the cars they sell, the provision gives dealers little incentive to inspect their cars. Under the provision, honest dealers who learn of defects must reveal their knowledge on the disclosure portion of the window sticker, whereas dealers who avoid gaining this knowledge may honestly leave the sticker blank. Disclosing "known defects" calls attention to the car's problems, but does not reward the dealer's integrity for revealing these problems. Thus, a dealer who regularly inspects and honestly discloses all "known defects" may be put at a competitive disadvantage relative to dealers who do not inspect. This factor may then have the unintended and perverse effect of discouraging, rather than encouraging, inspections and disclosure of defects.

b. Buyer Knowledge Under the Defects Disclosure Provision

The known defects provision was intended to improve a potential buyer's knowledge of a used car's condition by providing information about certain major defects known to the dealer. Based on its conclusion that dealers usually know about the condition of specific systems in the used automobiles they sell, in 1981 the Commission believed that dealer disclosure of major defects would enable consumers to assess more accurately the true cost of ownership, i.e., purchase price plus repair costs for defects. The Commission expected that more accurate knowledge about the true condition of the car would reduce consumer injury resulting from unanticipated repair costs and that such defect information would increase bargaining for desired warranty coverage and the price on a car of known condition.

As stated above, the Commission cannot now conclude from its review of the rulemaking record that dealers generally possess system-by-system knowledge of the cars they sell. This major deficiency in the evidentiary foundation for the known defects disclosure provision casts serious doubt on the effectiveness of this provision as a means of providing information about specific defects to consumers. Another major deficiency in the evidentiary basis for the "known defects" disclosure requirement is that the record surveys, which often provide the best evidence of the effectiveness of a rule provision, do not provide clearcut evidence that a defect disclosure requirement would improve consumers' knowledge of defects. Moreover, the Commission fears that the defect disclosure requirement may confuse consumers and thus cause them to base their purchasing decisions on inaccurate information.

Two record surveys present data that could be used to predict the effectiveness of the "known defects" disclosure provision. These surveys produced data showing the effects of the Wisconsin mandatory disclosure law which, at the time both studies were conducted, required dealers to inspect each vehicle in a specified manner, make safety repairs, and provide the inspection results to the purchaser prior to signing the sales contract.[282] One of the surveys was submitted to the Commission in 1977 and was considered by the Commission in promulgating the August 1981 Rule. The report on the survey was referred to in the August 1981 Statement of Basis and Purpose as the Wisconsin Study.[283]

The Wisconsin Study was designed to examine the effects of the Wisconsin mandatory inspection/disclosure law. In the study prepared by the Center for Public Representation, Madison, Wisconsin, a consumer questionnaire was sent to over 5,000 purchasers of used vehicles in Wisconsin, Iowa, and Minnesota. One thousand five hundred fifty five consumers responded to the survey. A survey questionnaire was also directed to more than 5,000 used vehicle dealers in Wisconsin and interviews, with written follow-up, were carried out with members of the Dealer Inspection Unit of the Wisconsin Motor Vehicle Department which is responsible for enforcing Wisconsin regulations.

The three states included in the study were chosen because of the differences in their regulatory systems. In 1972, Wisconsin's Division of Motor Vehicles promulgated an administrative regulation, MVD 24, which requires that all used motor vehicle dealers perform a walk around and under-the-hood inspection of each car they intend to sell at retail and record their findings on a disclosure statement.[284] In addition, dealers are required to repair designated safety items determined to be "not OK." Iowa, since 1972, has required that every motor vehicle pass a safety inspection before operational title can be passed.[285] A car not passing inspection can still be sold, but the buyer owns it by a restricted title and cannot drive the vehicle until the safety inspection has been passed. In contrast to Wisconsin and Iowa, Minnesota does not require

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[277] Staff Report 77; HX–164(A) at 46 and Table V–7 (The Wisconsin Study).

[278] Staff Report at 83–87.

[279] Staff Report at 99.

[280] One record study presented survey evidence suggesting that dealers fail to disclose known defects when such information is provided by prospective buyers. The California Public Interest Research Group (CALPIRG) undertook a survey that tested for the degree of known mechanical defect disclosure by dealers to consumers. The survey used trained test shoppers who participated in actual sales transactions up to the point of determining what disclosures were made. After a test car was taken from the dealer's lot to a diagnostic center for inspection, the test shopper returned the car with a copy of the diagnostic report and discussed the report with the salesperson. The test shoppers then broke off negotiations. A second test shopper returned on a follow-up visit to determine whether the results of the diagnosis were disclosed to the new prospective buyers. CALPIRG reports that, in 75 of the 101 completed tests, the follow-up purchaser did not receive defect information that had been provided to the dealer. In 47 of these 75 cases of non-disclosure, the second test shopper dealt with the same salesman who had been given the diagnostic results by the first test shopper.

Although these data suggests that, when told about defects, dealers fail to disclose this information to consumers, no inference can be drawn from these data concerning the extent to which dealers generally know about specific defects.

[281] Staff Report at 46–53.

[282] The law also required a window sticker disclosing warranty terms and defining "as is". In 1983 the law was amended to require that inspection results be disclosed on a window sticker along with warranty information.

[283] An investigation of the Retail Used Motor Vehicle Market: An Evaluation of Disclosure and Regulation, Center for Public Representation, HX, 164(A).

[284] Staff Report at 19–23.

[285] *Id.*

dealer disclosure, nor does it have any kind of safety inspection system.[286]

The other survey, entitled "A Report On A National Survey Private Buyers and Sellers of Used Automobiles" was submitted to the Commission in September 1982. Consequently, it was not considered in promulgating the 1981 Rule. This report presented data that was developed from responses to a national telephone survey of private buyers and sellers of used automobiles. The survey was conducted to provide baseline data for a future evaluation of the impact of the rule on the used car market. Transactions for the state of Wisconsin were oversampled so that Wisconsin could serve as a control. In total, 312 interviews were conducted for Wisconsin and 1,431 interviews were conducted for the rest of the country. The survey was perfomed by a private contractor, the Bureau of Social Science Research, pursuant to a 1978 contract with the FTC's Bureau of Consumer Protection. The data for the survey was collected from October 1979 to February 1980. We will refer to this survey as the Baseline Survey (BLS).

When the Commission promulgated the Rule in 1981, it cited data from the Wisconsin Study suggesting that the Wisconsin law increased overall consumer awareness of defects prior to purchase and that the law made it more likely that consumers would receive defect information from the dealer. However, contradictions in the data presented in the Wisconsin Study become apparent upon close review. On the one hand, the data show some increase in the percentage of post-law buyers who knew about defects before the sale and those who received pre-purchase defect information from dealers.[287] On the other hand, data from the study shows that more consumers in Minnesota (a state with no defect disclosure requirement) reported awareness of defects prior to sale than consumers in post-law Wisconsin.[288]

Finally, the data in the Wisconsin Study do not show that the Wisconsin defect disclosure requirement made it more likely that consumers would receive the information they felt they needed concerning the car's mechanical condition. Approximately 32 percent of pre-law consumers reported that they lacked needed information on the car's mechanical condition. This percentage decreased only slightly for post-law consumers (28.52 percent).[289] Moreover, there was essentially no difference in the percentage of pre-law and post-law consumers reporting that the dealer gave them accurate information on the mechanical condition of the car they purchased (62.6 percent vs 62.8 percent).[290]

Given the contradictions in the data presented in the Wisconsin Study, the Commission believes that the study is inconclusive with respect to the issue of whether a defect disclosure requirement would increase consumers' awareness of defects.[291] The inconclusive nature of the Wisconsin data tends to indicate that the Wisconsin defect disclosure requirement did not have a strong effect on consumers' knowledge of defects. Such a finding supports the Commission's decision to promulgate the Rule without this provision.

The Baseline Survey provides even more compelling reasons to eliminate the known defect disclosure provision from the Rule. Taken as a whole, the BLS data suggest that the expected beneficial effects of a defect disclosure requirement were not achieved in Wisconsin.[292] On the other hand, the BLS data do show expected beneficial effects of the warranty disclosures required by the Wisconsin law.[293]

Although the report on the Baseline Survey presents statistics separately for Wisconsin and the rest of the country, the report does not test or elaborate on any differences between the values of the same statistic in the two regions. In the following discussion of the Baseline Survey we will discuss some of those differences and their significance. Even though such comparisons were not made in the survey report, there is nothing in the method of collecting the data that

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[286] *Id.*

[287] As noted in August 1981 Statement of Basis and Purpose:

The Wisconsin Study indicates that 28.1 percent of pre-law buyers who bought from dealers were aware of defects prior to purchase. This percentage increased to 38.7 percent among those who purchased from dealers following passage of the mandatory inspection law. HX 164(A) at Table IV-12. This increase in defect awareness was accompanied by an increase in the number of buyers who stated that their knowledge of defects came from information supplied by the dealer. In the Wisconsin Study, 1 percent of pre-law respondents said that they learned of defects before purchase from dealers. In the post-law sample, 9 percent said they learned of defects before purchase from dealers. Computed from data in HX 164(A).

46 FR 41342 (1981).

[288] HX 164(A) at Table IV-12. This table indicates that 38.7 percent of Wisconsin post-law consumers who bought from dealers were aware of defects prior to purchase, whereas 40.7 percent of Minnesota consumers buying from dealers knew about defects prior to purchase.

[289] Wisconsin Study HX 164(A), Table IV-2.

[290] *Id.* Table IV-3.

[291] The Wisconsin data also indicated that prices paid by Wisconsin consumers who purchased from dealers fell by 8.73 percent after the Wisconsin inspection/disclosure law went into effect. The authors of the study stated that these apparent savings should not be considered as benefits of the Wisconsin law for three reasons. First, they could not be sure that price shifts were attributable to the Wisconsin law. Second, they were concerned that the price drop may have been a short run phenomenon. Third, they felt that, even if price changes were caused by the Wisconsin law and are permanent, they should not be treated as net increases in the welfare of Wisconsin consumers. In their view, the drop in price not only makes a used vehicle less expensive to buy, it also makes the existing stock of vehicles less valuable. Thus, the price decline reduced the trade-in value of used vehicles, causing welfare losses to some consumers.

[292] The August 1981 Rule required disclosure of defects on the window sticker. However, at the time the Baseline Survey was conducted, the Wisconsin law required only that dealers present a defect disclosure statement to consumers before signing the contract. Therefore, it could be argued that the Baseline Survey data showing the effects of the Wisconsin defect disclosure requirement should not be compared to the known defects disclosure provision because schemes used by dealers to prevent consumers from reading the defect disclosure are likely to work in Wisconsin but are unlikely to work when the defect disclosures must be placed on the car.

Although the comparison is not perfect, the Commission believes that studies of disclosures in different formats can provide useful information regarding the likely effect of the rule. Because the Baseline data reflect knowledge at the time of sale, and disclosure in Wisconsin occurs before the sale is concluded, the Wisconsin experience provides a reasonable assessment of the value of presale disclosure. Moreover, if we accept the argument that studies of the effectiveness of a law requiring defect disclosures prior to signing the sales contract have no relationship to the effectiveness of defect disclosures on a car's window sticker, then there is no empirical evidence in the record showing the likely effect of such a window sticker disclosure. Given the other significant problems with the defect disclosure requirement discussed in Section IV A of this Statement, the absence of such evidence would support our decision to promulgate a rule without a defect disclosure provision.

[293] An important purpose of a warranty disclosure is to make consumers aware of warranty coverage at a point when they can use this information in their purchasing decisions. Although the sample sizes are small, the Baseline Survey suggests that the Wisconsin warranty/as is disclosure accomplishes this purpose. About the same percentage of Wisconsin consumers (34 percent) as non-Wisconsin (35 percent) consumers learned of the warranty "while thinking about the car". Wisconsin consumers, however, were more likely to learn of the warranty "while negotiating" (58 percent vs 41 percent). Moreover, a higher percentage of non-Wisconsin consumers learned of the warranty late in the transaction. Table 12 shows that twenty percent of non-Wisconsin consumers learned of the warranty "when signing" the sales contract while only 5 percent of Wisconsin consumers learned of the warranty this late in the transaction.

The Baseline Survey also suggests that Wisconsin consumers had a better understanding of the dealer's post-sale repair responsibilities than non-Wisconsin consumers. This effect is shown in Table 15, Part B by the fact that Wisconsin dealers were more likely to correct post-sale problems when their customers thought the dealer should pay. Seventy-eight percent of consumers who brought their cars back to the dealer in Wisconsin reported that the dealer corrected or helped pay for the problem. Sixty-nine percent of non-Wisconsin consumers who brought their cars back to the dealer actually obtained repairs from the dealer.

would make comparisons between the two subpopulations inappropriate. The sample sizes in the subpopulations of Wisconsin consumers are large enough to permit valid statistical conclusions to be drawn by comparing data from Wisconsin consumers with data from non-Wisconsin consumers.

In comparing the value of a simple statistic (such as an average or a proportion responding in a particular way) for Wisconsin with its value for the rest of the country, it is, in general, incorrect to attribute all of the difference to the Wisconsin used car law. Nevertheless, it is important to know whether any differences exist. A finding of no difference in consumer experiences with used car transactions where strong remedies are present casts doubt on the effectiveness of such remedies.

The Baseline Survey suggests that the Wisconsin defect disclosure requirement has not increased the amount of information consumers receive about the mechanical condition of a used car. Fourteen percent of Wisconsin consumers, compared to 15 percent in the rest of the country, know about a problem with the car before purchase. Of those who knew about a defect, the percentage of non-Wisconsin consumers reporting that mechanical problems were disclosed by the dealer (24 percent) is higher than the percentage of Wisconsin consumers reporting defect disclosures from the dealer (20 percent), although the difference is not statistically significant.[294] Thus, 3 percent of Wisconsin consumers responding to the survey learned of a defect from the dealer, compared to 4 percent of consumers elsewhere.[295]

The BLS also suggests that the Wisconsin defect disclosure requirement did not improve consumers' ability to predict future repair costs. For problems known at the time of purchase, Table 14 of the BLS indicates that consumers outside of Wisconsin were just as likely to consider repair costs to be about what they expected as Wisconsin consumers. Moreover, Wisconsin consumers are no more likely than others to be "very satisfied" with their purchase (62 percent in Wisconsin, 63 percent elsewhere), and are slightly more likely to be "very dissatisfied." (12 percent vs 5 percent) (Table 19 A).[296] They also give their cars slightly lower ratings on overall mechanical condition and body and interior condition (Table 19, B and C), although only the difference in mechanical condition rating is statistically significant.

As Table 16 indicates, a higher percentage of Wisconsin consumers (65 percent) than non-Wisconsin consumers (60 percent) had repairs performed after the sale. If all problems known at the time of purchase are later repaired, then 51 percent of Wisconsin consumers fixed problems that were not known when they bought the car, compared to 46 percent of non-Wisconsin consumers.[297] These data are quite consistent with the Detroit II comment indicating that a large precentage of cars experience mechanical problems even after inspection and repair.[298]

In sum, the data compiled in the Baseline Survey generally show that some of the expected benefits of the Wisconsin warranty disclosure requirement were observed in Wisconsin, but the data do not show that the law's defect disclosure requirement had achieved beneficial results. This difference in the warranty disclosure data compared to the data relating to defect disclosures generally supports the Commission's view that the beneficial effects of a defect disclosure requirement in the Used Motor Vehicle Rule are questionable. No one comparison of Wisconsin and the rest of the country compels this conclusion. Nonetheless, in our view, the overall pattern of results supports our decision to promulgate a Rule without the "known defects" disclosure provisions.

The fact that the data compiled in the Baseline Survey generally do not show that the Wisconsin defect disclosure has achieved beneficial results and that the data in the Wisconsin Study is inconclusive on this point, must be considered as strong evidence supporting the Commission's decision to promulgate a Rule without the known defect disclosure requirement. The Commission is particularly concerned about the reliability of defect disclosures from dealers and the enforceability of a provision requiring such disclosures. Given these concerns, the lack of survey data showing significant benefits for defect disclosures confirms the Commission's belief that requiring such disclosures will not serve the public interest.

In addition to our serious questions concerning the effectiveness of a defect disclosure provision in making consumers aware of defects prior to purchase, we are equally concerned that the defect disclosure provision included in the 1981 Rule may confuse consumers and cause them to make inaccurate assumptions about the condition of a car after reading the defect disclosure. In cases in which the dealer knew of defects in the car, the provision was intended to result in disclosure of that information to potential buyers. However, in many cases dealers might not inspect or might not discover existing defects. In these cases, the "known defect" disclosure portion of the sticker would be left blank. Disclosure, therefore, might be the source of substantial confusion because the absence of disclosed defects does not necessarily mean that none exists.[299] These concerns are particularly significant given the conclusion that in Wisconsin, most buyers do not learn of defects from the dealer.

Unfortunately, there are at least five separate circumstances in which the dealer could list "no known defects": (1) A dealer inspects and accurately determines that no defect exists; (2) a dealer inspects but fails to discover a

[294] Baseline Survey, Table 9.

[295] Table 9 of the Baseline Survey shows that 14 percent of Wisconsin consumers were aware of mechanical defects before they bought their used cars. Twenty four percent of these consumers reported that they learned of mechanical problems from the dealer. Therefore, 3 percent of all Wisconsin consumers responding to the survey learned of mechanical problems from the dealer (20 percent of the 14 percent who knew about defects). Likewise, 4 percent of all consumer respondents in the rest of the country learned of mechanical problems from the dealer (24 percent of the 15 percent who knew abut defects).

[296] The difference in the proportion who are "very dissatisfied" is statistically significant. Consumer satisfaction is a good measure of the effectiveness of a defect disclosure remedy because the occurrence of major unknown problems after the sale is likely to have a significant effect on a consumer's level of satisfaction. Whether defect disclosures merely make consumers aware of the condition of a car, or induce dealers to make repairs or improve warranty coverage, consumer satisfaction should improve as a result. Consequently, it is reasonable to expect that consumer satisfaction would be significantly lower in states without a defect disclosure requirement compared to Wisconsin where dealers are required to inspect their cars and disclose major defects, if defect disclosure benefits consumers.

[297] For Wisconsin consumers, 65 percent made repairs (Table 16), but only 14 percent (Table 9) knew of the problems when they bought the car. Thus, 51 percent (65 percent minus 14 percent) experienced unknown problems.

Survey data indicate that 83 percent of Wisconsin consumers repair defects known at the time of sale, compared to 71 percent in the rest of the country. Adjusting for this factor, 53 percent of Wisconsin consumers fixed problems not known at the time of sale, compared to 49 percent elsewhere. If the same fraction of problems discovered after sale are repaired, then 64 percent of Wisconsin consumers (53 percent divided by 83 percent) experienced a problem after sale, compared to 69 percent in the rest of the country (49 percent divided by 71 percent).

[298] XB-02 (The Detroit II Corporation, Inc.).

[299] The "known defects" disclosure provision had no mechanism by which a system could be declared defect-free. A dealer could assure consumers that a system is "OK" by providing a warranty for the system. Although the *warranty* disclosure provision of the Rule facilitates the dealer's offering this assurance, a *known defects* provision would not help the buyer in this case.

defect that does exist; (3) a dealer does not inspect and a defect exists; (4) a dealer does not inspect and there is no defect; and (5) a dishonest dealer does not reveal a known defect.[300]

Thus, a buyer relying on the absence of a disclosure of a known defect may incorrectly assume that no defect exists, when in fact the buyer would only know that the seller had claimed no knowledge of a defect. The disclosure that the dealer is not aware of any defects in a car provides no information about the actual existence of an undiscovered or latent defect. Thus, buyers may not only be getting no useful information about a car's condition, but may be affirmatively harmed by mistakenly inferring that the dealer's lack of knowledge about defects means that no defets exist.[301] Unscrupulous dealers or salespersons could easily exploit the likelihood that consumers will mistake the absence of a disclosure for a claim that the car is of high quality. For example, dealers might highlight that there are no "known defects" in the car or argue that the requirement to disclose known defects makes an independent inspection unnecessary—"If we knew of any problems, we'd have to tell you about them."[302]

The danger that buyers may mistake a claim of "no known defects" for a claim about the car's overall quality or about its freedom from specific defects is especially great if the car is sold "as is." In fact, a "common abuse" identified in the original rulemaking record with respect to warranties was oral misrepresentations by dealers exploiting buyer confusion about their legal rights in "as is" sales.[303] If the "known defects" provision is retained, dealers selling "as is" cars could easily use the absence of disclosed defects in an effort to assure buyers that, because the car contains no "known defects", the "as is" warning is irrelevant. In addition, buyers may be further confused by incorrectly assuming that a dealer's disclosure of no known defects satisfies the window sticker's admonition to get "all promises in writing".

In view of the extensive evidence of dealer misrepresentations concerning the mechanical condition of their cars coupled with the likelihood that defect disclosures would be confusing to consumers or even be used to facilitate dealer misrepresentations, the Commission believes that a known defect disclosure will not serve the public interest. It gives the wrong signal to consumers by encouraging them to focus their attention on dealer-controlled information about a car's mechanical condition. In contrast, the warranty disclosure requirements, the warning about spoken promises and the pre-purchase inspection notice encourage consumers to avoid reliance on dealer-controlled information about a car's mechanical condition. The presence of the defect disclosure requirement on the Buyers Guide is confusing and likely to undermine the effectiveness of the essential protections afforded by the rule.

2. Enforceability

Another major reason for promulgating a Rule without the known defects disclosure requirement is the enforcement problems this provision would present. In order to establish a violation of the "known defects" provision it would be necessary to prove that (1) the car is defective, (2) the defect was present at the time of sale, and (3) the dealer (or the dealer's agent or employee) knew about the defect at the time of sale. The "knowledge" element may be proved by showing that the dealer had obtained "facts or information about the condition of [the] vehicle * * * which would lead a reasonable person under the circumstances to conclude that the car contained one or more of the defects [enumerated in the rule]."[304]

Unlike some other rules, a Rule with a "known defects" disclosure provision is not self-enforcing.[305] Rather, dealers would have every incentive to avoid inspecting their cars as well as to avoid disclosing defects if any are found. Indeed, the more prevalent are disclosures by other dealers in the marketplace, the more incentive any individual dealer would have *not* to disclose defects in his or her cars. When many dealers inspect and make honest disclosures, consumers, are even more likely to infer that lack of a disclosure implies "no defect." Thus when inspections are prevalent, dealers can benefit by failing to reveal the true condition of their cars.[306] Given the lack of any self-enforcing mechanism, the level of compliance with the "known defects" disclosure provision would depend wholly on the degree of the FTC's enforcement presence in the marketplace. This is particularly troubling because enforcement of this provision is likely to be quite difficult.

First, our means of targeting potential violators are seriously flawed because unknow defects frequently show up in cars soon after sale. The data discussed above indicate that a majority of buyers experience problems after sale that were not known at the time of sale.[307] Thus, cars sold by the average dealer may have many undisclosed and, indeed, unknown defects that surface following sale. Because the number of latent defects may vary considerably, an "unlucky" but honest dealer may have undisclosed defects that appear at an even higher rate. Thus, the prevalence of complaints would not provide an accurate gauge for targeting our enforcement effects.

The only enforcement technique that avoids these problems is the use of "test shoppers". One "shopper" would approach a dealer as a potential buyer, receive permission to take a car to a diagnostic center for inspection, return the car to the dealer and discuss the inspection report with the salesperson. A second "shopper" would subsequently return to the dealer to determine whether defects included in the inspection report were being disclosed to new prospective buyers. However, such an enforcement mechanism would be both costly and intrusive. Moreover, it relies on the reliability and consistency of opinion among mechanics, an issue about which there is some doubt.[308] Finally, holding dealers

[300] A dishonest dealer may reveal another, more minor defect to give the appearance of honesty.

[301] The "known defects" disclosure in the 1981 Rule contained a warning that the absence of a disclosed defect does not necessarily mean that the car is free from defects. However, there is no evidence that this warning would be effective. For example, a consumer comparing a car with a disclosed defect and car with an undisclosed defect may find the inference that the car with no disclosed defect was in better condition irresistable despite the warning.

[302] The Commission expects that dealers will use the warranty disclosure portion of the window sticker as a sales tool. We can hardly expect this use to be confined to one portion of the sticker, however.

[303] 1981 Statement of Basis and Purpose 46 FR at 41333 (1981); Staff Report 275–77, 286–87; Presiding Officer's Report 46–47, 125.

[304] 1981 Rule 455.2(c).

[305] We have noted previously that auction facilities have rules that allow dealers to rescind or renegotiate the sale, if the dealer purchasing the vehicle finds major problems. This right to rescind or renegotiate the sale is a self-enforcing remedy in that it allows the buyers and sellers at auctions to settle their differences without the need for a third party intervernor.

[306] *See* XB–21 at 33 (NADA) and XB–22 at 24 (NIADA) for dealers' arguments on this point.

[307] Baseline Study at Tables 9 and 16; XB–02 at 1 (The Detroit II Corporation, Inc.). *See* discussion in Section IV. A.1.b. *supra.*

[308] A study done by the California Public Interest Group (CALPIRG) demonstrates the extent to which mechanics can differ. Part of the CALPIRG plan was to take used cars to a diagnostic center to obtain reports on their condition. Before doing this, CALPIRG compared diagnostic centers to determine their reliability. The results of this comparison demonstrates the inconsistency of mechanics in noting defects:

Continued

liable for failure to disclose defects brought to their attention by test shoppers places a continual burden on dealers to update their disclosure forms whenever a potential buyer alleges a problem. This would substantially increase the costs of the provision, possibly even requiring dealers to remove previously inspected cars from sale until the allegations of a defect could be verified and the form updated.

Second, even if we were able to identify potential targets, the standards set forth in the "known defects" provision are sufficiently ambiguous that winning a contested enforcement action would be extremely difficult. For example, the "known defects" disclosure provision would have required disclosure of a defect for "oil leakage excluding normal seepage." The use of terms such as "abnormal" and "improper" in the criteria for determining whether a system has a major known defect imply that it is up to the dealer to determine when along a continuum the presence of a particular condition becomes a defect.[309] Such ambiguities would make compliance with the provision difficult and were a major focal point for dealer's complaints about the provision.[310] These same ambiguities, however, will also make winning a contested enforcement action very difficult.

Even if we were to meet the burden of establishing that a car is defective, we would still be required to prove that the defect existed at time of sale. This again is a formidable task since the appearance of a defect shortly after the sale does not imply that the defect existed prior to sale. New mechanical problems may develop and latent defects may appear at any time.[311] Although the August 1981 Rule would have prohibited dealers from considering a car's age in determining whether a defect exists, this standard is clearly unrealistic for certain categories of problems.[312] Further, because certain conditions occur naturally as a car ages, it is difficult, if not impossible, to determine reliably at what point such a condition becomes a "defect." Additionally, mechanics may disagree about what constitutes a defect or whether a defect in fact exists.[313]

There could also be a serious problem in proving that a dealer had knowledge of a defect. There is no recordkeeping requirement accompanying this provision and, even if one were added, the dealer's incentives to comply would be problematic. Absent records of dealer inspections, the Commission would be forced to either limit enforcement actions to blatant defects—such as body rust or bald tires—that develop over long periods of time, or prove cases based on constructive knowledge. In proving constructive knowledge we risk the evolution of the "actual knowledge" standard into a "should have known" standard. However, with a "should have known" standard, we risk the "known defects" disclosure requirement, in effect, becoming a mandatory inspection requirement.[314]

Finally, the Commission notes the problems of proof in its cases alleging defects in new automobiles. In most of these cases there have been thousands of vehicles with the relevant manufacturing defect, manufacturers have had regular reporting systems to identify problems, and engineering analyses have been able to establish the cause of the problem. Even so, establishing a manufacturer's knowledge of a defect has been one of the most difficult aspects of these cases. Establishing that an *individual* used car dealer has knowledge of a *particular* defect in a series of sales of *individual* cars of different makes, models and ages would be a very difficult, resource-intensive undertaking.

In sum, the vague terms used to define defects and the formidable evidentiary barriers created by the need to establish dealer knowledge of defects would severely limit the Commission's ability to enforce the "known defects" disclosure provision. In the Commission's judgment, such a use of its resources would be inappropriate, particularly in comparison to other enforcement priorities. Moreover, the Commission believes it is inappropriate, and likely to undermine respect for the law in general and the Commission's rules in particular, to promulgate rules where enforcement will necessarily be problematic at best.

The Commission stated in the August 1981 Statement of Basis and Purpose that it expected dealers to comply with the defect disclosure requirement since failure to comply with the requirement might be enforced by a fine of up to $10,000 for each violation. In addition, the Commission relied on findings presented in a record survey (the Wisconsin study) showing that, under Wisconsin's mandatory inspection-disclosure law, more consumers were aware of defects prior to purchase and the percentage of buyers receiving pre-purchase defect information from dealers increased after the Wisconsin law went into effect.[315]

The threat of fines may or may not be sufficient to assure some compliance with the rule, but we can be reasonably assured that full compliance is far from guaranteed and that compliance by the "bad actors" in the industry is questionable at best. The effectiveness of fines in achieving compliance is affected substantially by two factors: First the ability of the regulated industry to bring its practices into compliance with the rule, and second, the regulated industry's perception of the likelihood of

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We found that while there is some consistency amongst diagnosticians who are checking the same car—it is frequently weak. For example, out of the total problems noted by one or more of the diagnosticians for the three cars, which had undergone six diagnoses each, there was only one instance in which even five out of the six diagnosticians noted the same problem (a worn front tire). There were only four problems which four of these diagnosticians commonly noted (bad wiper blades, cracked windshield, inoperative backup lights, and poor brake condition). Three of the six diagnosticians agreed upon 12 other problems with these vehicles.

There were 15 problems out of 63 which at least two of the six diagnosticians noted. The remaining 31 problems uncovered by only one of the six diagnosticians were not confirmed by any of the others.

Out of the 36 total problems noted by the diagnosticians for the two cars which had been taken for five diagnoses each, there was one instance when all five diagnosticians agreed that a common problem existed (a dirty air filter). There were only three other instances in which four of the diagnosticians noted a common problem (bad tailpipe, leaking valve cover, bad gas filter), and five in which only three of the five did so. At least two of the five commonly noted 13 different problems, while 14 of the 36 problems noted in two cars had been mentioned by only one diagnostician and not confirmed by any of the other four.

The charts show instances where one diagnostician indicates that a brake job will be necessary in the near future, another says it is necessary immediately, and a third one indicates that the brakes have another 5,000 miles of lining left. In another case, two diagnosticians indicate that a left rear axle seal is leaking, while a third one notes that it is the right rear axle seal that should be replaced.

HX 82 at 6.

[309] Eight of the twenty-four defect criteria included in the August 1981 Rule used relative terms such as "abnormal" and "improper." *See* 1981 Rule, 16 CFR 455.6 (1982).

[310] *See* Staff's Summary of Comments in Response to the Dec. 16, 1983 Comment Period and the March 2, 1984 Rebuttal Period at 43–44, & nn. 146, 148.

[311] *See* discussion in Section IV.A.1.a. *supra*.

[312] *See* XB–23 at 16, American Car Rental Association.

[313] *See* n. 308 *supra*.

[314] Because the Rule requires that the form be made part of the sales contract by reference, consumers may litigate provisions of the Rule in private disputes. Thus, even if the FTC were to conduct its enforcement activities in ways that assiduously sought to avoid the development of a "should have known" standard, such a standard might have evolved through private litigation.

[315] *See* n. 287 *supra*.

punishment. As we discussed earlier in this statement, the Commission is very concerned about the ability of the industry to understand its obligations under the "known defects" provision. The Commission is even more concerned about its ability to enforce this provision. The ambiguity which, of necessity, characterized dealer obligations under the known defects disclosure provision would make it difficult for dealers to comply with the rule or, at least, to know whether they are in compliance with the rule even when they take steps to comply. In addition, the difficulties inherent in bringing even a single case to court under a "known defects" standard is likely to make rule enforcement, at best, sporadic. As consequence, it is not at all clear that fines will produce anything more than perfunctory compliance with the rule.

Finally, the Commission does not believe the Wisconsin Study provides a good basis upon which to assess dealer compliance with the "known defects" disclosure provision. Given the inconclusive nature of the Wisconsin data, the Commission does not believe the data support a prediction of substantial dealer compliance. Moreover, the Baseline Survey indicates that whatever levels of compliance have been achieved have not significantly benefitted consumers.[316]

4. Alternatives to the Known Defects Disclosure Requirement

During the course of the review proceeding held pursuant to the court remand order in *Miller Motor Car, supra*, the Commission has considered several alternatives to the known defects disclosure requirement. The Commission considered, first, whether changes could be made to this provision to resolve the significant problems discussed in detail above. The Commission also reevaluated the mandatory and optional inspection provisions that were considered as alternatives to the known defect disclosure requirement when the Commission issued the August 1981 Statement of Basis and Purpose. The Commission, however, has determined that neither approach is preferable to simply promulgating a rule without the known defects disclosure requirement.

5. Modifications to the Known Defect Disclosure Requirement

The known defects disclosure requirement could be modified to reduce the likelihood that disclosure would cause dealers to incur additional inspection costs. These changes could clarify or eliminate some of the relative terms used in the defect criteria and more clearly define the "reasonable person" standard. However, even if the known defects disclosure provision could be made so clear that dealers would disclose known defects without incuring additional inspection costs, the provision would not, in the Commission's view, provide significant benefits to consumers.

The Commission believes that any disclosure remedy that encourages consumers to rely on dealer-provided information about a car's mechanical condition undermines other more important disclosures required by the Rule. The warranty disclosures, the spoken promises warning, and the pre-purchase inspection notice are intended to signal that consumers should not rely on the dealer for information about a car's mechanical condition. This message is critical because the rulemaking record shows that many dealers misrepresent the condition of the cars they sell. On the other hand, encouraging consumers to rely on disclosures from the dealer to determine a car's mechanical condition presents a confusing and contradictory message that may itself (or with the aid of a shrewd dealer) dissuade consumers from shopping for the best warranty terms or obtaining independent inspections. Therefore, although it may be possible to modify the known defect disclosure provision to make its defect standards more precise and limit the standard for determining the dealer's knowledge of a defect, this alternative would still undermine the effectiveness of more important disclosures on the window sticker.

Additionally, enforcement of the rule could arguably be enhanced by requiring dealers to maintain records of inspections when they inspect cars. However, such recordkeeping requirements are not likely to be followed by dealers inclined to break the law, and can only serve to discourage dealers from inspecting their cars prior to sale. Consequently, the Commission does not believe that modifying the known defect disclosure provision is a viable alternative.

B. Mandatory Inspection

In August 1981, the Commission considered and rejected a requirement that dealers inspect their cars and disclose the results of the inspection.[317] The Commission again rejects the mandatory inspection alternative. In addition, some of the reasons stated above for eliminating the known defect disclosure provisions apply with equal force to the mandatory inspection requirement.

The mandatory disclosure provision would have involved a checklist in which each major mechanical system was to be checked "OK" or "NOT OK," together with an indication of the reason for any "NOT OK" checks. Dealers would have been required to follow a specified inspection protocol when performing inspections.

This approach was proposed by staff in a 1978 Staff Report to address the problem of dealer misrepresentation of mechanical condition directly. Under this alternative, buyers would have had a specified number of days to report any problems with "OK" systems, and, during the period to report problems, dealers would be responsible for repairing any defects in these systems.

Industry members expressed concern about the increased post-sale liability that would be incurred by dealers who checked systems "OK."[318] In addition, because "OK" checks in effect created warranties under state law, some industry members questioned whether a rule that required dealers to inspect and check "OK" where appropriate would contravene the intent of Congress expressed in 102(b)(2) of the Magnuson-Moss Warranty Act, which explicitly prohibits the Commission from mandating warranties.[319]

There was also concern by dealers and dealer organizations that dealers' cost of operation would increase under a mandatory plan;[320] that is, that

[316] *See* Section IV.A.1.b *supra*.

[317] The determination occurred at a Commission meeting held on October 11, 1979.

[318] See NIADA, S–739, at 44, 88, 101; Wilkerson, S–568; Gadwin, S–624; Suvan, S–489; Roland, S–553. *See also*, NIADA, S–739 at 88; Murphy, S–708 at 1; Knauf, S–410 at 1.

[319] NADA, S–738 at 62–77; AAA, S–633 at 2; NIADA, S–739, S–562; Delaware Valley Auto Dealers Association, S–461; Texas Independent Automobile Dealers Association, S–1006; Virginia Independent Automobile Dealers Association, S–1023.

[320] NADA, S–738; NIADA, S–739; Texas Independent Automobile Dealers Association, S–1006; Patnode, S–999; Bryson, S–376; Suvan, S–489.

dealers would have to pay for the inspection of each car offered for sale and would pass those costs on to the buyer in the form of higher selling prices for cars.[321] Such a result would not have been dictated by market forces but would ahve been uniformly required for every used car as a result of government intrusion into the marketplace.

The issue of the costs of inspection was addressed extensively in the record. The staff believed that because a majority of dealers currently inspect cars, inspection costs for most dealers would not increase.[322] As noted above, however, the Commission is not convinced that present inspection practices would provide the detailed, system-by-system information that a mandatory inspection rule would require.[323] Furthermore, for those dealers who did not currently inspect, staff projected a cost range of $15–30 per car.[324]

While the mandatory inspection proposal was favored by many consumer organizations,[325] the Commission, in light of the aforementioned concerns, determined that this remedial approach was not feasible.

The Commission also believes that the mandatory inspection alternative should be rejected because it is more likely to undermine the effectiveness of more important disclosures required by the Rule than either the defect disclosure requirement or an optional inspection provision. A mandatory inspection checklist, by its very nature, serves to induce consumer reliance on the dealer's inspection, discouraging consumers from seeking independent inspections. Moreover, consumers who rely on dealer inspections may well forego the search for important warranty protections. In addition, this emphasis on the results of a mandatory inspection works to the consumer's detriment because the dealer can be required only to disclose current defects, not conditions indicating that components may fail in the near future and require expensive repairs. Consumers who obtain independent inspections can find out whether components currently functioning adequately may need expensive repairs in the near future. Of course, consumers who obtain good warranty protection will not have to bear the expense of repairing malfunctions that occur during the warranty period. In short, the Commission is concerned that a mandatory inspection rule has the potential to do more harm than good because it encourages reliance on dealer inspections and, as a consequence, discourages consumers from seeking more reliable information. Finally, the Baseline Survey suggests that Wisconsin's version of the same remedy has not achieved significant beneficial effects.[326]

C. Optional Inspection

In promulgating the 1981 Rule, the Commission also considered an optional inspection provision as an alternative to the known defect disclosure requirement. Under this alternative, as under the mandatory inspection proposal, dealers would be required to post a window sticker with a list of mechanical systems. However, the checklist would have an additional column: "No Rating."[327] The dealer would have no obligation to inspect. If a dealer chose not to inspect, the mechanical systems could simply be checked "No Rating." Additionally, if the dealer inspected and found a system not to be defective, but did not want to assume liability for its condition, the dealer could also check "No Rating."[328] This alternative would give dealers the flexibility to determine whether to inspect as well as whether to assume responsibility for the condition of nondefective systems. If, however, the dealer did inspect or otherwise discovered specified systems to be defective, he or she would have to disclose such systems as "Not OK" and describe what the particular problem was.

There is little difference between optional inspection and known defects disclosure except that the former approach provides a format which permits dealers to disclose what components or systems are "OK" and, thus, counterbalance defect disclosures.

The Commission rejected the optional inspection approach in 1981 and we reject it today because of concerns expressed by consumer groups and industry representatives. First, some groups expressed concern that an optional inspection rule would detract from warrant disclosures, especially those relating to "as is" sales, by focusing the buyer's attention on the condition of individual components at the time of sale rather than on the dealer's continuing responsibility—if any—for post-sale repairs.[329] Others were concerned that a simple "OK"/"Not OK"/"No Rating" evaluation system might not clearly and accurately communicate a car's individual condition and, thus, could lead to consumer confusion and, perhaps, even deception.[330] Some believed that if dealers of older and cheaper used cars chose not to inspect, checked "no rating" and sold "as is" with no warranty, the consumer could conceivably be harmed by an optional inspection rule, since the "no rating" option could undermine a consumer's attempt through litigation to enforce oral dealer promises about condition.[331]

The question was also raised as to whether the optional inspection approach would provide consumers with useful information. A number of commentators believed that dealers, particularly in "as is" sales, would simply mark all systems "No Rating".[332]

In addition, there was some concern about the cost of an optional inspection approach. Dealers and dealer organizations claimed that the cost of inspection, even on an optional basis, would be high, and that consumers would ultimately shoulder those costs through higher used car prices.[333]

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[321] Virginia Independent Automobile Dealers Association, S–1023; Smith, S–970; Mitchell, S–569; Carter, S–615; Hawley, S–980.

[322] *See* Staff Report at 213–241.

[323] *See* Section IV.A.1.a. *supra*.

[324] However, one dealer association conducted a survey of mechanics which produced a cost of inspection ranging from $25 to $250 per car. See post-record comment of NIADA, T–742 at Appendix III. See generally NIADA, S–739; Whetman, S–790; Texas Independent Automobile Dealers Association, S–993.

[325] *See* AOAC, T–708; CALPIRG, T–727 at 1; Center for Auto Safety, T–733; NCLC, T–833; Newton, T–316; Pfeffer, T–371; Ranstrom, T–508; Carter, T–596.

[326] *See* Section IV.A.1.b. *supra*.

[327] In the version of the optional inspection rule published in the August 7, 1980, Federal Register, the column indicating that a car had not been inspected and that the dealer was making no promises about condition was called "We Don't Know." Technical comments suggested that "We Don't Know" carried pejorative connotations. Therefore, staff recommended that the column be labeled "No Rating." See staff Memorandum to the Commission, Final Recommendations concerning Used Car TRR dated January 14, 1981, at 17–18.

[328] Some such scheme is necessary to avoid the problem of requiring a warranty.

[329] Many commentators stated that buyers would not understand that an "OK" check identified a condition at the time of sale rather than a warranty of future performance. *See* AOAC, T–708 (Appendices B–6, B–9, B–12); CALPIRG, T–733 at 29; CAS, T–733; NCLC, T–833 at 14–15; NADA, T–740 at 26; NIADA, T–742 at 21–22.

[330] *See* AOAC, T–708; CALPIRG, T–727 at 8–12, 34; CAS, T–733; Cueller, T–238; Strickland, T–678; NADA, T–740; NADA, T–740 at 18–19, 33; NIADA, T–742 at 14–15, 25.

[331] AOAC, T–708 at 16 (Appendix B–6); CALPIRG, T–727 at 1, 31–32; Kaufman, T–150; Cueller, T–238; Hartman, T–287; NADA, T–740 at 31; Stokes, T–567.

[332] AOAC, T–708 at 7–15A; CALPIRG, T–727 at 15–18; CAS, T–733; NADA, T–740 at 21; Merrill-Wahus, T–165; Carter, T–66.

[333] Berrier, T–699(b); NADA, T–740 at 22; NIADA, T–742 at 5, 9. The dealer arguments concerning costs were counterbalanced against the evidence that in Wisconsin, after implementation of a mandatory

Continued

As stated above, the optional alternative is essentially a known defects disclosure requirement (known defects would be disclosed as "Not OK" with a mark next to the appropriate defect(s) listed on the form) with a format that allows dealers to indicate which systems are "OK." Therefore, all of the problems associated with the known defects provision apply equally to the optional inspection alternative. This alternative may undermine other more important disclosure remedies included in the rule. Dealers may ignore the defect disclosure requirement and routinely give all systems a "No Rating" designation or may use the disclosure checklist to corroborate their deceptive representations. Policing the defect disclosure component of the optional inspection alternative will create insurmountable enforcement problems. Finally, if the optional inspection provision were to define some defect criteria by using relative terms such as "abnormal," and use the "reasonable person" standard to determine the dealer's knowledge of defects, this alternative may force dealers to incur substantial additional inspection costs.

D. Mandatory Third-Party Inspection Opportunity

The staff considered, but did not recommend, a mandatory pre-sale third-party inspection opportunity for consumers.[334] Under this alternative, dealers would have been required to allow consumers to take the car off the lot for purposes of obtaining a third-party inspection; consumers would have been assured the availability of independent diagnostic analysis. However, record comments suggested such a rule would result in increased costs, including increased insurance and personnel time. Consumers would thus face the direct costs of inspection, as well as the likely pass-through by the dealer of his or her costs. Because of the potential costs involved in a mandatory, third-party inspection opportunity, the staff did not recommend that the Commission include such a requirement in the final rule.

E. Cooling-Off Period

Some consumer organizations recommended that a cooling-off period be added to the optional inspection rule.[335] The cooling-off period would apply only to vehicles that had not been inspected. Its purpose was to give purchasers of vehicles that had not been inspected an opportunity to discover defects on their own and to give dealers an incentive to inspect in order to avoid the cooling-off period.

The staff rejected the cooling-off period alternative because it appeared to have significant costs and uncertain benefits.[336] The costs to dealers included those arising from the danger of theft, the consumer's use of the vehicle as a free rental car or for "joy riding," uncertainties in financing arrangements (decreasing the rate of inventory turnover or increasing the dealer's capital requirements), increases in insurance rates, repeated detailing expenses, and repeated inspection expenses. If dealers attempted to recover these costs through a user fee to consumers who returned cars, the effectiveness of the cooling-off period would have been reduced since consumers would have little economic incentive to rescind. The Commission did not consider a cooling-off provision a viable option, and therefore the issue of a cooling-off period remedy was not discussed by the Commission as an alternative to, nor in conjunction with, the inspection or disclosure options.

F. Disclosure of Prior Use

The Final Staff Report recommended that the Commission include a disclosure of a car's prior use on the Buyers Guide.[337] "Prior use" refers to the manner in which a car was used prior to being offered for sale on the used car lot—*e.g.*, as a taxi, rental car, police car, etc. In the Final Staff Report, the staff proposed that each of these "prior uses" be listed on a window sticker and that the dealer check an appropriate box.

At the October 11, 1979 meeting, the Commission rejected the disclosure of prior use because it believed that staff had failed to demonstrate that consumers were injured when prior use was not disclosed. The Commission stated that, although it appeared prior use was material to consumers, the record did not sufficiently demonstrate that disclosure of prior use provided consumers with an accurate indication of a car's mechanical condition.[338]

G. Disclosure of Odometer Accuracy

The Final Staff Report recommended that the Commission include mileage disclosure on the Buyers Guide,[339] even though it duplicated federal law.[340] Staff's arguments focused on the fact that, under the law, disclosure need not be made until the time of sale, which often occurs in a pressure situation with the consumer confronted by a number of forms. Therefore, consumers did not always read the odometer disclosure form. Staff also stated that the repeated disclosure on the Buyers Guide was minimally burdensome since the dealer simply had to copy readings from the odometer disclosure form.

The Commission disagreed. On October 11, 1979, it rejected staff's proposal primarily because it duplicated federal law and therefore appeared unnecessary.

H. Disclosure of Estimated Repair Cost

In the Final Staff Report, staff proposed that dealers be required to disclose estimated costs of repair for items checked "Not OK."[341] Staff believed that such a disclosure would enable dealers to reveal to mechanically unsophisticated consumers the true impact of the "Not OK" check. However, at the May 16, 1980 meeting, the Commission rejected the staff's recommendation. The Commission decided that a disclosure of the estimated range of cost would not provide meaningful repair information to consumers, since mechanics could not be specific about repairs for problems not fully diagnosed. The Commission was also concerned about the cost of ascertaining what precise repairs might be necessary.[342]

I. Disclosure of Prior Repairs

The initial rulemaking notice on January 6, 1976, included a proposed rule provision that would have required a description of repair work performed by used car dealers.[343] Staff, however, recommended dropping the proposed disclosure of prior repairs because there was no record evidence to support a finding that prior repairs are reliable indicators of current mechanical condition. Moreover, since consumers consider prior repairs to be a negative

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inspection law, the costs of inspections to more than two-thirds of the dealers did not rise. *See, e.g.*, HX 164(A) at V–8. The lack of significant benefits from inspection in Wisconsin revealed by the Baseline Study, however, suggests that more thorough and more costly inspections may be necessary to enhance consumer information significantly.

[334] *See* Staff Report at 87–92 nn. 80–83; 41 FR 1091–1092 (1976).

[335] CALPIRG, T–727 at 2; CAS, T–733. Other witnesses suggested varying time periods. Staff Report at 183, nn. 245–248.

[336] Staff Report at 185–190.

[337] *Id.* at 337–383.

[338] This point was raised by several commentators. NADA, S–738; American Car Rental Association, S–736; Consumer Bankers Association S–737.

[339] Staff Report at 384–391.

[340] Motor Vehicle Cost Savings Act, 15 U.S.C. 1988(a)(1). Further, the seller must disclose that the actual mileage is "unknown" if he or she knows the reading is different from the vehicle's true mileage. 15 U.S.C. 1988(a)(2).

[341] Staff Report at 167–68.

[342] *See* Rork, S–16 at 1; Connors, S–633 at 2; Glahedge, S–678 at 2.

[343] 41 FR 1089 (1976).

attribute, disclosure of prior repairs would have reduced dealer incentive to make such repairs. Finally, the record indicates that most consumers could not make effective use of repair information because they lack the technical expertise to distinguish repairs which might indicate more serious problems from repairs which actually improve the value of the vehicle. The Commission agreed with staff's recommendation to eliminate the proposed prior repair disclosure.[344]

J. Disclosure of Flooded or Wrecked Vehicles

The Final Staff Report recommended that the Commission include a disclosure that vehicles had been flooded or wrecked and established as an insurance "total loss." [345] In staff's view, the record established that such vehicles are not desired by consumers and are often mechanically inferior to vehicles which have not been wrecked or flooded. However, the Commission decided at the May 16, 1980, meeting that, because insurance companies base their decision as to whether a car is totalled on the market value of the car, and not exclusively upon the amount of damage, the information provided could result either in unjustifiable depreciation in the value of a car or in a failure to disclose severe damage.[346] The provision for disclosure of the fact that a vehicle had been flooded or wrecked was therefore deleted from the rule.

V. Economic Impact on Small Businesses and Consumers

A. Analysis of the Used Car Rule—Projected Benefits, Costs, and Effects

As set forth earlier, the Rule comprises five components—two affirmative disclosure requirements relating to the specific vehicle (a disclosure of warranty information, and of the meaning of an "as is" sale), and three other general information disclosures (a spoken promises warning, a major systems list, and a pre-purchase inspection notice). Each element is designed to remedy particular abuses reflected in the rulemaking record and, thus, to a certain extent, is segregable from the whole for the purposes of analyzing projected benefits, costs and effects of the Rule.

However, certain of the projected benefits and costs may not be readily segregable, and therefore are more appropriately attributable to the Rule as a whole, rather than to any particular element of the Rule. For example, the Commission expects that the disclosures required by the Rule will reduce dealer misrepresentations, consumer reliance on such misrepresentations, and the consumer injury that occurs from unexpected liability for repair costs. Such benefits are likely to arise from the impact on the market of the entire Rule, rather than from the impact of any one particular element.

The direct cost of providing used car information required under the Rule is minimal. The dealer need only obtain the Buyers Guide forms, and complete them with readily available information. The Rule would not prevent any car, with or without any warranty, in any condition from being sold. Seen from this perspective, the costs of the Used Car Rule, insofar as it functions as a disclosure device, are minimal.

We now proceed to an analysis of each component of the Rule individually.

1. Disclosure of Availability and Scope of Warranty Coverage

The Rule addresses unfair and deceptive dealer practices with respect to warranty coverage and service contract terms.[347] The record clearly demonstrates that dealers orally misrepresent the terms of written warranties and service contracts.[348] In some cases, salespersons deceptively refer to "good warranty" or "full guarantee" when the warranty coverage offered is severely limited.[349] The allocation of repair responsibility and the duration of the warranty are often overstated or not clarified.[350] In addition, warranty information may not be available for use in the consumer's purchasing decision since warranty terms are often not made known to consumers until after they have decided to purchase.[351] For example, results from one study showed that warranty documents failed to describe the items that the dealer would repair in 24 percent of the cases; the dealer's share of the repair cost was not disclosed 19 percent of the time.[352] Another study found discrepancies between the verbal and written warranty in 34 percent of the cases where test shoppers actually saw the warranty.[353]

The warranty disclosure adopted by the Commission addresses these problems. The shopper will be able to readily ascertain which mechanical systems are warranted, for how long, and how costs of repair will be allocated between the buyer and the used car dealer.

a. *Benefits.* The Rule is designed to provide consumers with pre-sale disclosures of material information regarding warranties at a time prior to the closing of the sales contract. The Commission believes that clear and accurate disclosures of post-sale repair responsibilities at the point of purchase will provide an effective remedy for the consumer injury resulting from dealer misrepresentations of warranty coverage, and from failure to disclose the details of warranty coverage.

If consumers have accurate knowledge of what the dealer will pay in case the consumer encounters problems after the sale, unanticipated repair costs and the consumer injury that results therefrom should be reduced. With warranty information available at the point of sale, the consumer will be better able to make accurate assessments of the probable ownership costs (purchase price plus repair costs) of a car prior to making a purchase decision.[354]

The window sticker will provide consumers with an additional source of information on warranty coverage which they can use as a check against which to measure any oral representations by the dealer about the warranty. With the disclosure on the window sticker, consumers can compare the terms of the written warranty document. Thus, the Commission believes dealers will be less likely to misrepresent warranty coverage. At the same time, consumer reliance on any oral warranty promises should be reduced.

Disclosure of warranty terms also provides another sort of benefit. The terms of the warranty will frequently provide information to the consumer about the condition of the car, since

[344] This occurred at the October 11, 1979, meeting.

[345] Staff Report at 160–164. Cars that are subjected to flood damage in one state are often shipped out of state for sale and without informing the consumer of damage incurred. In the case of "wrecked" vehicles, insurance companies consider the car a total loss when estimated repairs exceed the vehicle's market value.

[346] *See generally* Jones, Alabama Automotive Dismantlers & Recyclers Association, S–202; Vorhof, Foreign Auto Salvage, S–288.

[347] Staff Report at 280–90.

[348] *Id.* at 303–05.

[349] Presiding Officer's Report at 35.

[350] Staff Report at 284. The SRL Study demonstrates a high percentage of confusion over the dealer's share of repair costs. HX 160(A) at Appendix C. Question 23 A and B.

[351] Staff Report at 282.

[352] SRL Study, HX 160(A), Appendix C, Questions 23A, 23B.

[353] CALPIRG, HX 82 at 17.

[354] The record indicates that some buyers do bargain over warranty coverage. Although the magnitude of such bargaining efforts is difficult to determine, the Commission expects it to increase when buyers have more accurate information about the warranty being offered. Staff Report at 301.

consumers are likely to use the strength of the car's warranty as a signal indicating the dealer's evaluation of the car's mechanical condition. For example, a strong warranty may signal the consumer that the dealer has confidence in the condition of the car. On the other hand, a warranty that does not cover the brake system may lead a shopper to question the condition of the brakes.[355] In general, the lack of a strong warranty may serve to arouse buyer suspicions concerning mechanical condition and may encourage some buyers to seek third-party inspections.

Warranty disclosures made early in the transaction thus will make it possible for consumers to use warranty information to weigh the relative importance of the warranty coverage, the condition of the car, and the price they are willing to pay for it. However, to be used effectively, such disclosures must be made available at a time prior to the signing of the sales contract. If warranty information is not available until late in the transaction, the buyer has little opportunity to utilize the information which the terms of the warranty convey. There is little chance for the final agreement between buyer and seller to reflect the buyer's desire for specific warranty terms or the relative value he or she attaches to warranty coverage, condition of car, and price.

We believe that the availability of warranty information early in the bargaining process should increase consumers' ability to bargain for the terms they desire. This should intensify the pressure on dealers to compete on the basis of the terms of the warranty whenever (and to the extent that) consumers are willing to pay for them. With better information, market forces will be able to work more efficiently to determine the nature of the warranty terms offered.

Of course, to be useful to consumers, the disclosure of information must be easily understandable. Tests of the comprehensibility of the disclosures on the window stickers have shown them to be remarkably clear. Focus group tests by Market Facts, Inc., testing two versions of a form very similar to the one required by the Rule, found that respondents could use the Buyers Guide to determine whether the car had a warranty, what systems were covered, and the length of the warranty.[356] This study suggests that the Buyers Guide will increase consumer certainty as to the warranty coverage offered on a car.

An additional benefit to both buyers and sellers may be reduced litigation costs. Disclosure of warranty terms will provide clear written information about the buyer's rights; a clearer written contract is likely to reduce the impact of oral promises. The Commission thus expects that sellers may be more willing to settle disputes and buyers may be less likely to bring actions for unenforceable oral promises. This should result in a more efficient dispute settlement system.

The Commission believes that clear and conspicuous disclosures of information concerning the availability and scope of warranty coverage is likely to have substantial benefits, given the misrepresentations and failures to disclose and resulting consumer injury demonstrated in the market. We expect reductions in consumer reliance on such oral (and generally unenforceable) warranty promises and in unanticipated repair costs for consumers.

b. *Costs.* The Commission believes that the direct costs of warranty disclosure will consist of the printing, filling out and posting of the Buyers Guide. The Rule itself requires no change in the offering or scope of warranties. Dealers may still sell "as is" or offer a warranty. The Rule requires only that dealers conspicuously disclose the terms of a warranty, if offered, or the fact that the sale is "as is." Thus, the direct costs of the Rule will be minimal.

Some indirect costs may result from warranty disclosure. As warranty disclosures become common, competitive pressures may encourage dealers to increase warranty coverage. In that event, dealers may incur additional post-sale repair costs. Presumably, dealers will not offer warranties with more protection than that for which consumers are willing to pay. Thus, to the extent warranty coverage and therefore post-sale repair costs do increase, such costs will be imposed by consumer demand in the market, not by the Rule.

In our judgment, the projected costs of these disclosures will impose minimal burdens on the industry while significant benefits will accrue to consumers. We therefore believe that the warranty disclosure requirements will be cost-effective.

2. "As Is" Sales

The Rule would require dealers to check an "as is" box on the Buyers Guide when they sell a vehicle with no warranty. Next to the box will be a simple statement explaining the meaning of an "as is" sale.

The record reveals a great deal of confusion on the part of consumers with respect to the meaning of "as is" sales:

> Undoubtedly the most needed disclosure proposed in this proceeding involves "As Is" sales . . . The record is replete with testimony as to the lack of understanding on the part of consumers of the meaning and effect of this term in a sales contract.[357]

Data from three studies on the record show that at least 25%, and perhaps as many as 59%, of buyers cannot correctly describe an "as is" sale.[358]

In addition, the record indicates that the "as is" nature of a transaction is not usually disclosed, if it is disclosed at all, until the sale is about to be made.[359] Some "as is" disclosures are couched in complex legalistic terms.[360] In addition, some dealers will make oral promises to repair problems that arise after sale, even though the sale is made on an "as is" basis.[361] Many buyers, even when aware that a sale is "as is" still believe the seller has a legal responsibility to make post-sale repairs.[362]

a. *Benefits.* The Commission believes the "as is" disclosure will assist in reducing the documented widespread ignorance and misunderstandings with respect to "as is" sales.

The benefits of a clear "as is" disclosure are similar to those benefits resulting from warranty disclosure. Because the disclosure will set out the significance of an "as is" sale, we expect that it will reduce consumer reliance on oral promises to repair problems that arise after sale. We also expect a concomitant reduction in dealer oral misrepresentations that a

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[355] The list of major systems which is set forth on the Buyers Guide should provide the shopper with a context in which to evaluate the warranty coverage offered on any given car. *See* section V.A.3.c. *infra.*

[356] As directed by the Commission, this study was conducted in May 1981, under a staff contract in order to test whether the Buyers Guide, as revised in accordance with the Rule changes approved by the Commission on April 14, 1981, would communicate information to consumers.

Previously, the staff had contracted for two studies that tested earlier versions of the Buyers Guide developed during the Commission's consideration of an optional inspection rule. Focus group testing conducted by Hollander & Associates in August 1980, indicated some confusion with parts of the form, including the relationship between the mechanical condition checklist and the warranty disclosures. After redesigning the Buyers Guide, the staff contracted with the Public Communications Center in December 1980 to perform mall intercept and focus group tests. In those tests, respondents understood the warranty information provided by the form and found the meaning of "as is" to be very clear. PCC Study, Tables 2, 3, 4, 8, and 17.

[357] Presiding Officer's Report at 79, 163.

[358] Staff Report at 262–263.

[359] *Id.* at 266–67. In some cases, it is never disclosed. *Id.* at 271.

[360] *Id.* at 268.

[361] *Id.* at 275. Many of these promises may be honored. Nevertheless, the "as is" disclosure, together with the spoken promises warning, will inform consumers that such promises may be unenforceable.

[362] *Id.* at 263.

warranty is provided since consumers will be able to use the disclosures on the Buyers Guide to evaluate contradictory dealer oral promises. A related benefit of the "as is" disclosure is the disincentive it provides for dealers to represent that a particular component is in good condition or that the vehicle in general is in good condition in light of the lack of warranty coverage.

Tests of the comprehensibility of the "as is" disclosure have indicated that consumers understand the disclosure and will use it in making purchase decisions. [363]

It is possible that some dealers may decide to offer a limited warranty on one or more non-essential systems rather than sell the vehicle "as is" and check the "as is" box on the Buyers Guide. However, we would not be concerned if this should occur. As long as the disclosures on the Buyers Guide accurately reflect the warranty coverage, the consumer who receives such a limited warranty will be able to assess the value of the warranty in determining whether to purchase the vehicle. Any detriment to the consumer in receiving such a limited warranty will be diminished by the fact that the Buyers Guide disclosures will inform the consumer of the limited scope of the warranty by placing it within a context of systems that could be covered by a warranty. [364]

b. *Costs.* The direct costs associated with "as is" disclosure are minimal. The check box and definition will be printed on the Buyers Guide adjacent to the warranty disclosure section. The dealer must merely check the box if the vehicle is sold on an "as is" basis. Thus, essentially no costs will be imposed beyond those already incurred in posting the window sticker.

3. General Information Disclosures

The Rule requires the disclosure of information on three additional aspects of the transaction: a spoken promises warning, pre-purchase inspection opportunity notice, and a list of major mechanical systems. These are to be posted as part of the Buyers Guide. The impact of each of the three disclosures is analyzed separately.

a. *Spoken Promises Warning.* The following notice appears at the top of the Buyers Guide:

Important: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

[363] *See* n. 356, and accompanying text *supra.*

[364] The list of major systems will be particularly useful in providing a context for the evaluation of warranty coverage.

The record demonstrates that many dealers orally misrepresent both the mechanical condition of used vehicles and the dealer's after sale repair responsibility. The record also demonstrates that consumers rely on oral statements made by dealers at the point of purchase even though those oral statements are not confirmed in writing.[365] Further, discrepancies between oral representations of warranty coverage and written warranty terms are commonplace.[366] In the face of consumer reliance on oral promises, dealers continue to make affirmative misrepresentations regarding their used vehicles' warranty coverage and mechanical condition. Consumers are therefore frequently deceived at the point of purchase by representations which are not only untrue but also unenforceable. The Commission believes the record contains substantial justification for requiring a warning to consumers that all oral promises should be confirmed in writing. Inclusion of a spoken promises warning would alert consumers to beware of reliance on dealers' oral representations.

(1) Benefits.

The Commission believes that a spoken promises warning will contribute to a reduction in oral misrepresentations of mechanical condition and warranty coverage by dealers and, in conjunction with the other disclosures on the Buyers Guide, assist in deterring deception. The level of misrepresentation at the used vehicle lot will be reduced if consumers are informed of the need to secure a written record of all statements made in conjunction with a used vehicle sale. If consumers do in fact ask dealers to confirm their promises in writing, making them available in case of disputes and enforceable in court, dealers are likely to be more reluctant than they are at present to make false or misleading statements.

At the same time, the introduction of this information into the used vehicle market should lead to a decrease in consumer reliance on oral statements and an increased insistence by consumers on written confirmation of all representations made at the time of sale. Such written confirmation of representations should reduce ambiguity and/or misunderstanding between buyer and seller as to whether or not a promise was made. With promises regarding mechanical condition and warranty coverage in writing, the consumer will have an additional means of checking the representations made in any warranty or service contract document and can check the statements against the results of an independent inspection, if one is performed. Additional sources of information decrease the necessity of consumers relying exclusively on the oral promises of dealers.

If consumers are able to obtain written confirmation in the Buyers Guide of oral statements made by dealers at the time of sale, these statements become part of the sales contract and can be used in the event of later disputes between buyers and sellers. Having dealer promises in writing should increase the ease of enforceability of these promises and thus decrease the need for post-sale litigation to enforce oral promises.

(2) Costs.

The printing costs, as described above, are minimal since the spoken promises warning will appear on every Buyers Guide printed for the dealer.

b. *Pre-Purchase Inspection Notice.* The Buyers Guide contains a notice suggesting that buyers ask dealers about their policies regarding independent pre-purchase inspections:

Ask the dealer if you may have this car inspected by your mechanic either on or off the lot.

Although pre-purchase inspection by a third party can provide consumers with important information regarding the mechanical condition of a used car, the record demonstrates that few consumers actually seek independent inspections by a qualified mechanic.[367] This circumstance may be attributed to dealer policies which disallow such inspections and to factors which inhibit consumers from seeking inspections.[368] More importantly, however, consumers rely on dealers' representations of sound mechanical condition, and, thus, do not perceive a need to obtain an independent pre-purchase inspection.[369]

(1) Benefits.

The notice of availability of independent third-party inspections will generate several benefits for consumers and dealers. For consumers, a disclosure of the dealer's policy concerning independent inspections informs consumers that independent inspection

[365] Staff Report at 103–130; 262–90; 295–315.

[366] *Id.* at 108–110; 274–77.

[367] *Id.*

[368] *Id.* at 93–94.

[369] *Id.* at 87–103. One dealer practice that discourages independent pre-purchase inspection is "detailing". The practice of "detailing" involves cleaning and cosmetically reconditioning cars without necessarily making mechanical or safety repairs. *Id.* at 97–103. Consumers who equate appearance with performance do not believe that independent, pre-purchase inspections are necessary.

is one means of corroborating dealers' oral statement regarding mechanical condition. In addition, the disclosure alerts consumers to the fact that independent inspection is a valuable means of determining the condition of the used car at the time of sale. Nevertheless, the decision to allow such inspection will remain voluntary for the dealer; the notice will simply alert consumers to a possible opportunity. Any effects that flow from dealers' decisions to extend this opportunity will be the result of consumer demand and dealers' responses.

If the notice does, in fact, encourage consumers to obtain independent inspections, this may reduce consumer reliance on dealer-controlled information. If, as a result of third-party inspections, buyers find a discrepancy between the results of an independent evaluation and the condition reported by the dealer, buyers would have enhanced their bargaining position with respect to the dealer.[370] On the other hand, the possibility of independent inspections may provide dealers with a disincentive to misrepresent orally mechanical condition in light of the risk that the consumer could discover misrepresentations as a result of third-party evaluations.

The notice not only focuses consumers' attention on the idea of pre-purchase inspection as a means of evaluating a car's mechanical condition but also provides consumers with a means of comparison shopping among the various terms and conditions offered by different used car dealers. This possibility may also provide benefits to dealers. Some dealers may make the availability of independent inspections a component of their marketing strategy. Their willingness to allow third-party inspections could provide consumers with information on the trustworthiness of the dealer. The notice may thus provide dealers with a way of communicating to consumers that their representations are trustworthy and will withstand the test of comparison with a third-party evaluation.

(2) Costs.

There are no direct costs associated with this disclosure. As with the spoken promises warning, the notice of availability of pre-purchase inspection is to be pre-printed on the Buyers Guide.

There may be some indirect costs resulting from disclosure of an independent inspection opportunity. If, as a result of the disclosure, consumers begin to value independent off-premises inspections and begin to demand such inspections, dealers may incur additional costs. These costs may include the costs of increased insurance premiums and employee time to accompany vehicles off the premises to safeguard against misuse or theft and the cost of foregone opportunities to show cars to other prospective buyers while the cars off the lot. Dealers would presumably pass along to consumers any increased costs of this sort and would only offer the opportunity for third-party inspections if, and to the extent that, consumers were willing to pay a price which would allow the dealers to cover those costs. Any costs of this sort would thus be imposed by the market, not by the Rule.

c. *List of Major Systems and Defects.* The Buyers Guide also contains a pre-printed list of 14 major mechanical and safety systems of a car. The list of systems includes all major mechanical systems or components of an automobile.

The record shows that dealer misrepresentations concerning mechanical conditions are often made on a system-by-system basis. The systems listed are those most likely to be represented by dealers as being in good condition, but without any confirmation of such representations in writing.[371]

(1) Benefits.

The list of major mechanical systems identifies for consumers the important systems on which they may want to seek mechanical condition information, either from the dealer or through an independent inspection. Furthermore, the list will enable consumers to evaluate which systems are covered by any warranties offered by the dealer. The list may also prompt consumers to seek information on costs to repair systems not in good order.

The record demonstrates that consumers are most interested in the condition of the car at the time of sale but are discouraged from inspecting mechanical condition as a result of dealer practices.[372] Highlighting the importance of mechanical systems may lead consumers to focus on them somewhat more specifically. As consumers begin to be more astute and critical, dealers' marketing incentives may shift away from cosmetic pre-sale reconditioning to remedying mechanical condition factors.

Thus, the list of systems will provide consumers with a framework for systematically evaluating and comparing the mechanical condition and warranty coverage offered between cars and dealers. The increased availability of information to consumers should also contribute to a reduction in the incidence of unanticipated repair costs by consumers.

(2) Costs.

The listing of major mechanical systems will not lead to any direct costs to dealers since it will be pre-printed on the Buyers Guide.

4. Summary

The Commission believes that each of the elements of the Rule will diminish the deceptive practices currently existing in the used car market. We expect that the elements of the Rule, taken together, will provide significant benefits while imposing only minimal direct costs. Any indirect costs that might result from the rule would result from dealer attempts to satisfy consumer demand and, therefore, by definition would be justified by significant benefits.

B. Conclusion

In formulating this Rule as the remedy for recorded abuses in the used car industry, the Commission has assessed the economic impact on consumers and small businesses. The Commission concludes that the benefits of this Rule outweigh its costs and that the Rule will be effective in remedying the unfair and deceptive practices established in the record.

IV. Other Matters

A. Impact Evaluation

The Commission believes it is essential to measure the degree of impact this Rule will have on the used car market, and therefore, has determined to perform an impact evaluation study three years from the effective date of the Rule. Such a study should assist the Commission in assessing the effectiveness of the Rule, and could illustrate whether proceedings to amend the Rule would be appropriate.

B. Readability

With the adoption of this Rule, the Commission again recognizes its goal of writing understandable regulations. The Commission has for some time required that disclosures to consumers be written in plain and easily understandable language.[373] The Buyers Guide approved by the Commission in 1981 was designed and reviewed to ensure that the disclosures will be conveyed in a clear and succinct manner. Moreover,

[370] *Id.* at 109–130.

[371] Staff Report at 109–115.

[372] *Id.*

[373] Section 21(a) (2) of the FTC Improvements Act, 15 U.S.C. 57a–1.

various versions of the Buyers Guide were subjected to several rounds of consumer testing to measure comprehensibility. Based on the results of that testing, the Commission believed that the Buyers Guide approved in 1981 would be understood by consumers. The Buyer Guide included in the Rule we promulgate today is similar to the Guide approved in 1981. However, it contains warranty and "as is" disclosures that are more prominent and less complicated than the 1981 Buyers Guide.

The Rule itself is also written in understandable language. This reflects the Commission's commitment to the principle that regulations which apply to small businesses should be readily understood. After reviewing the language of the Rule carefully, the Commission believes that its provisions will be understood by the affected industry members.

Title 16 of the Code of Federal Regulations, Chapter I, is amended by adding Part 455 to read as follows:

PART 455—USED MOTOR VEHICLE TRADE REGULATION RULE

Sec.

Authority: 88 Stat. 2189, 15 U.S.C. 2309; 38 Stat. 717, as amended 15 U.S.C. 41 et seq.

§ 455.1 General duties of a used vehicle dealer; definitions.

(a) It is a deceptive act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act:

(1) To misrepresent the mechanical condition of a used vehicle;

(2) To misrepresent the terms of any warranty offered in connection with the sale of a used vehicle; and

(3) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.

(b) It is an unfair act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act:

(1) To fail to disclose, prior to sale, that a used vehicle is sold without any warranty; and

(2) To fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle.

(c) The Commission has adopted this Rule in order to prevent the unfair and deceptive acts or practices defined in paragraphs (a) and (b). It is a violation of this Rule for any used vehicle dealer to fail to comply with the requirements set forth in §§ 455.2 through 455.5 of this part. If a used vehicle dealer complies with the requirements of §§ 455.2 through 455.5 of this part, the dealer does not violate this Rule. (d) The following definitions shall apply for purposes of this part:

(1) "Vehicle" means any motorized vehicle, other than a motorcycle, with a gross vehicle weight rating (GVWR) of less than 8500 lbs., a curb weight of less than 6,000 lbs., and a frontal area of less than 46 sq. ft.

(2) "Used vehicle" means any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer, but does not include any vehicle sold only for scrap or parts (title documents surrendered to the state and a salvage certificate issued).

(3) "Dealer" means any person or business which sells or offers for sale a used vehicle after selling or offering for sale five (5) or more used vehicles in the previous twelve months, but does not include a bank or financial institution, a business selling a used vehicle to an employee of that business, or a lessor selling a leased vehicle by or to that vehicle's lessee or to an employee of the lessee.

(4) "Consumer" means any person who is not a used vehicle dealer.

(5) "Warranty" means any undertaking in writing, in connection with the sale by a dealer of a used vehicle, to refund, repair, replace, maintain or take other action with respect to such used vehicle and provided at no extra charge beyond the price of the used vehicle.

(6) "Implied warranty" means an implied warranty arising under state law (as modified by the Magnuson-Moss Act) in connection with the sale by a dealer of a used vehicle.

(7) "Service contract" means a contract in writing for any period of time or any specific mileage to refund, repair, replace, or maintain a used vehicle and provided at an extra charge beyond the price of the used vehicle, provided that such contract is not regulated in your state as the business of insurance.

(8) "You" means any dealer, or any agent or employee of a dealer, except where the term appears on the window form required by § 455.2(a).

§ 455.2 Consumer sales—window form.

(a) *General duty.* Before you offer a used vehicle for sale to a consumer, you must prepare, fill in as applicable and display on that vehicle a "Buyers Guide" as required by this Rule.

(1) Use a side window to display the form so both sides of the form can be read, with the title "Buyers Guide" facing to the outside. You may remove a form temporarily from the window during any test drive, but you must return it as soon as the test drive is over.

(2) The capitalization, punctuation and wording of all items, headings, and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% black ink on a white stock no smaller than 11 inches high by 7¼ inches wide in the type styles, sizes and format indicated.

BILLING CODE 6750-01-M

BUYERS GUIDE

28 pt Triumvirate Bold caps

2 pt Rule

10/12 Triumvirate Bold c & lc flush left ragged right maximum line 42 picas

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE _____ MODEL _____ YEAR _____ VIN NUMBER _____

10 pt Baseline Rule
6 pt Triumvirate Bold caps

DEALER STOCK NUMBER (Optional) _____

10 pt Baseline Rule
6 pt Triumvirate Bold caps

WARRANTIES FOR THIS VEHICLE:

10 pt Triumvirate Bold caps

2 pt Rule

54 pt Box
42 pt Triumvirate Bold caps

☐ AS IS - NO WARRANTY

10/10 Triumvirate Bold c & lc flush left ragged right maximum line 42 picas

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

1 pt Rule

54 pt Box
42 pt Triumvirate Bold caps

☐ WARRANTY

10/10 Triumvirate Bold c & lc 4½ picas indent on 2nd line

☐ **FULL** ☐ **LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.**

10 pt Triumvirate Bold caps

10 pt Baseline Rule

SYSTEMS COVERED:	DURATION:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

10/10 Triumvirate Bold c & lc maximum line 42 picas

☐ **SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductable, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.**

10/10 Triumvirate Bold caps flush left ragged right maximum line 42 picas

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

10/10 Triumvirate Bold c & lc flush left ragged right maximum line 42 picas

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

12 pt Triumvirate Bold lc
flush left ragged right
maximum line 42 picas

Below is a list of some major defects that may occur in used motor vehicles.

2 pt Rule

8/9 Triumvirate Bold c & lc
flush left ragged right
maximum line 20 picas
1 em indent on 2nd line

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

2 pt Rule

10 pt Baseline Rule
6 pt Triumvirate Bold caps

DEALER

ADDRESS

SEE FOR COMPLAINTS

2 pt Rule

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

10/12 Triumvirate Bold c & lc
maximum line 42 picas

BILLING CODE 6750-01-C

When filling out the form, follow the directions in (b) through (e) of this section and § 455.4 of this part.

(b) *Warranties*—(1) *No Implied Warranty—"As Is"/No Warranty.* (i) If you offer the vehicle without any implied warranty, *i.e.*, "as is," mark the box provided. If you offer the vehicle with implied warranties only, substitute the disclosure specified below, and mark the box provided. If you first offer the vehicle "as is" or with implied warranties only but then sell it with a warranty, cross out the "As Is—No Warranty" or "Implied Warranties Only" disclosure, and fill in the warranty terms in accordance with paragraph (b)(2) of this section.

(ii) If your state law limits or prohibits "as is" sales of vehicles, that state law overrides this part and this rule does not give you the right to sell "as is." In such states, the heading "As Is—No Warranty" and the paragraph immediately accompanying that phrase must be deleted from the form, and the following heading and paragraph must be substituted. If you sell vehicles in states that permit "as is" sales, but you choose to offer implied warranties only, you must also use the following disclosure instead of "As Is—No Warranty":[1]

Implied Warranties Only

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

(2) *Full/Limited Warranty.* If you offer the vehicle with a warranty, briefly describe the warranty terms in the space provided. This description must include the following warranty information:

(i) Whether the warranty offered is "Full" or "Limited."[2] Mark the box next to the appropriate designation.

(ii) Which of the specific systems are covered (for example, "engine, transmission, diffential"). You cannot use shorthand, such as "drive train" or "power train" for covered systems.

(iii) The duration (for example, "30 days or 1,000 miles, whichever occurs first").

(iv) The percentage of the repair cost paid by you (for example, "The dealer will pay 100% of the labor and 100% of the parts."

(v) If the vehicle is still under the manufacturer's original warranty, you may add the following paragraph below the "Full/Limited Warranty" disclosure: MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, etc. If, following negotiations, you and the buyer agree to changes in the warranty coverage, mark the changes on the form, as appropriate. If you first offer the vehicle with a warranty, but then sell it without one, cross out the offered warranty and mark either the "As Is—No Warranty" box or the "Implied Warranties Only" box, as appropriate.

(3) *Service contracts.* If you make a service contract (other than a contract that is regulated in your state as the business of insurance) available on the vehicle, you must add the following heading and paragraph below the "Full/Limited Warranty" disclosure and mark the box provided.[3]

☐ Service Contract

A service contract is available at an extra charge on this vehicle. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

(c) *Name and Address.* Put the name and address of your dealership in the space provided. If you do not have a dealership, use the name and address of your place of business (for example, your service station) or your own name and home address.

(d) *Make, Model, Model Year, VIN.* Put the vehicle's name (for example, "Chevrolet"), model (for example, "Vega"), model year, and Vehicle Identification Number (VIN) in the spaces provided. You may write the dealer stock number in the space provided or you may leave this space blank.

(e) *Complaints.* In the space provided, put the name and telephone number of the person who should be contacted if any complaints arise after sale.

§ 455.3 Window form.

(a) *Form given to buyer.* Give the buyer of a used vehicle sold by you the window form displayed under § 455.2 containing all of the disclosures required by the Rule and reflecting the warranty coverage agreed upon. If you prefer, you may give the buyer a copy of the original, so long as that copy accurately reflects all of the disclosures required by the Rule and the warranty coverage agreed upon.

(b) *Incorporated into contract.* The information on the final version of the window form is incorporated into the contract of sale for each used vehicle you sell to a consumer. Information on the window form overrides any contrary provisions in the contract of sale. To inform the consumer of these facts, include the following language conspicuously in each consumer contract of sale:

The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

§ 455.4 Contrary statements.

You may not make any statements, oral or written, or take other actions which alter or contradict the disclosures required by §§ 455.2 and 455.3. You may negotiate over warranty coverage, as provided in § 455.2(b) of this part, as long as the final warranty terms are identified in the contract of sale and summarized on the copy of the window form you give to the buyer.

§ 455.5 Spanish language sales.

If you conduct a sale in Spanish, the window form required by § 455.2 and the contract disclosures required by § 455.3 must be in that language. You may display on a vehicle both an English language window form and a Spanish language translation of that form. Use the following translation and layout for Spanish language sales:[4]

BILLING CODE 6750-01-M

[1] *See* § 455.5 n. 4 for the Spanish version of this disclosure.

[2] A "Full" warranty is defined by the Federal Minimum Standards for Warranty set forth in 104 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2304 (1975). The Magnuson-Moss Warranty Act does not apply to vehicles manufactured before July 4, 1975. Therefore, if you choose not to designate "Full" or "Limited" for such cars, cross out both designations, leaving only "Warranty".

[3] *See* § 455.5 n. 4 for the Spanish version of this disclosure.

[4] Use the following language for the "Implied Warranties Only" disclosure when required by § 455.2(b)(1):

Garantías implícitas solamente

Este término significa que el vendedor no hace promesas específicas de arreglar lo que requiera reparación cuando usted compra el vehículo o después del momento de la venta. Pero, las "garantías implícitas" de la ley estatal pueden darle a usted algunos derechos y hacer que el vendedor resuelva problemas graves que no fueron evidentes cuando usted compró el vehículo.

Use the following language for the "Service Contract" disclosure required by § 455.2(b)(3):

CONTRATO DE SERVICIO. Este vehículo tiene disponible un contrato de servicio a un precio adicional. Pida los detalles en cuanto a cobertura, deducible, precio y exclusiones. Si adquiere usted un contrato de servicio dentro de los 90 días del momento de la venta, las "garantías implícitas" de acuerdo a la ley del estado pueden concederle derechos adicionales.

GUIA DEL COMPRADOR

28 pt Triumvirate Bold caps

2 pt Rule

IMPORTANTE: Las promeses verbales son difíciles de hacer cumplir. Solicite al vendedor que ponga todas las promeses por escrito. Conserve este formulario.

10/12 Triumvirate Bold c & lc flush left ragged right maximum line 42 picas

MARCA DEL VEHICULO _____ MODELO _____ ANO _____ NUMERO DE IDENTIFICACION _____

10 pt Baseline Rule

6 pt Triumvirate Bold caps

NUMERO DE ABASTO DEL DISTRIBUIDOR (Opcional) _____

10 pt Baseline Rule

6 pt Triumvirate Bold caps

GARANTIAS PARA ESTE VEHICULO:

10 pt Triumvirate Bold caps

2 pt Rule

☐ COMO ESTA - SIN GARANTIA

36 pt Box

32 pt Triumvirate Bold caps

USTED PAGARA TODOS LOS GASTOS DE CUALQUIER REPARACION QUE SEA NECESARIA. El vendedor no asume ninguna responsabilidad por cualquier las reparaciones, sean cuales sean las declaraciones verbales que haya hecho acerca del vehículo.

10/10 Triumvirate Bold c & lc maximum line 42 picas

1 pt Rule

☐ GARANTIA

36 pt Box

32 pt Triumvirate Bold caps

☐COMPLETA ☐LIMITADA. El vendedor pagará _____% de la mano de obra y _____% de los repuestos los sistemas cubiertos que dejen de funcionar durante el periodo de garantía. Pida al vendedo una copia del documento de garantía donde se explican detalladamente la cobertura de le garantia, exclusiones y las obligaciones que tiene el vendedor de realizar reparaciones. Conforme a la ley estatal, las "garantías implícitas" pueden darle a usted incluso más derechos.

10/10 Triumvirate Bold c & lc 6½ picas indent on 2nd line

SISTEMAS CUBIERTOS POR LA GARANTIA: **DURACION:**

10 pt Triumvirate Bold caps

10 pt Baseline Rule

CONTRATO DE SERVICIO. Este vehículo tiene disponible un contrato de servicio a un precio adicional. Pida los detalles en cuanto a cobertura, deducible, precio y exclusiones. Si adquiere usted un contrato de servicio dentro de los 90 días del momento de la venta, las 'garantías implícitas' de acuerdo a la ley del estado pueden concederle derechos adicionales.

10/10 Triumvirate Bold c & lc maximum line 42 picas

INSPECCION PREVIA A LA COMPRA: PREGUNTE AL VENDEDOR SI PUEDE USTED TRAER UN MECANICO PARA QUE INSPECCIONE EL AUTOMOVIL O LLEVAR EL AUTOMOVIL PARA QUE ESTE LO INSPECCIONE EN SU TALLER.

10/10 Triumvirate Bold caps maximum line 42 picas

VEASE EL DORSE DE ESTE FORMULARIO donde se proporciona información adicional importante, incluyendo una lista de algunos de los principales defectos que pueden ocurrir en vehículos usados.

10/10 Triumvirate Bold c & lc flush left ragged right maximum line 42 picas

A continuación presentamos una lista de algunos de los principales defectos que pueden ocurrir en vehiculos usados.

12 pt Triumvirate Bold lc flush left ragged right maximum line 42 picas

2 pt Rule

8/9 Triumvirate Bold c & lc flush left ragged right maximum line 20 picas 1 em indent on 2nd line

Chasis y carrocería
- Chasis-grietas, soldaduras correctivas u oxidado
- Chasis dobiado o torcido

Motor
- Fuga de aceite, excluyendo el escape normal
- Bloque o tapa de recamara agrietados
- Correas que faltan o no funcionan
- Fallo o pistoneo
- Emision excesiva de humo por el sistema de escape

Transmisión y eje de cardan
- Nivel di liquido inadecuado o fuga, excluyendo filtración normal
- Cubierta agrietada o dañada visible
- Vibración o ruido anormal ocasion do por una transmisión o eje de cardan defectuoso
- Cambio de marchas o funcionmiento inadecuado en cualquier marcha
- Embrague manual patina o vibra

Diferencial
- Nivel de liquido inadecuado o fuga excluyendo filtración normal
- Cubierta agrietada o dañada visible
- Ruido o vibración anormal ocasionado por diferencial defectuoso

Sistema de refrigeración
- Fuga, incluido el radiador
- Bomba de agua defectuosa

Sistema electrico
- Fuga en las baterías
- Alternador, generador, batería, o motor de arranque defectuosos

Sistema de combustible
- Escape visible de combustible

Accesorios averiados
- Indicadores o medidores del cuadro de instrumentos
- Acondicionador de aire
- Calefactor y descarchador

Sistema de frenos
- Luz de advertencia de falla dañada
- Pedal no firma bajo presión (Especif. del Dpto de Transp.)
- Juego insuficiente en el pedal (Especif. del Dpto de Transp.)
- No detiene el vehiculo en linea recta (Especif. del Dpto de Transp.)
- Conductos dañados
- Tambor o disco muy delgados (Especif. del fabricante)
- Grosor de las bandas de los frenos menor de 1/32 de pulgada
- Sistema de servofreno dañado o con escape
- Partes estructurales o mecánicas danadas

Sistema de dirección
- Juego excesivo en el volante (Especif. Dpto de Transp.)
- Juego en el varillaje en exceso de 1/4 pulgada
- Engranaje del volante de dirección se agarrota
- Ruedas delanteras mal alineadas (Especif. del Dpto de Transp.)
- Correas del sistema de servodirección agrietadas o flojas
- Nival del liquido del sistema de serviodirección inadecuado

Sistema de suspensión
- Sellos de conexión de rodamientos defectuosos
- Piezas estructurales dobiadas o dañadas
- Barra de estabilización desconectada
- Resorte roto
- Montura del amortiguador floja
- Bujes de goma dañadas o ausentes
- Estabilizador para curvas dañadas o ausente
- Amortiguador tiene fuga o funciona defectuosamente

Llantas
- Profundidad de la banda de rodamiento menor de 2/32 de pulgada
- Diferentes tamanos de llanta
- Danos visibles

Ruedas
- Grietas visibles, danos o reparaciones
- Pernos de montaje sueltos o ausentes

Sistema de Escape
- Fuga

2 pt Rule

VENDEDOR

10 pt Baseline Rule

6 pt Triumvirate Bold caps

DIRECCION

VEASE PARA RECLAMACIONES

IMPORTANTE: La informacion contenida en este formulario forma parte de todo contrato de compra de este vehiculo. Constituye una contravencion de la ley federal (16 C.F.R. 455) quitar este rotulo antes de la compra del vehiculo por el consumidor (salvo para conducir el automovil en calidad de prueba).

2 pt Rule

10/12 Triumvirate Bold c & lc maximum line 42 picas

BILLING CODE 6750-01-C

§ 455.6 State exemptions.

(a) If, upon application to the Commission by an appropriate state agency, the Commission determines, that—

(1) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(2) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this Rule; then the Commission's Rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

(b) Applications for exemption under Subsection (a) should be directed to the Secretary of the Commission. When appropriate, proceedings will be commenced in order to make a determination described in paragraph (a) of this section, and will be conducted in accordance with Subpart C of Part 1 of the Commission's Rules of Practice.

§ 455.7 Severability.

The provisions of this part are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission, Commissioner Bailey dissenting.

Dated: November 9, 1984.

Emily H. Rock,

Secretary.

[FR Doc. 84-30086 Filed 11-16-84; 8:45 am]

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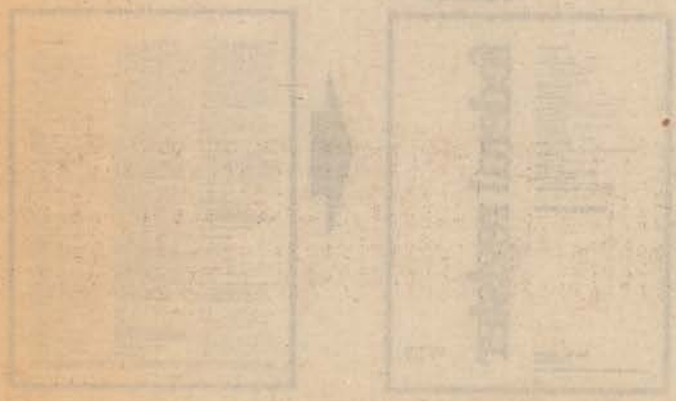
[2] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).



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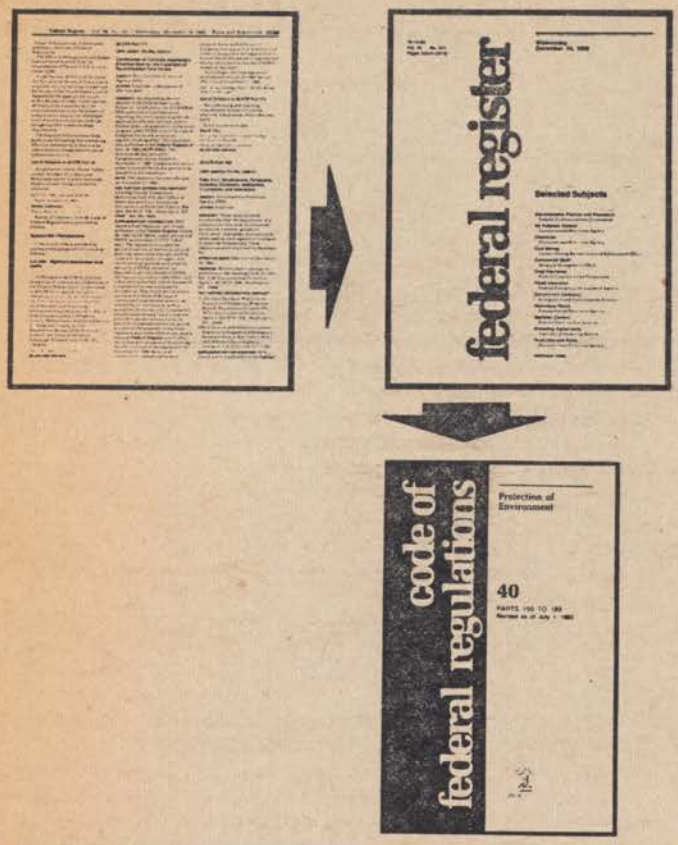

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_____ **Federal Register:** ___ One year as issued: $145 domestic; $181.25 foreign ___ Six months: $72.50 domestic; $90.65 foreign

_____ **Code of Federal Regulations:** ___ Current year: $200 domestic; $250 foreign ___ Previous year's full set (single shipment): $155 domestic; $193.75 foreign

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